XIV-840

A DIGEST OF INDIAN LAW CASES;

CONTAINING

HIGH COURT REPORTS, 1862-1886,

AND

PRIVY COUNCIL REPORTS OF APPEALS FROM INDIA, 1836-1886,

WITH AN INDEX OF CASES.

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BY

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IN FIVE VOLUMES.

VOLUME I. A—D.

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PREFACE.

THE object of this work is to furnish a comprehensive Index to the case law of India as laid down in the reported decisions of the High Courts and Privy Council, analogous to that already compiled of the statute law. It would perhaps be too much to hope that this object has been fully attained, but I can at least claim for it that it goes further towards success in that attainment than any previous work of the kind in India. I shall be satisfied with this attempt towards such an end if it be found in some degree useful to the Government in its legislation, to the judicial officers of Government, and last, but by no means least, to the members of all the branches of the profession to which I have the honour to belong.

The work contains the gist of the cases reported in 166 volumes of Reports extending over a period of fifty years,—*viz.*, from 1836 to 1886. Besides the reports published in India it contains the cases in Moore's Indian Appeals, without which, of course, no digest of Indian Cases would be complete; and also such cases from the Law Reports, Indian Appeals, as are not reported in the Indian reports. The names of the reports are set out in the annexed list showing the periods over which they extend, the decisions of what Court they contain, and the abbreviations used for them in the references throughout the Digest.

With respect to a few of those volumes which have been reprinted, and in the later editions of which the paging is different from that in the original edition, I have given, wherever I could do so, both pagings. I think this difference of paging will be found with respect only to the first and second volumes of the Bombay Reports, the first volume of the N.-W. Provinces Reports, and the Agra Full Bench volume.

In some of the volumes—instances chiefly, however, confined to the Agra Reports—the paging is in some places manifestly incorrect, some pages having the same numbers. In these cases I have generally given the page which would have been correct had the paging been correctly continued.

In cases where it is not otherwise apparent that the case is a Privy Council or Full Bench decision, I have added in the reference the letters P. C. or F. B., as the case may be, to indicate this. It should be noticed that *all* the cases in the supplemental volume of the Bengal Law Reports are Full Bench cases. This is not the case, however, with the Full Bench volume of the Weekly Reporter containing cases

decided in 1862-63; the letters W. R., F. B., therefore merely represent the abbreviation of the name of that volume, and do not necessarily imply that the case to which they are appended is a Full Bench case. In fact, as all the Full Bench cases in that volume are reported elsewhere, cases to which the letters W. R., F. B. alone are appended are probably not Full Bench cases, though some of them may be decided by more than two Judges.

With the names of the cases I have had great difficulty,—a difficulty which, from the character of Indian names, is, it seems to me, almost impossible to overcome. The general rule I have followed has been to cut out from the commencement of the names all prefixes and titles. The principal of these are Shahzada, Shah, Maharajah, Maharani, Rajah, Rani, Nawab, Sahib, Sri, Sreemutty, Mussamat, Bibi, Thakoor, Syed, Moulvie, Moonshee, Mir, Mirza, Hadji, Sheikh, Baboo, Coomar, Cowar or Kooer, and perhaps a few others. I have omitted these as far as possible with the object in view not only of greater brevity in the names, but also in order that, in the Index of Cases, names that are similar may come together, and not as they sometimes do in an index of names, some *with* the prefix or title and under one letter, and the same name *without* it under another letter. I have made exceptions to this rule only in cases where the name is given in the following form: "Maharajah of Vizianagram," "Rajah of Shivagunga," "Nawab Nazim of Bengal," &c.

As to the spelling of the names, I found it hopeless to attempt any consistency, for the various volumes of reports go through all the possible variations in the manner of spelling any particular Indian name, and I came to the conclusion that it was best to spell the cases as they appear in the reports. Had I adhered in all cases to any one mode of spelling, the result would have been that any cases spelt in the report in a different way would probably never be found by looking in the Index of Cases, or if discovered at all, only after much more expenditure of time and trouble than would be desirable; and such a method would, it seemed to me, lead in other ways to difficulty and confusion.

I at first intended to issue the work in not more than two volumes, but owing to the material having taken up more space in print than I imagined it would do, and it being desirable not to have the volumes of a bulk inconvenient for ready use and reference, it has been decided to issue it in five volumes to be published successively, and, if possible, within the present year. To each volume will be appended a table of the headings contained in it, and the last volume will contain a list of all the cases contained in the five volumes. The paging will be continuous throughout the work.

J. V. WOODMAN.

CALCUTTA,
15th September, 1887.

LIST OF REPORTS DIGESTED.

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Hay's Reports	1862–63	2	High Court, Calcutta, Appellate Side	Hay.
Marshall's Reports	1862–63	1	High Court, Calcutta, Appellate Side, and Privy Council	Marsh.
Coryton's Reports	1862–63	1	High Court, Calcutta, Original Side	Cor.
Hyde's Reports	1863–64	2	High Court, Calcutta, Original Side	Hyde.
Sutherland's Weekly Reporter, Gap Number	1864	1	High Court, Calcutta, Appellate Side	W. R., 1864.
Sutherland's Weekly Reporter	1864–76	26	High Court, Calcutta, Appellate Side, and Privy Council	W. R.
Bourke's Reports	1865	1	High Court, Calcutta, Original Side	Bourke.
Indian Jurist, New Series	1866–67	2	High Court, Calcutta	Ind. Jur., N. S.
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Agra High Court Reports	1866–68	3	North-Western Provinces High Court, Agra	Agra.
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Indian Law Reports, Bombay Series	1876–86	10	High Court, Bombay, and Privy Council	I. L. R., Bom.
Indian Law Reports, Allahabad Series	1876–86	8	High Court, North-Western Provinces, Allahabad, and Privy Council	I. L. R., All.
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CORRIGENDA.

COL. 116.—*Omit* "Act I of 1866" *and reference.*

COL. 160.—*Last line but one, insert under reference* "I. L. R., 10 Calc., 946."

COL. 186.—*Case 131, after* "RAYGO *v.* POGOSE" *insert* "I. L. R., 3 Calc., 709, note", *and omit this reference in previous line.*

COL. 242.—*Last case, for* "38" *read* "398."

COLS. 390 AND 391.—*The heading of columns should be* "ARMS ACT (XI OF 1878)" *instead of* "ARMS ACT (XXXI of 1860)"

COL. 434.—*Case 136, line 2, for* "207" *read* "203."

COL. 465.—*Case 4, in reference, for* "138" *read* "139"

COL. 492.—*Insert* "Bengal Act—1866—I. *See* FERRY . 15 W. R., 132"

COL. 647.—*For* "BURMA COURTS ACT," *read* "BURMA CIVIL COURTS ACT," *and omit black type at head of next case.*

COL. 648.—*In the heading* "CALCUTTA MUNICIPAL ACTS" *for* "Bengal Act VI of 1883" *read* "Bengal Act VI of 1863."

COLS. 649, 650, 651, 652.—*Line 2, for* "1883" *read* "1863."

COL. 823.—*The reference to the first case, for* "I. L. R., 53 All., 33" *read* "I. L. R., 3 All., 533"

COL. 1362.—*Case 56, in reference, for* "12 B. L. R." *read* "2 B. L. R."

COLS. 1394 TO 1403.—*The heading of columns should be* "DEBTOR AND CREDITOR" *instead of* "DEBTOR, DISCHARGE OF."

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——— *Penal Code, s. 317.*—Section 317 of the Penal Code was intended to prevent the abandonment or desertion by a parent of his or her children of tender years in such a manner that the children, not being able to take care of themselves, may run the risk of dying or being injured. IN THE MATTER OF FELANI HARIANI . . 16 W. R., Cr., 12

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1. ——— Ground of Abatement.—Causes beyond control.—*Act X of 1859, s. 18.*—The real meaning of section 18, Act X of 1859, is that the grounds for which an abatement of rent may be claimed by a ryot must have resulted from causes beyond his control. MUNSOOR ALI *v.* HARVEY

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2. ——— Diluvion.—*Act X of 1859, s. 18—(Bengal Act VIII of 1869, s. 19).—Deduction in suit for arrears of rent.*—Rent of a talook may be abated if a portion of the talook be washed away. Independently of section 18, Act X of 1859, a suit for abatement of rent will lie by a talookdar on the ground that part of the talook has been washed away. A deduction may be made on such ground in a suit for arrears of rent. AFSUROODEEN *v.* SHOROOSHEE BALA DABEE . . Marsh 558

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3. ——— Diluvion.—*Onus probandi.*—The *onus* lies on the defendant in a suit for arrears of rent of proving to what deduction he is entitled, and of showing precisely what lands have disappeared. SAVI *v.* OBHOY NATH BOSE

[2 W. R., Act X, 27

4. ——— Diluvion.—*Right of occupancy.*—A tenant, whether with or without a right of occupancy, is entitled to abatement of rent for land washed away unless precluded by the term of his kabuliat from claiming any abatement. ENAYUTOOLAH *v.* ELAHEBUKSH

[W. R., 1864, Act X, 42

5. ——— Diluvion.—*Cause of action.*—When a diluvion takes place, a right of suit to obtain an abatement of jumma accrues from the time when the plaintiff is compelled to pay the rent named in his pottah without the allowance of the abatement claimed by him. BARRY *v.* ABDOOL ALI

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6. ——— Diluvion.—*Talook created before 1790.—Quære.*—Whether the proprietor of a talook created before the Permanent Settlement can claim abatement of rent on the ground of diluvion. RAM CHURN BYSACK *v.* LUCAS

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7. ——— Diluvion.—*Waiver of right to deduction.* In a suit for arrears of rent of land adjacent to a river where defendant

ABATEMENT OF RENT—Ground of Abatement—*continued.*

claims deduction on account of diluvion, and it is found that the agreement under which he holds requires measurement to be made once in three years, no account being taken of accretion or decretion occurring within that period: if the tenant has waived his right of measurement and has held over, it must be presumed that he elects to continue to hold at the same jumma as before, and his claim to deduction cannot be allowed. KRISTO KINKUR PURAMANICK *v.* RAMDHUN CHETTANGIA [24 W. R., 326

8. ——————— **Diluvion.**—*Kabuliat.—Sale by tenant of his tenure.—Suit against purchaser.*—In a suit against the purchaser at an auction sale of a tenure under a kabuliat by which it was agreed that the former tenant should not be entitled to abatement of rent on any ground and should be liable for interest at a particular rate for all arrears of rent, the defendant pleaded that as auction purchaser he was not bound by the terms of the kabuliat; that he was entitled to abatement on the ground of diluvion of portion of the demised lands, and only bound to pay interest at a reasonable rate upon arrears of rent. *Held*, that defendant was bound by the terms of the kabuliat entered into by his predecessor. ISHAN CHUNDER CHOWDHRY *v.* CHUNDER KANT ROY . . 13 C. L. R., 55

9 ——————— **Diluvion.**—*Transferee of tenant, Right of, to abatement.*—A tenant has a right to, and can claim an abatement of rent where the area of the land, the subject of his tenure, has been diminished by diluvion, and such right passes to a purchaser on a sale of the tenure. *Prosunno Moyee Dossee* v. *Doya Moyee Dossee 22 W. R., 275* distinguished. KALI PRASANNA RAI *v.* DHANANJAI GHOSE . I. L. R. 11, Calc. 625

10. ——————— **Diluvion.**—*Bengal Act VIII of 1869, s. 18.*—A ryot cannot sue for abatement of rent simply because the lands which he holds are rated higher than those of the same description and with similar advantages held by ryots of the same class in the vicinity. Bengal Act VIII of 1869, Section 18, refers to an alteration of area owing to a portion of the land having gone away by diluvion or otherwise—not to some difference in the length of the measuring pole in use at different periods. BABUN MUNDLE *v.* SHIB KOOMAREE BURMONEE . . 21 W. R., 404
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11. ——————— **Damage to land by Cyclone.**—*Right of under-tenant to get remission of rent.*—A landlord receiving remission from Government on account of damage done to his estate by a cyclone, is not on that account bound to allow a remission to his under-tenants, unless he received the former on the understanding or agreement that he would allow it in turn. GOLUCK CHUNDER MYTEE *v.* PARBUTTY CHURN DASS [15 W. R., 167

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12. ——————— **Error in measurement of land.**—*Land found to be less than stated.*—A lease providing for enhancement if the lands are found on measurement to exceed the quantity stated in the lease, does not necessarily give the right to abate if the lands are found to be less than that stated in the lease. RAM KANT CHOWDHRY *v.* BINDABUN CHUNDER GOPE [2 W. R., Act X, 71

13. ——————— **Error in measurement of land.**—*Construction of pottah.—Default of tenant.*—Though a pottah provided for an abatement of defendant's rent if on measurement the land was found to be less than 145 beegahs, yet it was held that if defendant came to be in possession of that less quantity by his own default, and not that of the lessor, the mere fact of defendant having been in possession of less than 145 beegahs would not entitle him to an abatement. SEETANATH BOSE *v.* SHAMCHAND MITTER 17 W. R., 418

14. ——————— **Error in measurement of land.**—*Ryot having paid no rent.—Bengal Act VIII of 1869, s. 19.*—A ryot who has held his land for a few months, and paid no rent at all, cannot sue for an abatement of rent on the ground that the land, on measurement, is less than the quantity mentioned in his pottah. BROJONATH KOONDOO CHOWDRY *v.* UNANT RAM DUTT [17 W. R., 449

15. ——————— **Misrepresentation as to quantity of land.**—In a suit by a putnidar to recover rent in accordance with the terms of a dur-putni lease, the defendant claimed an abatement of his putni rent on the ground that his predecessor had obtained such abatement in a previous rent suit, in which it appeared that the lessor's share was slightly less than what was described in the lease.—*Held* that unless the defendant could show that he had been damaged by the plaintiff's misrepresentation as to the extent of his share, he could not be relieved from his contract, in this form of suit at least. GOUR MOHUN ROY *v.* RADHA ROMUN SINGH . . . 21 W. R., 372

16. ——————— **Misrepresentation as to quantity of land.**—*Delay in suing.*—In 1859 *G* entered into negociations with respect to the purchase of a certain talook at premium of R42,411 and an annual rent of R48,070, and in January 1860 he signed a sale-bond which contained an enumeration of the mouzahs purchased, the actual sale being completed in the 2nd June following. Until his death in December 1861 he paid the stipulated rent according to the terms of the deed. Subsequently his widow brought a suit for abatement of the rent on the ground that her husband had been misled as to the amount of rent payable by the under-tenants,—*Held* (affirming the decision of the High Court of Calcutta) that under the circumstances the suit could not be maintained. DARIMBYA DEBBYA *v.* NILMONEY SINGH DEO [5 C. L. R., 465

ABATEMENT OF RENT—Ground of Abatement—*continued.*

17. ——————— Misrepresentation as to quantity of land.—*Act X of 1859, ss. 18 and 23, cl. 3.*—Section 18, Act X of 1859, is not applicable to a case in which a plaintiff putnidar sues for an abatement of rent, on the ground of fraud caused by the concealment from him of the existence of an intermediate tenure created by the zemindar. Clause 3, Section 23 of that Act, is wide enough to admit of such a suit being tried by the Revenue Courts. SHOKOOR ALI *v.* UMOLA AHALYA [8 W. R., 504

18. ——————— Misrepresentation as to quantity of land.—*Denial of right to assess lands in tenure.*—A suit in which the plaintiff alleges that rent was wrongly assessed on him for lands not covered by his pottah, and contends that in assessing his rent these lands should be included, is not in the nature of a suit for abatement of rent. OBHOY GOBIND CHOWDHRY *v.* KENNY [8 W. R., 518

19. ——————— Breach of Contract.—*Jurisdiction of Civil Court.*—In a suit for damages by a lessee, where the plaint shows a distinct prayer for abatement of rent, and also sets forth as the main ground of the suit a fraudulent breach of contract by misrepresentation and refusal of deduction and refund stipulated for, so much of the claim as refers to abatement is, by Clause 3, Section 23, Act X of 1859, beyond the jurisdiction of the Civil Court; but the rest of the suit is properly cognizable by such Court. NILMONEY SINGH *v.* ISSUR CHUNDER GHOSAL . . . . . 9 W. R., 92

20. ——————— Reduction of rent payable by landlord to Government.—*Act X of 1859, ss. 17 and 18.*—Sections 17 and 18 were passed for the benefit of the ryot, and not for the protection of the zemindar. Section 18 was intended to give the ryot a right to abatement in certain cases, but not to protect the zemindar from liability to make abatement in any other case. In a suit for abatement of rent on the ground that the jumma payable to Government had been reduced upon condition that the rents of the ryot should be reduced in a like proportion,—*Held* that the right to abatement applies only to the case of rents of which the amount had been fixed before the jumma was reduced by Government, and not to rents fixed by pottahs or kabuliats entered into subsequently. SUKHAWATOOLLAH *v.* PUTHOO GOLDAR - - - - 1 Ind. Jur., O. S., 7

21. ——————— Loss of portion of land.—*Suit for declaration of liability to pay less rent—Equitable relief.*—A suit by a tenant against his original lessors for a declaration that he is not liable to pay them the whole rent payable under his pottah in consequence of a third person having, subsequently to the grant of such pottah, by suit established a right to a share of the rent, is not a suit for abatement of rent. But where, under such circumstances, the tenant is holding more land than is covered by his pottah, it is not necessary that his landlords, if desirous of enhancing the rent, should be referred to a separate suit for that purpose. The suit of the tenant being for equitable relief, the claim of the landlords must be taken into consideration in determining what relief the plaintiff is entitled to obtain. CHANDMONI DASI *vs.* LOKE NATH CHATTERJEE [6 C. L. R., 494

22. ——————— Land taken for public purposes.—*Suit to recover share of money taken as compensation for land.*—In a suit to recover the proportion of money paid into Court as compensation for land taken for a railway, to which the plaintiff, a dur-putnidar, may be entitled, and in which suit the zemindar and putnidar are defendants, the plaintiff cannot claim abatement of rent under Act X of 1859, section 18, since such a claim is cognizable only in a suit instituted under that Act. GORDON STUART & CO. *v.* MOHATAB CHAND . . Marsh, 490

23. ——————— Land taken for public purposes.—*Claim to deduction from rent.*—A claim for rent being a recurring cause of action, a tenant is entitled to set up against it for any particular year any right which he had to a deduction or abatement, notwithstanding that he has paid full rent for several previous years. When land is taken away for railway purposes, and compensation made, which is divided between the zemindar and those holding under him, any deduction of rent claimed from the zemindar must be reckoned with reference, not to the gross amount of compensation, but to the proportion which passed into his hands. MOHATAB CHAND *v.* CHITTRO COOMAREE BIBEE [16 W. R., 201

24. ——————— Land taken for public purposes.—In a suit for rent by a zemindar against a putnidar, the latter claimed abatement of the rent on the ground that part of the land included in the putni tenure had been acquired by the Government for public purposes. The kabuliat executed by the putnidar contained a provision to the effect that, if any of the land settled should be taken up by Government for public purposes, the zemindar and the putnidar should divide and take in equal shares the compensation money, and a further provision to the effect that the putnidar should "make no objection on the score of diluvion or any other cause to pay the rent fixed or reserved by this kabuliat." *Held* that the putnidar was entitled to abatement of the rent. UMA SUNKUR SIRKAR *v.* TARINI CHUNDER I. L. R. 9 Calc. 571; 11 C. L. R. 366

25. ——————— Land taken for public purposes.—*Ijara Settlement.—Deduction from Rent.*—An ijaradar took on lease certain lands, giving a kabuliat which contained the following clause:—"In regard to the aforesaid rent we take upon ourselves the risk of flood and drought, of death and flight, of alluvion and diluvion, of profit and loss. In no case shall we be able to claim a reduction in the rent, nor will it be open to you to demand more on account of alluvion, &c." During the lease part of these lands were taken up by Government for the purpose of a railway, and compensation was paid to the lessor therefor. The ijaradar claimed to make a deduction from his rent for the land taken away from him. *Held* that such a claim did not come

ABATEMENT OF RENT Ground of Abatement—*continued.*

under the meaning of the word "abatement" as used in the rent law, nor was it intended by the parties to be within the clause of the lease, but the land having been taken from the whole area demised, not by natural causes, but by *vis major*, the ijaradar was entitled to a deduction from the rent, on his showing that there were tenants of his on the land who, before the land was taken by Government, paid rent to him which they had now ceased to pay. WATSON & Co. *v.* NISTARINI GUPTA . . I. L. R 10 Calc. 544

26 ——— ——— **Land taken for public purposes.**—In a suit for arrears of rent, a claim for abatement may be made by way of set-off in respect of land taken up by Government for the purposes of a road. DEEN DYAL LALL *v.* THUKROO KOONWAR . . . 6 W. R., Act X, 24

27. ——— ——— **Land taken for public purposes.**—*Proceedings under Land Acquisition Act, 1870.—Purchase at sale for arrears of rent.—Beng. Reg. VIII of 1819.*—Portion of certain land held under a putni having been taken up by the Government for public purposes under the Land Acquisition Act, the zemindar declared his intention of granting no abatement of rent, and acting upon this declaration the putnidar was allowed to appropriate the whole of the compensation. The putni was subsequently sold under Regulation VIII of 1819, with notice of the amount of the original rent, and the purchaser now sued for abatement of that rent. He did not allege that he held no notice of the proceedings under the Land Acquisition Act. *Held* that the plaintiff must be presumed to have had notice of these proceedings, and that it was therefore incumbent upon him to have made inquiry regarding the position of the putni, and that under the circumstances he was not entitled to the abatement sought for. PEARI MOHUN MUKERJEE *v.* AUDHIRAJ AFTAB CHAND [10 C. L. R., 526

28 ——— **Previous suit for abatement, effect of.**—*Onus probandi.*—There is no provision in the Rent Law prescribing that suits for enhancement or abatement shall not be brought within a certain period after the determination of a similar suit on the same grounds. And there is no provision throwing upon a plaintiff in a suit for abatement of rent the burden of proof that there has been some change in circumstances since a decision in a previous similar suit was passed. CHEDA *v.* NUNHOO BEG . . . . . 2 N. W., 348

29. ——— **Claim to abatement.**—*"Otherwise vary" the rent.*—The words "otherwise vary" in section 153, Act X of 1859, are meant to include abatement claimable by the ryot; and this reservation is made in respect of questions of right to vary the rent, whether raised by the landlord or by the tenant. ANUND CHUNDER DEGHLE *v.* NUBOOOOMAR CHATTERJEE [8 W. R., 192

30. ——— **Right to sue.—Putnidar.**—A putnidar can sue for abatement of rent under the Rent Act, 1859 PROSUNOMOYEE DASEE *v.* SOONDUR COOMAREE DEBIA 2 W. R, Act X, 30

ABATEMENT OF RENT—Right to sue—*continued.*

MAN GUROBINEE DASSEA *v.* KHETTUR CHUNDER GHOSE . . . 2 W. R., Act X, 47

31. ——— **Putnidar.**—*Lessee.—Act X of 1859, s. 23.*—A putnidar, or any other lease-holder, may bring a suit against the zemindar for abatement of rent, under section 23, Act X of 1859. RAMNARAYAN BANERJEE *v.* JAYAKRISHNA MOOKERJEE . . B. L. R. Sup. Vol. 70
HOROKISHEN BANERJEE *v.* JOYKISHEN MOOKERJEE [1 W. R., 299

32. ——— **Howladar.**—A howladar has a right to sue for abatement of rent. KOMLAKANT DOSS *v.* POGOSE [2 W. R., Act X, 65

33. ——— **Tenant without right of occupancy.**—*Act X of 1859, s. 18.*—A tenant not having a right of occupancy is not entitled to an abatement of rent under Act X of 1859, section 18. NOBODEEP CHUNDER SIRCAR *v.* LALLA SEEB LOLL . . . . . Marsh, 325

34. ——— **Under-tenants.**—*Act X of 1859, s. 23, cl. 2.—Illegal exaction of rent.*—Clause 2, section 23, Act X of 1859, relating to the illegal exaction of rent, was not limited to suits at the instance of the ryot, but applied to any under-tenant. GOPAL PAUL CHOWDRY *v.* GRISH CHUNDER PANDEY . . . 14 W. R., 269

35. ——— **Form of Suit.**—*Act X of 1859, s. 23.—Jurisdiction of Civil Court.*—*A.* obtained from *B.* a putni lease, whereby it was agreed that *A.* should prepare a hustabad (rent-roll); that if it should appear that there was any deficiency in the jumma stated in the pottah, the correct jumma should be ascertained as therein provided; and that the rent should be made up to *A.* by *B.*, and *B.* should return a proportionate amount of the consideration-money. *A.* sued *B.* for an abatement of rent, for a refund of rent paid in excess, and for a proportionate refund of the consideration-money. *Held*, the suit was not a suit for abatement of rent within section 23 of Act X of 1859, and the Civil Court had jurisdiction to try the different questions together in the same suit. NILMONI SINGH *v.* ANNADAPRASAUD MOOKERJEA . . 1 B. L. R., F. B., 93 [10 W. R., F. B., 41

36. ——— *Suit for apportionment of rent.—Bengal Act VIII of 1869, s. 19.*—In 1877 certain *butwara* proceedings were terminated, and the amount of land held by the plaintiff in the portion of the estate allotted to the defendant was ascertained. The rent payable was admitted to be at the rate of Rs. 4 per biggah. In 1881 the defendants sued the plaintiff for rent of a larger amount than the plaintiff admitted to be due, and obtained a decree on the 31st May 1881. On the 20th September 1881, the plaintiff instituted a suit, nominally under the provisions of section 19 of Bengal Act VIII of 1869 for abatement of rent, upon the ground that the defendants were seeking to charge him rent upon a larger amount of land than he actually held. The Court found that the

ABATEMENT OF RENT—Form of Suit —*continued.*

amount of land held by the plaintiff was the amount stated by him in his plaint, and not that alleged by the defendants. *Held* that the suit was rather one for the apportionment of rent after the *butwara* proceedings, and not one for abatement of rent. DURGA PERSHAD *v.* GHOSITA GORIA

[I. L. R., 11 Calc., 284

37. ——— **Rate of deduction.**—*Jurisdiction of Revenue Court.*—*A.* granted a putni to *B.*, to which a certain mehal appertained. The Government, to which the mehal belonged, in reversion upon an ijara held by *A.*, sold it to *C.* *Held* that *B.* was entitled to abatement of rent from *A.*, and that a suit for abatement, under the circumstances, was cognizable by the Revenue Court. *Semble,*—Where there is no specification in the original contract of the amount of rent payable for the portion of land for which abatement is claimed, such a sum ought to be deducted from the whole rent as would bear to that whole rent the same proportion as the annual value of the portion of the land which has disappeared bears to the annual value of the land originally leased. BRIJANATH PAL CHOWDRY *v.* HIRALAL PAL

[1 B. L. R., A. C., 87; 10 W. R., 120

38. ——— **Procedure.**—*Suit for arrears of rent.*—A claim by defendant for abatement of rent under remission granted to plaintiff by Government may be tried in a suit for arrears. BOIKUNTO PARAKI *v.* SURENDRONATH ROY . 1 W. R., 84

39. ——— *Plea of abatement in suit for arrears of rent.*—In a suit to recover arrears of rent it is competent to a Court to adjudicate upon a plea of abatement. GOUR KISHORE CHUNDER *v.* BONOMALEE CHOWDHRY

[22 W. R., 117

40. ——— **Effect of decision of Civil Court on decree of Revenue Court.**—*Suit for excess payments of rent after decree for abatement.*—A putnidar sued his zemindar and obtained a decree for abatement of the putni rent, on the ground that the assets of the putni fell short of the amount stated in the lease. While this suit was pending in the Civil Court, the zemindar brought a suit for the rent of two years upon the full jumma; and though the putnidar objected that his suit for abatement was pending, the Collector decreed the rent suit in full. In execution, the zemindar recovered the full rent, and the putnidar then sued for a refund of excess payments and of the interest realized by the zemindar thereon.—*Held* that the decree of the Revenue Court was superseded and modified by the decree of the Civil Court which was subsequently affirmed in appeal.—*Held* that the plaintiff's cause of action accrued on the date on which the zemindar recovered from him rent in excess of what he was justly liable for, and also interest on such excess.—*Held* (on reference to the decree) that the abatement was to take effect from the commencement of the putni lease. NILMONEY SINGH DEO *v.* SHARODA PERSHAD MOOKERJEE

[18 W. R., 434

ABATEMENT OF SUIT.

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1.—SUITS	10
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[6 B. L. R., 119
[10 Bom., 58

(1).—SUITS.

1. ——— **Lands washed away.**—*Suit for possession and mesne profits.* A suit for possession with mesne profits does not abate by reason of the lands having since been washed away. UNNA POORNA DEBIA *v.* RAM LOCHAN GHOSE

[5 W. R., 227

2. ——— **Death of sole Plaintiff.**—*Revivor—Civil Procedure Code (Act X of 1877), ss. 363, 365, 366, 371—Limitation Act (XV of 1877), sched. ii, arts. 171, 178.*—Upon the death of a sole plaintiff, if no application to revive is made within sixty days from the date of the plaintiff's death, the suit abates. But the Court may, under section 371 of the Code of Civil Procedure, revive the suit, on the application of the legal representative of the plaintiff, within three years from the time when the right to apply accrues, if he can show that he was prevented by sufficient cause from continuing the suit. BHOYRUB DASS JOHURRY *v.* DOMAN THAKOOR . . I. L. R., 5 Calc., 139

[4 C. L. R., 374

3. ——— *Civil Procedure Code (1859), s. 102, (1877) s. 371.—Institution of fresh suit.*—Where a suit was declared abated in 1868 under section 102 of Act VIII of 1859 for non-prosecution by the representative of deceased plaintiff,—*Held* that the Civil Procedure Code, section 371, was no bar to a fresh suit instituted in 1880 on the same cause of action. PALLIKUNATH RAMEN MENON *v.* MULLANKAJI SRI KUMARAN NAMBUDRI

[I. L. R., 3 Mad. 31

4. ——— *Civil Procedure Code, 1882, ss. 365, 366, 371.—Revival of suit.*—The plaintiff died on the 28th August 1883, and in December 1884, letters of administration to his estate were granted to the Administrator General. The defendant died in June 1884, leaving a widow and one son him surviving. By his will he appointed two executors. On the 3rd February 1885, the Administrator General took out a summons to revive the suit.—*Held* that, notwithstanding the provisions of section 365 of the Civil Procedure Code (XIV of 1882) and of the Limitation Act XV of 1877, it was competent for a Judge in chambers to revive the suit by making an order for abatement under section 366 of the Code, coupled with an order under section 371 setting aside the order for abatement. FULVAHU *v.* GOCULDAS VALLABHDAS . . . . I. L. R., 9 Bom., 275

5. ——— **Insolvency of plaintiff.**—*Civil Procedure Code, 1859, s. 106 (1882, s. 370)—Order for security for costs by Official Assignee when made a party.*—Section 106 of the Civil Procedure Code means that a suit abates by the insolvency of the plaintiff, but that the defendant shall not plead the abatement without giving the Official Assignee an opportunity of prosecuting the

ABATEMENT OF SUIT—*continued.*

(1)—SUITS—*continued.*

Insolvency of Plaintiff—*continued.*

suit. Where, therefore, the plaintiff, after the institution of a suit, became insolvent, and the defendant thereupon obtained an order that the Official Assignee should give security for the costs of the defendant within fourteen days, and should be made a party to the suit within one month, and that, in default of such security, the suit should be set down for dismissal within eight days after the expiration of the time so limited,—*Held* that such order was irregular.—*Held* also, that the Official Assignee, having notice of the order, was not entitled to further notice of the setting down of the suit for dismissal, he not having given the security required, and that the giving of such security was a condition precedent to his being made a party to the suit. IBRAHIM BIN MAHASIN *v.* ABDUR RAHIMAN BIN ALLI. GAMBLE *v.* ABDUR RAHIMAN BIN ALLI . **12 Bom., 257**

6. ——— *Civil Procedure Code, 1859, s. 106 (1882, s. 370).*—If an assignee, who has been substituted for the plaintiff under section 106, Act VIII of 1859, declines to furnish security for costs within such reasonable time as the Court may order, the defendant may, within eight days after such neglect and refusal, plead the bankruptcy or insolvency of the plaintiff as a reason for abating the suit. HEERA LALL SEAL *v.* CARAPIET **[13 W. R., 431**

7. ——— **Survival of cause of action.**—During the pendency of a suit by a Hindu widow to recover possession of her husband's estate, the widow died,—*Held* the cause of action was one which from its very nature survived on the death of the plaintiff and therefore the suit did not abate. PARBUTTY *v.* HIGGIN . . . **17 W. R., 475**
S.C. PARBUTTY *v.* BHIKUN . **8 B. L. R., Ap. 98**

8. ——— *Suit by son to set aside father's alienation of ancestral property.—Death of son.—Hindu mother.*—Where a Hindu minor, governed by the law of the Mitakshara, on whose behalf a suit to set aside his father's alienation of ancestral property had been instituted, died,—*Held* that no right to sue survived in favour of his mother, but the suit abated. PADARATH SINGH *v.* RAJA RAM . . . . . **I. L. R., 4 All., 235**

9. ——— *Personal cause of action.*—*Held*, that under the circumstances the suit which had arisen on account of some illegal act of the widow, had abated on her death pending the suit, and that the question as to the plaintiff's reversionary right which was raised by an intervenor must be decided in a separate suit. RAMJUN *v.* LACHHE . . . . . **1 Agra, 49**

10. ——— *Act VIII of 1859, s. 100 (1882, s. 362).*—*A.* and *B.*, as joint owners of certain land, brought an action for damages on account of trespass. *B.* died after action was brought. *Held*, that the cause of action survived to *A.* *Semble.*—The words "cause of action" in section 100 of Act VIII of 1859, mean right to bring an action. CHUNDERMOHUN DUTT *v.* BISWAMBHUR LAHA **[1 B. L. R., O. C., 42**

ABATEMENT OF SUIT—*continued.*

(1)—SUITS—*continued.*

Survival of cause of action—*continued.*

11. ——— In a suit to recover possession of timber, the first defendant had ceased to have any interest, and after the settlement of issues he died. *Held* that the cause of action against the other defendants survived, and that the first defendant having no interest in the subject of the suit, it was not necessary that the suit should be revived against his representatives. MOUNG KHINE *v.* BURN . . . . **6 W. R., Civ. Ref., 2**

12. ——— *Act X of 1859, s. 20 (Beng. Act, 1869, s. 21).*—A cause of action accruing against an agent for money received and accounts kept, falling within the class mentioned in section 20, Act X of 1859, survives the death of the agent. HILLS *v.* SHOKHEE MONEE DOSSEE **[10 W. R., 59**

(2).—APPEALS.

13. ——— **Death of appellant.**—The death of an appellant was held to be no reason for the abatement or postponement of a case which was being conducted by an agent of the deceased defendant, and was not in any way prejudiced. JUGOMOHUN SINGH *v.* DABEE PERSHAD **[W. R., 1864, Act X, 47**

14. ——— An appellant having died and no application having been made before the lapse of two months to enter appearance on behalf of the representatives, the appeal was held to have abated. KHETTRONATH DEY *v.* GOSSAIN DASS DEY . . . . . **11 W. R., 543**
BHAGIAN *v.* PALMER . . **20 W. R., 267**

15. ——— *Civil Procedure Code, ss. 102 (1882, ss. 365, 366) and 348 (1882, s. 561), and Act XXIII of 1861, s. 37 (Act X of 1882, s. 582).*—*Issue based on objections by respondent.*—Where the special appellant died after the High Court had referred for trial to the Court below an issue based upon objections taken by the respondent under section 348 of Act VIII of 1859,—*Held* that the appeal must abate in accordance with section 102 of Act VIII of 1859, and section 37 of Act XXIII of 1861; and that the respondent could not require that it should proceed, in order that he might have an opportunity of taking objections to the decree of the Court below. If the respondent desires to secure the right of asking for decision on his objection, he must file a separate appeal. JAITA BIN KALU *v.* BALU BIN RAGHU **[3 Bom. A. C., 81**

16. ——— **Death of principal pending appeal.**—*Principal and agent.*—The plea of abatement on account of the death of the principal, pending the suit in appeal before the Lower Appellate Court, was disallowed, it being shown from the circumstances of the case that appellant, though an agent, intended himself to be the plaintiff. Had he acted as an agent, the whole authority was determined on the death of the principal, and the appeal must have abated until resumed by substituting the heir of the deceased principal as a party to the suit. THORNHILL *v.* TAYLOR . . . . **1 Agra, 215**

ABATEMENT OF SUIT—*continued.*

(2)—APPEALS—*continued.*

16. ——— Civil Procedure Code, 1882, ss. 368, 371.—*Change of procedure pending suit.*—An appeal having been declared to have abated on the 12th December 1881 under section 368 of the Code of Civil Procedure, 1877, because the appellant had not applied within sixty days of the date of the death of the respondent to bring in his representative, an application was made in January 1882 to set aside the order and was heard after the Code of Civil Procedure, 1882, came into force,—*Held* that the application must be disposed of under the Code of Procedure as it stood at the date of the application, and, therefore, that it was not open to the appellant to satisfy the Court that he had sufficient cause for not making the application within the prescribed period. Section 371 of the Code of Civil Procedure does not apply to the case in which a defendant or respondent dies. SURI BHATTA *v.* SITARAMA BHATTA

[I. L. R., 7 Mad., 195

17. ——— Civil Procedure Code, ss. 365, 582.—*Substitution of second applicant as respondent.*—A respondent having died, a conditional order was, on the application of the appellant, made substituting the name of his alleged representative on the record. That order was cancelled upon the application of another person, who satisfied the Court that he and not the person whose name had been conditionally substituted was the real representative, and who asked to have his name put on the record,—*Held* that the Court had no power to substitute the name of the second applicant upon the record, and no further application having been made by the appellant to complete the record, the appeal was ordered to abate. SADHU SARUN SINGH *v.* DWARKA SINGH

[12 C. L. R., 45

18. ——— Death of respondent—*No application for substitution of deceased's representative.—Civil Procedure Code, ss. 368, 582.—Act XV of 1877 (Limitation Act) sch. ii, art. 171B.*—*Held* by the Full Bench (MAHMOOD, *J.*, dissenting) that section 582 of the Civil Procedure Code does not make the provisions of Chapter XXI, relating to the death of a defendant in a suit, applicable to the death of a plaintiff-respondent in an appeal, so as to render it obligatory on the defendant-appellant to make an application to the Court praying that the legal representatives of the deceased be made parties to the appeal; and that, where there has been no such application, the appeal does not abate.—*Per* PETHERAM, *C.J.*—The words "so far as may be," in the second clause of the first paragraph of s. 582, must be construed as meaning "so far as may be necessary to carry into effect the remedies contemplated by Chapter XXI."—*Per* MAHMOOD, *J.*, *contra*, that the object of section 582 of the Civil Procedure Code is to obviate the necessity of repeating the provisions of Chapter XXI, so as to make them applicable to appeals, and the words "appellant" and "respondent" as used in the section include both plaintiffs and defendants in an appeal; that the whole Code maintains the analogy between the position of a respondent and that of a defendant for the purposes of being impleaded and brought before the Court; that Chapter XXI

ABATEMENT OF SUIT—*continued.*

(2).—APPEALS—*continued.*

Death of respondent—*continued.*

applies to cases where a plaintiff-respondent has died; and that, in such a case, and where no application has been made, within the period prescribed therefor, praying that the legal representatives of the deceased be made parties in his place, the appeal abates—Also *per* MAHMOOD, *J.*—The word "defendant" as used in art. 171B of the Limitation Act (XV of 1877) must be taken to include a respondent, whether plaintiff or defendant in the suit. *Lakshmibai v. Balkrishna, I. L. R., 4 Bom., 654; Rajmonee Dabee v. Chunder Kant Sandel, I. L. R., 8 Calc., 440,* and *Bai Javer v. Hathising Kerising, I. L. R., 9 Bom., 56* referred to. NARAIN DAS *v.* LAJJA RAM . . . . **I. L. R., 7 All., 693**

19. ——— *Application for declaration of insolvency.—Appeal from order rejecting application.—Death of decree-holder-respondent.—No application by appellant for substitution of deceased's representative.—Act XV of 1877 (Limitation Act), sch. ii, No. 171B.—Civil Procedure Code, ss. 344-348, 350, 351, 368, 553, 582, 590.*—The decree-holder-respondent, in an appeal from an order refusing an application by the judgment-debtor for declaration of insolvency under section 344 of the Civil Procedure Code, died, and the judgment-debtor, appellant, took no steps to have the legal representative of the deceased substituted as respondent in his place.—*Held* that art. 171B, sch. ii of the Limitation Act (XV of 1877) applied to the case, and that, as no one had been brought on the record to represent the deceased respondent within the period prescribed, the appeal must abate.—*Per* MAHMOOD, *J.*, that whatever the position of the parties might have been in the regular suit, in the insolvency proceedings the judgment-debtor occupied a position analogous to that of a plaintiff, and the decree-holder occupied the position of a defendant. *Narain Das v. Lajja Ram, I. L. R., 7 All., 693* distinguished. RAMESHAR SINGH *v.* BISHESHAR SINGH

[I. L. R., 7 All., 734

20. ——— *Defendant.*—The word "defendant" in art. 171B of the Limitation Act, 1877, does not include a respondent. UDIT NARAIN SINGH *v.* HAROGOURI PRASAD

[I. L. R., 12 Calc., 590

ABETMENT.

See FORGERY.

[I. L. R., 3 Mad., 4

See KIDNAPPING.

[I. L. R., 1 Mad., 173

1. ——— Omission to give information of offence.—*Penal Code, s. 107.*—An omission to give information that a crime has been committed does not, under section 107 of the Penal Code, amount to abetment, unless such omission involves a breach of a legal obligation. A private individual is not bound by any law to give information of any offence which he has seen committed. QUEEN *v.* KHADIM SHEIK . . . . **4 B. L. R., A. Cr., 7**

ABETMENT—Omission to give information of offence—*continued.*

2. ——— *Penal Code, s. 107.*—"*Illegal omission.*"—To prove abetment under section 107, Indian Penal Code, by "illegal omission," it would be necessary to show that the accused intentionally aided the commission of the offence by his non-interference. NOORUL HOSSEIN *alias* WAHEED JAN *v.* FABRE-TONNERRE . **24 W. R., Cr., 26**

3. ——— **Non-commission of offence abetted.**—It is not necessary to constitute the offence of abetment that the act abetted should be committed. IN THE MATTER OF DINO NATH BURDOA . . . . **18 W. R., Cr., 32**

4. ——— *Abetment of abetment of offence.—Penal Code, s. 108, Exp. 2 and 4.*—It is not necessary to an indictment for the abetment of an abetment of an offence to show that such offence was actually committed. EMPRESS *v.* TROYLUCKHO NATH CHOWDHRY . . **I. L. R., 4 Calc., 366** [**3 C. L. R., 525**

5. ——— *Acquittal of principal.—Conviction of abettor.*—The offence of abetment under the Indian Penal Code is a substantive offence. The conviction of an abettor is, therefore, in no way dependent on the conviction of the principal. REG. *v.* MAHUTI DADA . **I. L. R., 1 Bom., 15**

6. ——— *Penal Code, s. 109.*—Section 109 of the Penal Code contemplates that the act abetted should be committed in consequence of the abetment. QUEEN *v.* RAJCOOMAR BANERJEE [**1 Ind. Jur., O. S., 105**

7. ——— **Supplying food to person about to commit a crime.**—*Facilitating commission of crime.*—The supplying of food to a person about to commit a crime is not necessarily an abetment of the crime: but if food were supplied in order that the criminal might go on a journey to the intended scene of the crime, or conceal himself while waiting for an opportunity to commit the crime, the supplying of food would be in order to facilitate the commission of the crime and might facilitate it. EMPRESS *v.* LINGAM RAMANNA [**I. L. R., 2 Mad., 137**

8. ——— **Penal Code, s. 114.**—According to section 114 of the Penal Code, if the nature of the act constitutes abetment, the abettor if present is to be deemed to have committed the offence, though in point of fact another actually committed it. ANONYMOUS . . . . . **4 Mad. Ap. 37**

9. ——— In order to bring a prisoner within section 114 of the Penal Code, it is necessary, first, to make out the circumstances which constitute abetment, so that "if absent" he would have been "liable to be punished as an abettor," and then to show that he was also present when the offence was committed. QUEEN v. NIRUNI [**7 W. R., Cr., 49**

10. ——— When a person abets the commission of an offence and is present at the time when it is committed, he should be tried under section 114 of the Penal Code, for the same offence as the principal. REG. *v.* CHIMA [**8 Bom. Cr., 164**

ABETMENT—Penal Code, s. 114—*continued.*

11. ——— *Continuing abetment.—Withdrawal before offence is committed.*—If an abettor of a crime is, on account of his presence at its commission, to be charged under section 114 of the Penal Code as principal, his abetment must continue down to the time of the commission of the offence. If he distinctly withdraws at any moment before the final act is done, the offence is not committed with his continuing abetment. REG. *v.* AMRITA GOVINDA . . . **10 Bom. 497**

12. ——— **Abetment by Instigation.**—*Intention of abettor.*—The offence of abetment by instigation depends upon the intention of the person who abets and not upon the act which is actually done by the person whom he abets. QUEEN *v.* IMAMDI BHOOYAH . . . . **21 W. R., Cr., 8**

13. ——— **Assault.**—Where, of several persons constituting an unlawful assembly, some only are armed with sticks, and *A.*, one of them, is not so armed, but picks up a stick and uses it, *B.* (the master of *A.*), who gives a general order to beat, is guilty of abetting the assault made by *A.* QUEEN *v.* RASOO KOOLLAH . . . **12 W. R., Cr., 51**

14. ——— **Bigamy.**—*Illegal Marriage.*—Mere consent of persons to be present at an illegal marriage, or their presence in pursuance of such consent, or the grant of accommodation in a house for the marriage, does not necessarily constitute abetment of such marriage. EMPRESS *v.* UMI [**I. L. R., 6 Bom., 126**

QUEEN *v.* KUDUM . **W. R., 1864, Cr., 13**

15. ——— *Penal Code, ss. 109, 494.* A Mahomedan guardian of a married female infant, who, while her husband is living, causes a marriage ceremony to be gone through in her name with another man, but without her taking any part in the transaction, does not commit the offence of abetment under sections 109 and 494 of the Penal Code. The practice of instituting criminal proceedings with a view to determining disputes arising in cases of this class condemned. IN THE MATTER OF THE EMPRESS *v.* ABDOOL KURREEM [**I. L. R., 4, Calc., 10; 3 C. L. R. 81**

16. ——— **Conspiracy.**—*Penal Code, s. 108, Expl. 5.*—Under explanation 5, Section 108, Penal Code, it is not necessary to the commission of the offence of abetment by conspiracy that the abettor shall concert the offence with the person who commits it. It is sufficient if he engage in the conspiracy in pursuance of which the offence is committed. QUEEN *v.* GOBIND DOBEY **21 W. R., Cr., 35**

17. ——— **Execution of unstamped Document.**—*Receipt of unstamped Document.*—The mere receipt of an unstamped instrument does not constitute the offence of abetment of the execution of such an instrument. EMPRESS *v.* JANKI [**I. L. R., 7 Bom., 82**

18. ——— **Extortion.**—*Village Chowkidar.—Penal Code (Act XLV of 1860), s. 384.*—The mere fact that the offence of extortion under section 384 of the Penal Code is committed in the presence of the village chowkidar, without eliciting

ABETMENT—Extortion—*continued.*

any disapproval on his part, will not render him liable as an abettor of the offence. IN THE MATTER OF THE PETITION OF GOPAL CHUNDER SIRDAR.

GOPAL CHUNDER SIRDAR *v.* FOOLMONI BEWA [I. L. R., 8 Calc., 728 11 C. L. R., 223

19. ——— **False Charge.**—*Giving false evidence.*—There being no abetment of an offence after it has been committed, a person cannot be convicted of abetting the offence of instituting a false charge, on evidence which shows only that he gave evidence in support of a charge found to be false. IN THE MATTER OF JUGUT MOHINI DASSEE *v.* MADHU SUDAN DATTA . . 10 C. L. R., 4

20. ——— *Giving evidence in support of false charge.—Penal Code, ss. 109 and 211.*—A person cannot be convicted of abetment of a false charge, solely on the ground of his having given evidence in support of such charge. QUEEN *v.* RAM PANDA . . . 9 B. L. R., App. 16
S. C. QUEEN *v.* PAUN PANDAH . 18 W. R., Cr., 28

21. ——— **False Evidence.**—*Intention.*—In order to convict a person of abetting the commission of a crime, it is not only necessary to prove that he has taken part in those steps of the transaction which are innocent, but in some way or other it is absolutely necessary to connect him with those steps of the transaction which are criminal. There can be no offence of abetment of giving false evidence unless the person charged with abetment intended not only that the statement should be made but intended that the statement should be made falsely. QUEEN *v.* NIM CHAND MOOKERJEE [20 W. R., Cr., 41

22. ——— *Asking witness to suppress evidence.*—The prisoner asked a witness to suppress certain facts in giving his evidence against the prisoner before the Deputy Magistrate on a charge of defamation,—*Held* that this was abetment of giving false evidence in a stage of a judicial proceeding, and was triable before a Court of Session only. IN RE ANDY CHETTY . 2 Mad. 438

23. ——— **Grievous Hurt.**—Where *A.* ordered *B.* and *C.* to seize and forcibly take *D.* in the contemplation of an assault upon *D.*, and *D.* was so beaten and tortured as to have died in consequence, —*Held* that *A.* was guilty at least of abetting the commission of voluntarily causing grievous hurt. QUEEN *v.* DOORGESSUR SURMAH 7 W. R., Cr., 97

24. ——— Where *A.* gave a dao to *B.* who had given out his intention to coerce the party against whom he was acting, and who inflicted grievous hurt on such party with the dao, *A.* was guilty of abetment within the 2nd head of clause 3 of section 107, Penal Code. QUEEN *v.* ESHAN MEAH . . . 12 W. R., Cr., 52

25. ——— **Murder.**—*Proof of offence.*—There can be no conviction for abetment of murder without proof of murder. QUEEN *v.* ASKUR [W. R., 1864, Cr., 12

26. ——— *Murder by impossible means.—Quære;* Whether abetment to murder by sorcery or other impossible means is an

ABETMENT—Murder—*continued.*

offence under the Penal Code. REG. *v.* PESTANJI DINSHA . . . . . 10 Bom., 75

27. ——— *Penal Code, s. 111—Knowledge of abettor.—Probable consequences of abetment.*—*M.* and *C.* were proved to have connived at a robbery in which excessive violence was used, resulting in the death of the persons robbed. The Sessions Judge convicted *M.* and *C.* of abetment of murder, on the ground that the death was "a probable consequence of the intention known and abetted" by them. *Held* that the test of guilt in charges of abetment must always be whether, having regard to the immediate object of the instigation or conspiracy, the act done by the principal is one which, according to ordinary experience and common sense, the abettor must have foreseen as probable; and that, having regard both to the strictness of the tests which should be applied to the interpretation of a penal statute, and specially of a section such as section 111 of the Penal Code, and also to the necessary difficulty of questions as to the state of a man's mind at a particular moment, it could not, in the present case, be said that, because the accused knew of and connived at the intended robbery, they must be presumed to have foreseen that such excessive violence as was used was probable. QUEEN-EMPRESS *v.* MATHURA DAS I. L. R., 6 All., 491

28. ——— **Suicide.**—*Assisting Leper in sacrificial act.—Held* (Pearson, J., dissenting) that where certain persons assisted a leper in the ceremonies connected with the performance by the leper of the sacrificial act they were rightly found guilty of abetment of suicide. GOVERNMENT *v.* GOPAL SINGH . . . . . 1 Agra Cr., 21

29. ——— *Assisting in Suttee.*—Evidence that a woman prepared herself to commit suicide in the presence of the accused, that they followed her to the pyre and stood by her, her stepsons crying "Ram, Ram," and one of the accused admitting that he told the woman to say "Ram, Ram, and she would become suttee," proves active connivance and unequivocal countenance of the suicide by the accused, and justifies the inference that they had engaged with her in a conspiracy for the commission of the suttee. QUEEN *v.* MOHIT PANDEY . . . 3 N. W., 316

30. ——— **Theft.**—*Penal Code, s. 107, Expl.*—A person can be convicted of abetment of theft, under the first explanation of section 107 of the Indian Penal Code only if he either procure or attempts to procure the commission of the theft. Mere subsequent knowledge of the offence is insufficient. QUEEN *v.* SHUMEERUDDEEN [2 W. R., Cr., 40

31. ——— *Penal Code, ss. 107, cls. 2 and 3, and 109.*—A prisoner who consented to form one of a party who committed theft, and resiled from his agreement, but was present at the commission of the theft, does not come within clause 2, section 107, Penal Code, and ought not to have been convicted of the theft, but of the abetment thereof, under clause 3, section 107, and section 109, Penal Code, read together. QUEEN *v.* BOODHUN MOOSHUR . . . . 8 W. R., Cr., 78

ABETMENT—Theft—*continued.*

32. ——————— The carrying off of certain buffaloes belonging to the complainant by order of the accused, and the retention of them in the custody of the latter's servant, were held to be an abetment of theft as defined in the Penal Code. IN THE MATTER OF THE PETITION OF TARINEE PERSAD BANERJEE . . . **18 W R., Cr., 8**

33. ——— **Torture.**—*Common object.*—Where several prisoners were all concerned in a case of torture, and were prosecuting a common object, each was held guilty as a principal, and not as an abettor of others. QUEEN *v.* TARINEE CHURN CHUTTOPADHYA . . . . **7 W. R., Cr., 3**

34. ——————— *Penal Code, s. 107, Expl. 2.—Keeping out of the way with knowledge that offence is to be committed.*—Where a head constable, who knew that certain persons were likely to be tortured for the purpose of extorting confession, purposely kept out of the way, it was held that he was guilty of abetment under the words of section 107 of the Penal Code, explanation 2. QUEEN *v.* KALI CHURN GANGOOLY . . . . **21 W. R., Cr., 11**

35. ——— **Act XIV of 1866 (Post Office Act).**—*Penal Code, s. 109.*—Act XIV of 1866 does not provide for the punishment of abetting an offence under that Act. Under section 109 of the Penal Code the abetment must be of an offence punishable under that Act, and not of an offence punishable under a distinct and special law. QUEEN *v.* RAMLUGUN LALL . . **7 W. R., Cr., 54**

36. ——— **Excise Act XXI of 1856.**—The Excise Act of 1856 contains no provision for the punishment of abetment. QUEEN *v.* KULLIMOODEEN **[7 W. R., Cr., 53**

ABKARI LAWS.

See CASES UNDER ACT XXI OF 1856.

See LORDS DAY ACT.

[1 B. L. R., A. Cr., 17

See CASES UNDER BOMBAY ABKARI ACT.

See CASES UNDER MADRAS ABKARI ACT.

ABSCONDING OFFENDER—

See PENAL CODE, s. 172.

[5 W. R., Cr., 71
7 N. W., 302
I. L. R., 4 Mad., 393
9 W. R., Cr., 70

1. ——— **Evidence of Guilt.**—A prisoner's absconding is but a small item in evidence of his guilt. QUEEN *v.* SAROP ROY . . **5 W. R., Cr., 28**

2. ——— **Proclamation.**—*Forfeiture of property.—Criminal Procedure Code (1861), ss. 183, (1872) 171.*—Before the passing of an order declaring the property of an accused person, who cannot be found, to be at the disposal of the Government, there must be a proclamation under section 183, Code of Criminal Procedure, specifying a time within which such person is required to appear. But before a Magistrate can issue such a proclamation he must be satisfied that such person has absconded or is concealing himself for the purpose of avoiding the service of the warrant. SHEODYAL SINGH *v.* GIRBAN SINGH . . . . **6 W. R., Cr., 73, 79**

ABSCONDING OFFENDER—Proclamation—*continued.*

3. ——————— *Criminal Procedure Code (1861), ss. 183, 184, (1872), ss. 171, 172.—Issue of proclamation for appearance.—Forfeiture of property.*—In order to lay a sufficient foundation for the issue of a proclamation under section 185, Act XXV of 1861, and the accompanying order of attachment under section 184, the Magistrate must, on some sufficient materials, find judicially that the person against whom the proclamation is to be issued has absconded or concealed himself for the purpose of avoiding the service of the warrant of arrest previously issued against him. *Semble,—Per* PHEAR, *J.*—The period of thirty days, which is prescribed in section 183 as the minimum period within which the person is to be required by the proclamation to appear, runs from the date on which the publication in the mode prescribed by the same section should be effected, not from the date of the issue of the proclamation. The declaration of forfeiture directed to be made in section 184 was intended to be in furtherance of a matter of procedure, and not simply as a mode of punishment for contempt of process; therefore, where it is not made before the person affected by the proclamation has come in, or has been brought in, it ought not to be made at all. IN THE MATTER OF THE PETITION OF RAMKISHAR SEIN . . . . . **10 B. L. R., Ap. 14**
[19 W. R., Cr., 12

4. ——————— *Procedure.—Forfeiture of property.*—Sections 183 and 184 of the Code of Criminal Procedure, 1861 (proclamation and attachment of property of absconding parties) do not apply to offences punishable with imprisonment extending to six months only. There is no rule which requires a Magistrate to satisfy himself that a party has absconded before issuing a proclamation, but the party on suing to recover his property may prove by evidence that he had not absconded. Before a Magistrate proceeds to declare attached property forfeited, he should take evidence to prove compliance with the formalities laid down by law with regard to proclamation. QUEEN *v.* MUDDUN MOHUN PODAR **[3 W. R., Cr., 34**

5. ——— **Proclamation, effect of—** *Contempt—Application on behalf of accused person absconding.*—An accused person, against whom a proclamation has been issued, must, until he has surrendered, be regarded as in contempt, and the Court will not entertain any application on his behalf. QUEEN *v.* BISESSUR PERSHAD **2 N. W., 441**
[Agra F. B., Ed. 1874, 236

6. ——————— *Striking off of case, effect of on Contempt order for absconding.*—An order striking off a case on account of the little prospect of bringing the guilty parties to trial, cannot dispose of the question of contempt of Court arising out of the fact of the accused having absconded to evade justice. QUEEN *v.* MADHOOSURUN . . . **[7 W. R., Cr., 40**

7. ——— **Proclamation, proof of.**—*Criminal Procedure Code, ss. 87, 88.—Penal Code, s. 176.—Presumption—Omnia præsumuntur rite esse acta.*—Where *K.* was convicted under section 176,

ABSCONDING OFFENDER—Proclamation, proof of—*continued.*

Penal Code, of having intentionally omitted to inform the police of the presence of *V.*, a proclaimed offender, at a certain village,—*Held*, it could not be presumed by the Court that *V.* was a proclaimed offender, because it was proved that his property had been attached under the provisions of section 88 of the Criminal Procedure Code, 1882. *Held*, the prosecutor was bound to prove the fact of proclamation. IN THE MATTER OF THE PETITION OF PANDYA NAYAK **[I. L. R., 7 Mad., 436**

8. ——— Attachment of property.—*Criminal Procedure Code, 1861, s. 184.—Forfeiture of property.*—The words "order the attachment of any moveable or immoveable property," in section 184 of the Criminal Procedure Code, are enabling and not restrictive, and the Magistrate may attach both kinds of property. But he must issue his warrant of attachment simultaneously with the proclamation, if he resorts to attachment at all. ANONYMOUS CASE . . . **4 Mad. Ap. 48**

9. ——— Reason for absconding.—*Forfeiture of property.*—The forfeiture of the property of an absconding offender, who appears within two years from the attachment of his property, should not be carried into effect until after a regular enquiry into the causes of the offender's absence. IN THE MATTER OF BISHONATH SIRCAR . . . . . **3 W. R., Cr., 63**

10. ——— Power to make order as to property.—*Penal Code, s. 174.*—Where property of an absconding offender had been attached and declared to be at the disposal of Government under section 184 of the Criminal Procedure Code, and the offender was subsequently convicted under section 174 of the Penal Code, and such conviction was upheld on appeal,—*Held*, the High Court had no power to make any order with respect to such property. IN THE MATTER OF THE PETITION OF THE GOVERNMENT OF BENGAL **[9 B. L. R., 342**

S. C. GOVERNMENT OF BENGAL *v.* SURWAR JAN **[18 W. R., Cr., 33**

11. ——— Power to try claim of third parties.—*Criminal Procedure Code, 1861, ss. 184, 185.*—A Magistrate has no power under ss. 184, 185 of the Criminal Procedure Code, 1861, to investigate the claims of third persons to property which has been attached, as that of absconding offenders. QUEEN *v.* CHUMROO ROY **[7 W. R., Cr., 35**

IN RE CHUNDER BHON SINGH **17 W. R., Cr., 10**

12. ——— Power to try claims of third parties.—*Criminal Procedure Code, 1882, ss. 88, 89.—Proceedings of Magistrate.—"Judicial proceedings."*—There is no provision of law requiring a Magistrate, who has attached property under section 88 of the Criminal Procedure Code, to investigate the claims of third persons to the ownership of such property. *Queen* v. *Chumroo Roy* followed. The proceedings of a Magistrate under section 88 of the Criminal Procedure Code are therefore not "judicial proceedings" in the sense of section 4 (*d*) of that Code. QUEEN-EMPRESS *v.* SHEODIHAL RAI . . **I. L. R., 6 All., 487**

13. ——— Title given by Magistrate's sale.—*Sale in execution of decree.—Sale by Magistrate.—Code of Criminal Procedure (Act X of 1872), s. 172.*—*A.* having been accused of an offence under the Indian Penal Code absconded, and his property was, on the 7th of August 1878, attached by the Magistrate under section 172 of the Code of Criminal Procedure, Act X of 1872. While the property was so under attachment, it was attached by *B.* in execution of a money-decree against *A.* and sold on the 15th of January 1879, *B.* being the purchaser. On the 21st of April 1880, the Magistrate sold the property to *C.* It did not appear whether the time fixed by the Magistrate's proclamation for *A.*'s appearance had expired at the date of the sale to *B.* *Held*, in a suit for possession by *B.* against *C.*, that the title obtained by *C.* under the Magistrate's sale was superior to the title (if any) obtained by *B.* at the sale in execution of the money-decree.—*Semble*, that after the date of the attachment by the Magistrate under section 172 of the Code of Criminal Procedure and during its continuance, no title could be conferred by an attachment and sale subsequently made in execution of a money-decree. GOLAM ABED *v.* TOOLSEERAM BERA . . . . . **I. L. R., 9 Calc., 861**

[12 C. L. R., 411

ABSENCE BY REASON OF TRANSPORTATION.

See LIMITATION ACT, 1877, S. 13.

[1 B. L. R., S. N., 25

ABUSE, SUIT FOR DAMAGES FOR.

See CASES UNDER JURISDICTION OF CIVIL COURT.—ABUSE, DEFAMATION, AND SLANDER, SUITS FOR.

ACCEPTOR OF BILL OF EXCHANGE, JOINDER OF—

See PARTIES—DEFENDANTS.

[I. L. R., 3 Calc., 541

ACCOMMODATION ACCEPTOR.

See BILL OF EXCHANGE.

[I. L. R., 3 Calc., 174

ACCOMPLICE.

See CASES UNDER APPROVER.

1. ——— Corroboration, necessity for.—*Setting aside conviction for error in law.*—The uncorroborated testimony of one or more accomplice or accomplices is sufficient in law to support a conviction. The evidence of accomplices should not be left to the jury without such directions and observations from the Judge as the circumstances of the case may require, pointing out to them the danger of trusting to such evidence when it is not corroborated by other evidence. The omission to do so is an error

ACCOMPLICE—Corroboration, necessity for—*continued.*

in law in the summing up by the Judge, and is, on appeal, a ground for setting aside the conviction, when the Appellate Court thinks that the prisoner has been prejudiced by such omission, and that there has been a failure of justice. The nature and extent of the corroboration requisite, explained and illustrated. QUEEN *v.* ELAHI BAX . B. L. R., Sup. Vol. 459
[5 W. R., Cr., 80

QUEEN *v.* BAKANTHANATH BANERJEE
[3 B. L. R., F. B. 2, note

QUEEN *v.* CHUTTERDHAREE SING
[5 W. R., Cr., 59

2. A prisoner should not be convicted on the sole and uncorroborated evidence of an accomplice who was made a witness after a pardon was granted to him. QUEEN *v.* NUNHOO . . 9 W. R., Cr., 28

3. ——————— The testimony of an accomplice is not alone sufficient for a conviction. The corroboration must be on matters directly connecting the prisoner with the offence of which he is accused; and the evidence of two or more accomplices requires confirmation equally with the testimony of one. QUEEN *v.* DWARKA . . 5 W. R., Cr., 18
[1 Ind. Jur., N. S., 100

4. ——————— *Charge to assessors.*—There is no rule of law that the uncorroborated evidence of an accomplice is sufficient for a conviction. The proper form of the charge to the assessors in such cases stated. ANONYMOUS
[4 Mad. Ap. 7

5. ——————— *Evidence Act II of 1855, s. 28.*—A jury may convict upon the evidence of an accomplice, though not corroborated so as to show the prisoner's actual participation in the offence. Section 28, Act II of 1855, applied only to the old Supreme Courts, and the rules and practice prevailing in them; and does not show that in the Courts of the mofussil corroborative evidence is legally requisite to support the testimony of an accomplice. QUEEN *v.* GODAI RAOUT
[5 W. R., Cr., 11

6. ——————— *English practice.*—The English practice should be followed as to the amount of corroboration required to support the evidence of an accomplice, which is, that when he speaks to two or more persons as having been concerned in the same offence, his testimony should be confirmed, not only as to the circumstances of the case, but also as to the identity of the prisoners; and that any prisoner as to whom his testimony is not supported should be acquitted. REG. *v.* IMAM VALAD BABAU . 3 Bom., Cr., 57
See REG. *v.* GANU BIN DHAROJI . 6 Bom., Cr., 57

7. ——————— *Witness erroneously treated as accomplice.*—Where the Magistrate erroneously treated a witness as an accomplice, and granted him a conditional pardon,—*Held* that the evidence did not require corroboration. REG. *v.* FATTECHAND VASTACHAND . . 5 Bom., Cr., 85

8. ——————— *Evidence of accomplice.*—The evidence requisite for the corroboration of the testimony of an accomplice must

ACCOMPLICE—Corroboration, necessity for—*continued.*

proceed from an independent and reliable source, and previous statements made by the accomplice himself, though consistent with the evidence given by him at the trial, are insufficient for such corroboration. The confession of one of the prisoners cannot be used to corroborate the evidence of an accomplice against the others; tainted evidence not being made better by being corroborated by other tainted evidence. REG. *v.* MALAPA BIN KAPANA
[11 Bom. 196

QUEEN *v.* BAIJOO CHOWDHRY
[25 W. R., Cr., 43

9. ——————— *Evidence Act, 1872, s. 114.*—*Held* on a consideration of the Evidence Act, 1872, section 114, that the Legislature intended to lay down as a maxim or rule of evidence that the testimony of an accomplice is unworthy of credit so far as it implicates an accused person, unless it is corroborated in material particulars in respect to that person; and it is the duty of a Court which has to deal with an accomplice's testimony, to consider whether this maxim applies to exclude that testimony or not, and in a case tried by jury to draw the attention of the jury to the principles relative to the reception of an accomplice's testimony. QUEEN *v.* SADHU MUNDAL
[21 W. R., Cr., 69

10. ——————— *Evidence Act, ss. 114 and 133.*—Section 133 of the Evidence Act (I of 1872) in unmistakeable terms lays it down that a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice, and to hold that corroboration is necessary is to refuse to give effect to this provision. The rule in section 114 of the Evidence Act coincides with the rule observed in England, that though the evidence of an accomplice should be carefully scanned and received with caution, and may be treated as unworthy of credit, yet if the Jury or the Court credits the evidence, a conviction proceeding upon it is not illegal. REG. *v.* RAMASAMI PADAYACHI . . . I. L. R., 1 Mad., 394
QUEEN *v.* KOA . . 19 W. R., Cr., 48

11. ——————— *Evidence Act, 1872, ss. 114, 133.*—*Evidence unworthy of credit.*—Although under section 133 of the Indian Evidence Act the conviction of a prisoner on the uncorroborated testimony of an accomplice is not illegal, the Court, having reference to illustration (*b*), section 114 of that Act, considered in this case that the accomplice was unworthy of credit. QUEEN *v.* LUCHMIE PERSHAD . . . . 19 W. R, Cr., 43

12. ——————— Although by section 133, Act I of 1872, an accomplice is a competent witness against an accused person, and a conviction would not be illegal merely because it proceeded upon the uncorroborated testimony of an accomplice, yet it would be unsafe where the testimony of the accomplice is not corroborated in any material point, except by the confession of a fellow-prisoner, whose testimony likewise requires corroboration, to convict the accused. QUEEN *v.* UDHAN BIND
[19 W. R., Cr., 68

ACCOMPLICE—Corroboration, necessity for—*continued.*

13. ——————— The Court (MITTER and PONTIFEX, *JJ.*, GLOVER, *J.*, dissenting) refused to convict in this case on the uncorroborated evidence of an accomplice who had previously been convicted of the same offence on her own confession. QUEEN *v.* RAMSODOY CHUCKERBUTTY **[20 W. R., Cr., 19**

14. ——————— **Admissibility of evidence.—** *Accused acquitted but under arrest pending appeal under Section 272, Criminal Procedure Code.— K.* and *B.* were accused of being concerned in the same offence. *K.* was first apprehended, and the Magistrate inquired into the charge against him and committed him for trial, but the Court of Session acquitted *K.* The Local Government preferred an appeal against his acquittal, and the Magistrate arrested him with a view to his detention in custody until such appeal was determined. While *K.* was so detained, the Magistrate inquired into the charge against *B.*, who had meanwhile been arrested, and made *K.* a witness for the prosecution and committed *B.* for trial. *K.'s* evidence was taken on *B.'s* trial. *Held, per* STUART, *C. J.* (SPANKIE, *J.*, doubting), that *K.'s* arrest was lawful, and that his evidence was admissible against *B. Held per* SPANKIE, *J.*, that, assuming that the Magistrate looked on *K.* as an accused person and his arrest was lawful, the Magistrate should not have examined him as a witness against *B.*, and that, assuming that *K.'s* arrest was unlawful, and that when he made his statements he was a free man, his evidence, if admissible, was not evidence on which a Court should place much reliance. EMPRESS OF INDIA *v.* KARIM BAKHSH . **I. L. R., 2 All., 386**

15. ——————— *Person charged with offence and discharged for want of evidence.—* There is no law or principle which prevents a person who has been suspected and charged with an offence, but discharged by the Magistrate for want of evidence, being afterwards admitted as a witness for the prosecution on the ground that he is an accomplice. QUEEN *v.* BEHARY LALL BOSE **7 W. R., Cr., 44**

16. ——————— *Person cognizant of crime taking no means to prevent it.—*An accused person cannot be convicted solely upon the evidence of persons who are more or less participators in the crime of which he is accused. Where a witness admits that he was cognizant of the crime as to which he testifies, and took no means to prevent or disclose it, his evidence must be considered as no better than that of an accomplice. QUEEN *v.* CHANDO CHANDALINEE . . . . **24 W. R., Cr., 55**

ACCOUNT—

See DECREE, CONSTRUCTION OF—ACCOUNT. **3 Moore's I. A. 175**

See CASES UNDER MORTGAGE—ACCOUNTS.

See VARIANCE BETWEEN PLEADING AND PROOF. **[Agra F. B. 47, Ed. 1874, 35 1 N. W., 28, Ed. 1873, 26 15 W. R., 24**

ACCOUNT—*continued.*

1. ——————— **Power of Court to order Account instead of referring party to separate suit.—**In a suit by the heirs of a deceased Mahomedan to recover from his widow landed property of which she claims to be in possession as absolute owner under a mokurari deed alleged to have been executed in lieu of her dower, where she wholly fails to prove execution of the deed, it is competent to the Court, instead of referring the plaintiffs to a separate suit, to direct an account to be taken of the mesne profits received by the widow and of the amount due to her on account of dower with a view to the settlement of the claims of both parties. ASLOO *v.* UMDUTOONISA; UMDUTOONISA *v.* ASLOO . . **20 W. R., 297**

ACCOUNT, ADJUSTMENT OF—

See CONTRACT ACT, s. 25. **[I. L. R., 6 Bom., 683**

See LIMITATION ACT, 1877, ART. 120 (1859, s. 1., CL. 16) . **3 B. L. R., Ap. 57**

See LIMITATION ACT, 1877, s. 20 (1871, s. 21) . . **I. L. R., 1 Mad., 228**

See LIMITATION ACT, 1877, s. 19. **[I. L. R., 6 Bom., 683**

See LIMITATION ACT, 1877, s. 20 **[I. L. R., 6 Bom. 103**

See LIMITATION ACT, 1877, ART. 64 (1859, s. 1., CL. 9) . . **5 Bom. O. C. 16 Agra F. B. 94': Ed. 1874, 71 9 Bom., 429 3 Mad., 378 9 W. R., 209 24 W. R., 440**

1. ——————— **Contract to purchase land—** *Necessity to sell land for arrears.* Where an estate was sold under a contract at 10½ years' purchase of the net annual rent collections, and various sums of money were left in deposit with the vendee to meet various charges which were expected to arise, and the amount of these charges was regulated by the vendor's expectations, and formed portions of the stipulations of which the contract was composed, but the net annual collections eventually fell short of these expectations,—*Held* that the agreement at the root of the contract, *viz.*, that the property was taken at 10½ years' purchase, should govern the whole transaction, and that the accounts between the parties should be adjusted accordingly. In a suit to have an account taken of what was payable, and had been paid, by either of the two parties in pursuance of the contract, and to have a decree for any balance found to be due to either the contract distinctly providing for an adjustment after the net annual collection, and containing a stipulation that any injury accruing to the interests of one party by any *laches* in the payment of rent by the other, should form a ground for compensation: *Held* that it was not necessary that the land should be sold up for arrears in default of payment before the account could be adjusted; and that even a decree, taken out by the zemindars against defendant for the rents of the land in suit, did not affect plaintiff's claim to the money owing under the contract. OPENDER NARAIN MOOKERJEE *v.* GUDADHUR DEY . . **25 W. R., 472, 476**

ACCOUNT, ADJUSTMENT OF—*contd.*

2. ——— **Proof of Adjustment.**—*Parol evidence.*—The adjustment of an account may be proved by verbal evidence, and need not necessarily be in writing signed by the party to be bound. PURNIMA CHOWDRAIN *v.* NITTANAND SHAH

[B. L. R., Sup. Vol. 3
W. R., F. B., 82

ACCOUNT, ERROR IN—

See BOND . . I. L. R., 1 Bom., 45
[8 W. R., 316

See MORTGAGE—ACCOUNTS.
[I. L. R., 3 Calc., 602

ACCOUNT STATED—

See LIMITATION ACT, 1877, s. 2.
I. L. R., 3 All., 148

See LIMITATION ACT, 1877, s. 19
[I. L. R., 5 Calc., 303
I. L. R., 6 Bom., 683

See LIMITATION ACT, 1877, ss. 19 and 20 (1859, s. 4) . . 8 Bom. A. C., 6

See CASES UNDER LIMITATION ACT, 1877, ART. 64.

See STAMP ACT, 1869, s. 9.
[I. L. R., 4 Bom., 326

ACCOUNT, SUIT FOR—

See BENGAL RENT ACT (VIII OF 1869) s. 30 . . I. L. R., 5 Calc., 303, 314
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3 C. L. R., 444

See LIMITATION ACT, 1877, s. 5.
[I. L. R., 5 Calc., 314

See CASES UNDER MORTGAGE—ACCOUNTS.

See PLAINT—FORM OF PLAINT.
[I. L. R., 7 Calc., 89, 169
8 C. L. R., 285, 357

See PRINCIPAL AND AGENT—LIABILITY OF AGENT . I. L. R., 6 Calc., 754
[8 C. L. R., 321

See RES-JUDICATA.
[I. L. R., 7 Calc., 169
8 C. L. R., 357

1. ——— **Liability to account.**—*Administrator General as Executor of the surviving trustee of religious endowment*—An account was decreed against the Administrator General, who had been appointed the executor of the last surviving trustee under the will of the founder of a religious institution. THACOOR DASS SETT *v.* HOGG . Cor. 68

2. ——— **Lumberdar.**—*Account of rents uncollected.*—*Held* that a lumberdar is ordinarily bound to account for rents not collected

ACCOUNT, SUIT FOR—Liability to account *—continued.*

if he does not exercise his power of such distraint with due diligence. SEES RAM *v.* CHAIT RAM

[2 Agra, 266

3. ——— **Lumberdar.**—*Account of rents uncollected.*—*Held* that a lumberdar is not liable for the rent which he, without any wilful default on his part, has never received, if he shows that he has done his duty in endeavouring to collect the same. ENAYET HOSSEIN *v.* GHOLAM ALLY

[2 Agra, 276

4. ——— **Mahomedan widow in possession for dower.**—*Suit not framed for an account.*—In a suit by the only brother and heir-at-law of a Mahomedan of the Shiah sect, claiming the whole of the deceased's estate, and for mesne profits, the issues raised by the pleadings were, first, whether a marriage had taken place between the deceased and the party in possession, who claimed to be his widow, and secondly, the validity of a deed of dower executed by the deceased in her favour. The Courts in India found these issues in favour of the widow and dismissed the suit. The Judicial Committee, in affirming the Court's decrees upon these points, held further, that although the estate of the husband was hypothecated for the dower, yet as the heir-at-law would be entitled to the residue after satisfying the widow's claim, he was by right entitled to an account, but as the plaint was so framed as not to admit of an account being taken, the appeal was affirmed, without prejudice to a suit being brought for administration of the deceased's estate upon the footing of the marriage and deed of dower being admitted in the suit.—AMEEROONNISSA *v.* MORADONNISSA . . . . 6 Moore's I. A. 211

5. ——— **Mother appointed administratrix of minor son.**—*Bombay Minors Act (XX of 1864), ss. 6, 9, and 19.—Account of minor's estate after his death.—District Court.*—Where a mother is appointed administratrix to the estate of her minor son, under Act XX of 1864, section 6,—*Held* that unlike a curator or other person appointed administrator under section 9, she is not bound to render an account, unless a suit should be instituted for the purpose, under section 19, by a relative, during the minority. No application for an account can be made after the death of the minor, though his representatives are entitled to an account. When the minor is dead, the District Court is no longer capable of representing him under the Act. The only way of calling the administrator to account is a suit instituted by a person interested. IN THE MATTER OF PETITION OF NARMADABAI

[I. L. R., 8 Bom., 14

6. ——— **Right to an account—Person with title barred by lapse of time**—*Hereditary Office, administration of trusts of*—The plaintiff brought a suit to establish his right to and for possession of the hereditary office of dharmaharta of a pagoda and to remove the defendant, but it was held that his title was extinguished by lapse of time. *Held* that plaintiff having no longer any title to the property was not in a position to treat defendant as a trespasser and to call upon him for an account of

ACCOUNT, SUIT FOR—Right to an account—*continued.*

the past administration of the trust upon that footing, and further, that the suit being substantially one to remove the defendant from the trust and establish plaintiff's title to the hereditary office or, on failure of this, to secure the appointment of a fit and proper person to fill defendant's office, the account was only prayed for on that understanding, and, therefore, the plaintiff was not entitled to call for an account of the past administration of the trust, as a person interested in the religious trust. MANALLY CHENNA KESAVARAYA *v.* VAIDELINGA

[I. L. R., 1 Mad., 343

7. ——— **Principal and Agent.**—*Method of taking accounts.—Civil Procedure Code, 1877, ss. 394, 395.*—In a suit for an account against an agent, the plaint stated that the defendant had not submitted proper accounts of his agency, and prayed that the defendant might be ordered to produce certain papers, and that, on failure to submit the accounts, he might be decreed to pay the plaintiff Rs. 1,200 by way of damages. The plaint also alleged that, in consequence of the defendant's negligence and mismanagement, the plaintiff believed that he had sustained a loss of Rs. 5,000, and prayed for a decree for this sum. *Held* that no decree could be made for the sums mentioned, or any other sum, until an account had been taken and the amount due from the defendant ascertained. Method to be followed on taking accounts in the mofussil stated. If the taking of accounts by the Judge would occasion a waste of public time, he should resort to the provisions of sections 394 and 395 of the Civil Procedure Code, and furnish the Commissioner with such part of the proceedings and such detailed instructions as may appear necessary. ANNODA PERSAD ROY *v.* DWARKA NATH GANGOPADHYA

[I. L. R., 6 Calc., 754
8 C. L. R., 321

8. ——— *Form of Suit for Account—Procedure on taking Accounts—Civil Procedure Code (Act X of 1877), ss. 250, 395, and 396, sched. iv, Form 157.—Form of keeping Accounts of joint property in Mofussil.*—In a suit for an account by a principal against his agent, the plaintiff should ask in his plaint that a proper account may be taken. If the defendant is found liable to render such account for a certain period, the Court should make an interlocutory decree declaring that he is so liable, and direct him to file an account in Court within a fixed period. This decree may be enforced under section 260 of the Civil Procedure Code. After an account has been filed, the plaintiff should be allowed reasonable time to examine it. If the objections are numerous, the procedure prescribed by sections 394 and 395 and Form 157 of schedule iv to the Code should be followed. When the accounts have been taken, the Court must determine the amount due, and the final decree should be for the payment of this amount, and also, if necessary, for the delivery of any papers, vouchers, or other documents which have come into the hands of the agent in the course of his employment. Form of keeping accounts of joint property in the mofussil

ACCOUNT, SUIT FOR—Principal and Agent—*continued.*

considered. DEGAMBER MOZUMDAR *v.* KALLYNATH ROY . . . . **I. L. R., 7 Calc., 654**
[9 C. L. R., 265

9. ——— *Fraud or specific error in account, allegation of.*—*M.* sued for an account of all moneys received and paid on his behalf by *T.*, deceased (represented by his widow), and *F.*, as his agents from 1st August 1859 to 30th April 1865. It was alleged in the plaint that *M.* "left India in 1858, and has since resided in Scotland; that at the time he left he was, and still is, possessed of extensive property in the Province of Bengal, chiefly landed property;" that *T.*, and afterwards *T.* and *F.*, were his agents and managers. In his written statement, *M.* stated that "in the month of June 1861, the deceased rendered an account to the plaintiff showing that all moneys due to him by the plaintiff in respect of his salary and commissions up to the 31st January 1861, being the whole of deceased's claim against him up to that date under their above-mentioned arrangements, had been duly paid by the plaintiff." "In the month of April 1865, deceased transmitted to the plaintiff the agency accounts of himself and his firm with the plaintiff in continuation of the accounts rendered by him as mentioned in the preceding paragraph, brought down to the end of February 1865; and again in May 1865, the deceased transmitted the continuation of the said account brought down to the 30th April preceding, being the date of the termination of the agency. The said accounts rendered have been examined by the plaintiff, who verily believes that the true balance now due to him thereon exceeds Rs. 1,00,000, without including interest." There was no allegation in the plaint, written statement, or opening of counsel, of fraud or specific error. *Held* that *M.*, in his plaint and written statement, had not disclosed any cause of action. MACKINTOSH *v.* TEMPLE . . . **2 Ind. Jur., N. S., 333**

10. ——— *Suit against Gomasta—Duty of Court to look into accounts.*—In a suit against a gomasta to obtain accounts of moneys which had come into his hands, it was held that it was not enough for the Lower Courts to make a decree ordering the defendant to render nikash papers to the plaintiff: it was the business of the Court to have these papers brought before it and examined, and to determine whether they were correct and fair accounts between the parties. SHUSHEE SHEKHUR AUDHIKAREE *v.* SULEEM BISWAS . **22 W. R., 191**

11. ——— *Decree for account against agent.*—Where a decree requires an agent to render accounts, he can only discharge himself by accounting for all the moneys that have come into his hands, and it is always open to the decreeholder to show that this has not been done. WOOMANATH ROY CHOWDHRY *v.* SREENATH SINGH

15 W. R., 260

12. ——— **Refusal to account.**—*Destruction of account books.*—Where a defendant refused to render accounts, and there was evidence of spoliation of the Banking Books, the Court charged him with the principal sum for which he was accountable,

ACCOUNT, SUIT FOR—Refusal to account—*continued*

with interest at 12 *per cent. per mensem* in lieu of the profits he failed to account for. RAMPERSHAD TEWARRY *v.* SHEO CHURN DOSS; THOOKRA *v.* RAMPERSHAD TEWARRY . **10 Moore's I. A. 490**

13. ———— Right to re-open settled account.—*Principles of Court of Equity in reopening accounts.—Principles which regulate a Court of Equity in opening stated and settled accounts.*—Accounts of long standing and great complication of a mercantile firm at Calcutta, one of the partners of which afterwards acted as agent in England, involving charges for agency and partnership transactions, were mutually agreed to be investigated and closed. After long negotiations and discussion respecting some of the charges, an agreement was come to, the parties agreeing to strike the general balance at a given sum, reserving one item of the account, amounting to a considerable sum, for future investigation. This reserved item was subsequently settled by the acceptance of a Bill of Exchange for a lesser amount, as such reserved item if re-opened would have disarranged the settled general account The Bill of Exchange was dishonored and an action brought to recover the amount. A bill was then filed for an injunction for the cancelment of the Bill of Exchange, and praying that the accounts so settled might be opened. The Supreme Court at Calcutta held that the reserved item being left open was evidence that the account was not finally closed and decreed the accounts to be opened, referring the cause to the master. On appeal, held by the Judicial Committee (reversing such decree, and dismissing the bill with costs) that the transaction amounted to an adjustment of the general account between the parties, subject to the reserved item which was subsequently settled, and that the accounts so settled and closed could not in the absence of fraud be reopened MCKELLAR *v.* WALLACE . **5 Moore's I. A. 372**

14. ———— Running account for portion of which hundis are given.—*Obligation to sue on hundis.*—Where there is a running account between the parties, a portion of which relates to an amount due upon dishonored hundis, plaintiff is not bound to sue upon the hundis, but may base his claim upon the running account. RAM CHAND *v.* PUNNA LAL . . . . . **3 N. W., 323**

15. ———— Necessity to go into accounts in suit for profits.—The mere fact that in a suit for profits by a co-sharer it is necessary to go into the accounts will not alter the character of the suit and make it one for settlement of accounts DABEE DEEN *v.* DOORGA PERSHAD . **3 N. W., 49**

ACCOUNT, SUIT FOR DISSOLUTION OF PARTNERSHIP, AND FOR—

See CONTRACT ACT, s. 265.

[I. L. R., 1 Mad., 340

ACCOUNT OF HEREDITARY OFFICE, SUIT FOR—

See LIMITATION ACT, 1877, s. 28 (1871, s. 29.)

[I. L. R., 1 Mad., 343

See LIMITATION ACT, 1877, ART 124 (1871, ART. 123.)

[I. L. R., 1 Mad., 343

ACCOUNT OF MORTGAGED PROPERTY OUT OF THE JURISDICTION—

See JURISDICTION—SUITS FOR LAND—REDEMPTION.

[I. L. R., 1 All., 431

ACCOUNT OF PAST TRANSACTIONS, RIGHT TO—

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ACCOUNT OF PROFITS OF EXCLUSIVE PRIVILEGE—

See LIMITATION ACT, 1871, ART. 11.

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ACCOUNT SALES—

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[2 B. L. R., A. C. 269 and 270 note.

See CASES UNDER MORTGAGE.—ACCOUNTS.

See SMALL CAUSE COURT, MOFUSSIL.—JURISDICTION—ACCOUNT, SUIT FOR.

[I. L. R., 1 Calc., 123
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———— Procedure.—Procedure to be observed in a Judicial enquiry into accounts laid down. ALAIAHMAD alias BOOLAKI *v.* NUSIBUN

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ACCRETION— Col.

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(1.)—NEW FORMATION OF ALLUVIAL LAND.

(*a*)—GENERALLY.

1. ——— **Beng. Reg. XI of 1825.**—Bengal Regulation XI of 1825 regards accreted land as the right of that party to whose estate the land is an accretion, and does not divide the accreted land according to the extent of each party's loss by diluvion. The mere fact of a lessee having received a malikana allowance from the Collector during the period of his temporary lease will not bar the right to a permanent settlement of any party who, under the law of alluvion, is entitled to settlement. CALLY CHUNDER CHOWDHRY *v.* MONIKURNIKA CHOWDHRAIN [W. R. 1864, 149

BISSESSUREE DOSSEE *v.* KALEE KOOMAR ROY [18 W. R., 198

2. ——— **Beng. Reg. XI of 1825, s. 4, application of**—Clause 1, section 4, Regulation XI of 1825, applies only to lands gained by alluvion either gradually or suddenly, and not to lands existing as waste land subject to inundation and in one year rendered culturable by a deposit of earth by the action of the river. RAMJEEAWAN RAI *v.* DEEP NARAIN RAI [Agra, F. B., 78, Ed., 1874, 60

3. ——— **Beng. Reg. XI of 1825.**—*Suit for accreted land.*—In a suit for possession of alluvial land, which plaintiffs claimed by right of accretion under the provisions of Regulation XI of 1825, and in which the question of accretion was put in issue, the lower Court's judgment was held not to be good in law, because it contained no clear finding as to whether the lands in dispute had re-formed on the original site of diluviated lands of plaintiff's estate, or whether they were accretions to that estate by recession of the river. WISE *v.* JUGGOBUNDOO BOSE [12 W. R., 229

S. C. Affirmed on review, JUGGOBUNDOO BOSE *v.* WISE [12 W., R. 409

4. ——— **Beng. Reg. XI of 1825, Cls. 1 and 3.**—In a suit for possession where certain lands were decreed to plaintiff on the ground that having formed opposite to his villages, they subsequently became contiguous thereto by the gradual silting up of the bed of the river which had previously flowed between,—*Held* that the decision was not in conformity with clause 1 or clause 3, section 4, Regulation XI of 1825, and that it was necessary to determine how the

ACCRETION—*continued.*

(1.)—NEW FORMATION OF ALLUVIAL LAND —*continued.*

(*a*)—GENERALLY—*continued.*

Beng. Reg. XI. of 1825, Cls. 1 and 3—*contd.* land formed, whether it was thrown up as an island in the bed of the river, or was formed by gradual accretion to an estate; and, if by gradual accretion, to what lands it so accreted. UNNOPOORNA DEBIA *v.* SREEMUTTY DASSEE . . . . 14 W. R., 254

5. ——— **Beng. Reg. XI of 1825.**—*Proprietor of resumed mehal.*—The Government, when it holds a resumed mehal on its rent-roll as its khas property, holds it as, and with all the rights and liabilities of, a private zemindar, and is therefore entitled, under Regulation XI of 1825, to claim accretions to the khas estate. COLLECTOR OF PUBNA *v.* SURNO MOYEE [17 W. R., 163

6. ——— **Suit for possession of chur lands.**—The plaintiff sued for possession of a chur which he alleged had accreted to the remnant of the plaintiff's original estate, which had been left when all the rest of his estate was washed away,—*Held* that the Court must decide what particular parcel (if any) was the remnant of the original estate, and must also decide whether the chur claimed was formed by accretion to that remnant. RASHMONEE DOSSEE *v.* BHUBONATH BHUTTACHARJEE . 12 W. R., 252

7. ——— **Land forming bed of canal.**—*Beng. Reg. XI of 1825, s. 4, cl. 4.*—Land forming the dry bed of a canal belongs to the estate in which the canal itself was included. In clause 4, section 4, Regulation XI of 1825, the words "subject to the provisions stated in the first clause of the present section" do not apply to the formation and position of the newly accreted land, but to the owner's rights in them in relation to the Government. SYFOOLLAH *v.* BHUTTON, alias BUTTESSUR . . . . 10 W. R., 68

8. ——— **Accretion to estate on opposite side of river.**—Accretion on one side of a river is not claimable as belonging to an estate on the opposite bank. PUNCHANUN MULLICK *v.* HEERA LALL SEAL . . . . . 1 W. R., 173

9. ——— **Gradual Accretion.**—*Lakhirajdar.*—Gradual accretion may be claimed by a lakhirajdar as his property. PUTHURAM CHOWDRY *v.* KUTHENARAIN CHOWDHRY . . 1 W. R., 124

10. ——— **Right of zemindar to accreted land.**—As long as any portion of an estate is in existence the zemindar is entitled to claim the land accreting to it as forming by law part of that estate. BHOOBUNMOHUN SIRCAR *v.* WATSON AND CO. [W. R. 1864, 64

11. ——— **Accretion to riparian village.**—"*Ancestral*" *property.*—*Alluvial land.*—"*Ancestral*" *riparian property.*—*Alluvial land held on same title as riparian land.*—*Held* that the ownership of alluvial land which had accreted to a riparian village must rest upon the same title as that upon which the original village was held, and that as the riparian village was ancestral the accreted property must be ancestral also. RAM PRASAD RAI *v.* RADHA PRASAD SINGH . I. L. R., 7 All., 402

ACCRETION—*continued.*

(1).—NEW FORMATION OF ALLUVIAL LAND —*continued.*

(*a*)—GENERALLY.—*continued.*

12. ——— **Evidence.**—*Alteration of surface of land.—Obliteration of landmarks.*—The question whether land is formed by gradual accretion depends on evidence; but it would be an error in law to consider it as conclusive of that fact that the surface of the land had all been changed, and the marks all obliterated, so that no old houses, or trees, or mounds, or vestiges of boundary could be found, and that all the surface of the land was fresh land which had been brought down by the river. *Lopez* v. *Maddan Mohan Thakur, 6 B. L. R., 121,* commented on. PAHALWAN SINGH *v.* MAHESSUR BUKSH SING and MAHESSUR BUKSH SING *v.* MEGBURN SING **[9 B. L. R., 150 16 W. R., P. C., 5**

13. ——— **Accretion by washing away lands of another.**—The party to whose lands new formations accrete is entitled to them, though the accretion may have been caused by the washing away of the lands of another person. ADOO MEAN *v.* SHIBO SOONDOOREE . . . **2 W. R., 295**

(*b*)—RIVERS OR CHANGE IN COURSE OF RIVERS.

14. ——— **Gradual accretion from river receding.**—*Riparian proprietors.—Beng. Reg. XI of 1825, s. 4, cl. 5.*—In a suit for lands gradually gained by recession of a river the plaintiffs and defendants are equally bound to prove their titles, and where they fail to do so, the accretion under the 5th clause of section 4 of Regulation XI of 1825 should be so divided that the owners of the land forming each bank of the original bed of the river must receive the land newly formed opposite their respective holdings. BHAGEERUTTEE DABEA *v.* GREESH CHUNDER CHOWDHRY . . . **2 Hay., 541**

15. ——— **Gradual accretion from river.**—Land gained from a river by gradual accretion belongs to the owner of the adjacent soil by the title of occupancy. NASAVANJI PESTANJI *v.* NASARVANJI DARASHA **[2 Bom. 366, 2nd Ed. 345**

16. ——— *Nadi bharati.*—Nadi bharati, or land raised out of the river, is not an accretion, and belongs to the person to whom the river was re-leased by the Resumption Authorities. HARI KISHORE DUTT *v.* COLLECTOR OF DACCA **[3 B. L. R., Ap. 116**

17. ——— **Bed of navigable rivers.**—The East India Company as representing the Indian Government had a freehold in the bed of navigable rivers in India, and to the land between high and low water-mark. Land formed by gradual accretion belongs to the owner of the adjacent soil. DOE *d.* SEEBKRISTO *v.* EAST INDIA COMPANY **[6 Moore's I. A. 267**

18. ——— **Land dry only in dry season below high-water mark.**—*Private property.*—A strip of land which, in the dry season only, is left dry between the permanent bank and the river cannot

ACCRETION—*continued.*

(1.)—NEW FORMATION OF ALLUVIAL LAND —*continued.*

(*b*)—RIVERS OR CHANGE IN COURSE OF RIVERS— —*continued.*

Land dry only in dry season, &c.—*contd.*

be private property until it rises beyond high-water mark, so as to become fit for cultivation; and when it does so rise the public will be entitled to the same access to the river as before. ODHIRANEE NARAIN KOOMAREE *v.* NAWAB NAZIM OF BENGAL **[4 W. R., 41**

19. ——— **Beng. Reg. XI of 1825, s. 1, cl. 4**—*Right of Julkar.*—Before clause 4, section 1, Regulation XI of 1825 can have the effect of depriving a party of the title given by clause 1, the opposite party must prove that the land in question was the bed of a small and shallow river which, with the julkar right of fishing over it, was recognized as the property of such opposite party. RAM SHURN SHAHA *v.* BHOTE KINKUR . . . . . **14 W. R., 268**

20. ——— **Land accreting from bed of khal.**—Land which accretes to an estate from the bed of an adjoining khal, not being a canal but a river, belongs by law to the owner of the estate. DATARAM NATH *v.* ESHAN CHUNDER LAW . **11 W. R., 116**

21. ——— **Change in course of River.**—*Alluvion and diluvion.*—Land gained by the gradual accession of a river, and added by the operation of nature to *A.*'s tenure must be held to be *A.*'s property, although it be also established by evidence that this land has re-formed on a site which was formerly part of *B.*'s property. If it should be proved that the river flowed over the original site, and, receding, left the new formation and a fordable channel between it and *B.*'s property, *B.* would be entitled to retake possession of the newly-formed land on the old site, and he would not be deprived of it because the river was either fordable on *A.*'s side, or had wholly dried up. MASEYK *v.* HEDGER . . . **W. R. 1864, 306**

22. ——— *Land capable of identification.*—*Semble.* That the general law of alluvion in India, as well as in Europe, does not entitle a landholder to land which is annexed to his estates by a sudden change in the course of a river, and is still capable of being identified as part of the estate of another. ISREE SING *v.* SHURFOODEEN **[1 N. W., 142, Ed. 1873, 224**

PRAGDUTT RAOOT *v.* LUCHMUN PERSHAD **[3 N. W., 111**

23. ——— *Beng. Reg. XI of 1825, s. 4, cl. 2.—Land separated from estate.*—When a party has proved that land which formed part of his estate has, by a sudden change in the course of the river, been separated, he is entitled to recover such land under clause 2, section 4, Regulation XI of 1825. RAI MANIK CHAND *v.* MADHURAM **[3 B. L. R., P. C. 5; 11 W. R., P. C., 42 S. C. 13, Moore's I. A., 1.**

24. ——— **Lands bounded by river.**—*Custom of dhardhoora—Riparian proprietors—Held* that the mere fact that the river forms the constant

ACCRETION—*continued.*

(1.)—NEW FORMATION OF ALLUVIAL LAND —*continued.*

(*b*)—RIVERS OR CHANGE IN COURSE OF RIVERS —*continued.*

Lands bounded by river—*continued.*

boundary between two districts cannot, in the absence of any dhardhoora custom, affect the rights of riparian proprietors. DHOOLHIN HURPAUL KOONWAREE *v.* UBRUCK SINGH . . . . **3 Agra, 18**

25. ——————— *Boundary fluctuating.—Agreement as to mode of fixing boundaries.—Riparian proprietors.—Custom.—Beng. Reg. XI of 1825, s. 2.*—The plaintiffs sued to obtain possession of land on the ground of the existence of a custom in the district that where land which had once been alluvial lies between two branches of a river, or two rivers, and from time to time the volume of water shifts, so that alternately one of those channels is deep, and the other is fordable, then the whole of such intermediate land belongs to the land-owner on the side of the channel which at any given time is fordable. *Held* (without deciding whether such a custom falls within section 2, Regulation XI of 1825), no clear and definite usage had been established. A fluctuating boundary between zillas does not necessarily affect the rights of landed riparian proprietors. An ikrarnama between two zemindars as to the mode of determining the boundaries of their estates, in the event of changes in the channel of river, cannot bind persons claiming under one with whom the perpetual settlement was subsequently made as to the lands in his possession, he being a stranger to that ikrarnama. BISSESSURNATH *v.* MOHESSUR BUKSH SING BAHADOOR . . **11 B. L. R., 265 : 18 W. R., 160 [S. C. L. R. I. A. Sup. Vol. 34**

26. ——————— *Accretion by gradual accession.—Riparian proprietors.—Effect of sudden change in course of boundary river.—Beng. Reg. XI of 1825, s. 2, and s. 4, cls. 1 and 2.*—The lands in suit in Tirhoot were settled under Regulation XI of 1825, section 4, clause 1, with the plaintiff's predecessor in 1837, as the proprietors of an estate to which the lands had become an accretion by gradual accession, and the plaintiffs continued in possession thereof till the expiration of the settlement in 1847 which was made on the same principle. Prior to the renewal of that settlement in 1857, the river, which was to the south of the plaintiff's zemindari in Tirhoot, and to the north of the defendant's in Sarun, had suddenly and so completely changed its course, that the lands in suit, which were formerly on the north side of the river, were capable of being identified on the south side of it, and were, notwithstanding, summarily settled with the defendant who obtained possession of them :—*Held* that in the absence of proof of usage within the meaning of section 2 of the Regulation, that the river should be not merely the boundary between the two districts of Tirhoot and Sarun, but also the boundary between the two zemindaries, the plaintiffs were entitled to the lands. RAGHOOBUR DYAL SAKOO *v.* KISHEN PERTAB SAHEE . . . . **L. R. 6 I A. 211**

ACCRETION—*continued.*

(1.)—NEW FORMATION OF ALLUVIAL LAND —*continued.*

(*c*.) CHURS OR ISLANDS IN NAVIGABLE RIVERS.

27. ——————— **Accretion to Chur.**—*Fordable Channel.*—An accretion to a chur belongs to the owner of the chur, whether the channel between the main land and the chur is fordable or not. KALLY NATH ROY CHOWDHRY *v.* LAWRIE **3 W. R. 122**

28. ——————— Under Regulation XI of 1825, chur land belongs to the proprietor of the estate to which it accretes, provided it is not separated from such estate by an unfordable stream. SHIBCHUNDER GHUTTUCK *v.* THE COLLECTOR OF TIPPERAH **[5 W. R., 139**

29. ——————— *Formation of Churs.—Beng. Reg. XI of 1825, s. 5, cls. 1 and 4.—Right of fishery.*—According to clause 4, section 4, Regulation XI of 1825, churs thrown up in small and shallow rivers, the beds of which are private property, belong to the proprietor of the bed of the river; but by clause 1 of the same section, churs thrown up in rivers not small and shallow, the ownership of the beds of which remains in the public, are an increment to the tenure of the riparian owner to whose land or estate they are annexed. The fact of the right of fishery being in another person does not take the case out of the operation of the former clause. CHUNDERMONEE CHOWDHRAIN *v.* CHOWDHRAIN **4 W. R., 54**

30. ——————— *Diluvion.—Reformation.—Title.—Beng. Reg. XI of 1825, s. 4.*—Where a chur formed in the middle of a river, and was settled with *A.*, and by the recession of the river new land appeared, which was really a deposit on the ancient site of *B.'s* lands though adhering to the chur, it was held to be *B.'s* land. The first rule established by section 4, Regulation XI of 1825, does not apparently contemplate land other than that commonly known as alluvion, *viz.*, land gained by gradual and imperceptible accretion, the *incrementum latens* of the civil law. There is no express provision in the Regulation for the case of land which has been lost to the original proprietor by the encroachment of the sea or a river, and which, after diluviation, reappears on the recession of the sea or river, and there is nothing to take away or destroy the original proprietor's right; such a case is to be determined by the general principles of equity and justice under the 5th rule contained in section 4. A title founded on the original ownership and identification of land reappearing is to be confined *primâ facie* to the reformation on that site. The cases of *Imam Bandi* v. *Hurgobind Ghose, 4 Moore's I. A. 403 ; Lopez* v. *Maddan Mohan Thakur, 6 B. L. R., 121,* and *Eckowri Singh* v. *Heeralal Seal, 2 B. L. R., P. C. 5,* commented on. NOGENDER CHUNDER GHOSE *v.* MAHOMED ESOF **[10 B. L. R., 406 : 18 W. R., 113**

31. ——————— *Beng. Reg. XI of 1825, s. 4, cl. 3.*—If alluvial land be surrounded by water fordable at any point, the owner of the land to which the chur adjoins has a *primâ facie* title to it under clause 3, section 4, Regulation XI of 1825. WISE *v.* AMEERUNNISSA KHATOON **2 W. R., 34**
WISE *v.* ABDOOL ALI . . **2 W. R., 127**
PORESH NARAIN RAI *v.* WATSON **5 W. R., 283**

ACCRETION—*continued.*

(1).—NEW FORMATION OF ALLUVIAL LAND —*continued.*

(*c*).—CHURS OR ISLANDS IN NAVIGABLE RIVERS —*continued.*

32. ——— **Formation of Chur.**—*Alluvion.—Beng. Reg. XI of 1825, s. 4.—Re-formation on old site.*—Under Regulation XI of 1825 a right of property in land gained by alluvion from a river (the bed of which is not the property of an individual) is acquired in two modes: first, where the land is gained by gradual accession by the recess of the river, in which case it becomes the property of the person in possession of the estate to which the land is an increment; and secondly, when a chur or island is thrown up in a large navigable river, and the channel between such chur or island is fordable at any season of the year, the accession is an accession to the land or tenure most contiguous. MOHINI MOHUN DOSS *v.* JUGGOBUNDOO BOSE . . **9 W. R., 312**

33. ——— *Gradual accretion.—Land "most contiguous."—Beng Reg. XI of 1825, s. 4, cl. 3.*—The land "most contiguous" to a chur, as that phrase is used in Regulation XI of 1825, section 4, clause 3, is intended only to comprise the estate or estates with which the chur comes into contact along the length of the fordable part of a channel; and the whole chur becomes an accession to the land and part of the tenure of the party to whom such estate belongs, and no portion of it will cease to belong to him merely by reason of the deep water between it and the estate of another becoming shallow and fordable. *Held* also, that after the chur had, by the first occurrence of the fordable channel, become part of *A.'s* property, all further accretions to it, if gained by "gradual accession," would also belong to *A.*, even though the result would, in the aggregate, be a prolongation of the chur in front of estates on the river bank not belonging to him. GOLAM ALI CHOWDHRY *v.* GOPAL LALL TAGORE . . . . **9 W. R., 401**

34. ——— *Navigable river.—Rights of riparian proprietors.*—Where a chur or island is thrown up in a large navigable river, originally surrounded by deep, unfordable water, but between which and the estate of the zemindar a fordable channel has since been created, the criterion for deciding whether the Government has the right of disposing of that island, or whether the owner of the land to which it is most contiguous has that right, is to consider the state of circumstances at the time of the formation of the island,—that is, at the time when it was thrown up, and not the state of things at any subsequent or fluctuating period, such as the subsequent silting up of the bed of the river between the island and the contiguous estate so as to form a fordable passage. BUDRUNISSA CHOWDHRAIN *v.* PROSUNNO KUMAR BOSE

[6 B. L. R., 255: 14 W. R., F. B., 25

CANNON *v.* BISSONATH ADHICARRE

[5 C. L. R., 154

35. ——— **Fordable River.**—*Beng. Reg. XI, s. 4, cl. 3.—Island in Navigable river.—Right of riparian proprietor to.*—Under clause 3, section 4,

ACCRETION—*continued.*

(1.)—NEW FORMATION OF ALLUVIAL LAND —*continued.*

(*c*).—CHURS OR ISLANDS IN NAVIGABLE RIVERS —*continued.*

Fordable River—*continued.*

Regulation XI of 1825, a riparian proprietor has no right to an island thrown up in a large navigable river, when the channel which intervenes between his land and the island is, under ordinary circumstances, and at the most favorable seasons, unfordable for sixteen out of twenty-four hours. NOBIN KISHOR ROY *v.* JAGES PRASAD GANGOPADYA

[6 B. L. R., 343: 14 W. R., 352

36. ——— *Beng. Reg. XI of 1825, s. 4, cl. 3.*—A river that can be crossed from one side zigzag in the dry season only, when the water is breast-high, and the main stream of which is indubitably on the other side, is not a "fordable" stream within the meaning of clause 3, section 4, Regulation XI of 1825. ISSURCHUNDER SEIN *v.* KALEE DOSS HAJRAH . . . **3 W. R., 95**

37. ——— *Formation of Chur.*—The fact that, under certain circumstances, a river is in some places, and at extreme time of low water, fordable, does not warrant the presumption that the river was a fordable stream at the time of the formation of the chur. WISE *v.* AMEERONISSA KHATOON . . . . . **3 W. R., 219**

38 ——— When the Government sues for alluvial land as an ordinary riparian zemindar it is bound to prove, under the latter part of clause 3, section 3, Regulation XI of 1825, that the stream between the chur and the main land is fordable at some time of the year, and that it was fordable when the alluvium formed. TABIRA *v.* GOVERNMENT . . . . . **6 W. R., 123**

Affirmed on review GOVERNMENT *v.* TABIRA **7 W. R., 513**

39. ——— **Re-formation on old site.**—*Beng. Reg. XI, s. 4, cl. 3.—Island in navigable river.—Right of Government.*—Under clause 3, section 4, Regulation XI of 1825, Government has no right to land thrown up as an island in the bed of a navigable river, when such island is formed on the site of land which had been washed away. MANI LALL SAHU *v.* COLLECTOR OF SARUN

[6 B. L. R., Ap. 93: 14. W. R., 424

40 ——— The Government is not entitled, under clause 3, section 4, Regulation XI of 1825, to take possession of land which has re-formed on an old site of land belonging to another, although the re-formation forms an island, and is surrounded by a channel which is not fordable. COLLECTOR OF RAJSHAHYE *v.* SHAMASOONDREE DEBEA

[14 B. L. R., 219: 22 W. R., 324

41. ——— **Navigable River.**—*Beng. Reg. XI of 1825, s. 4, cl. 3.*—The words "a large navigable river" in clause 3, section 4, Regulation XI of 1825, are not applicable to the Goomta, but to such rivers as the Ganges and the Megna, upon which navigation can always be carried on. MOHINEE MOHUN DOSS *v.* ASSANOOLLAH . . . **17 W. R., 73**

ACCRETION—*continued.*

(1).—NEW FORMATION OF ALLUVIAL LAND —*continued.*

(*c*).—CHURS OR ISLANDS IN NAVIGABLE RIVERS —*continued.*

42. ——— Unfordable Stream.—Land cannot be legally proved to be an accretion to a talook, or a re-formation of diluviated land of that talook on its original site, where the stream between the land in question and the talook is found to be an unfordable stream, nor can possession under such circumstances give a plaintiff a right to a declaration of his title. NOBEEN KISHORE ROY *v.* JOGESH PROKASH GANGOOLY . . **10 W. R., 272**

43. ——— Formation of island in river adjacent to Zemindari.—*Zemindars, Right of.—Waste lands.*—Where an island was formed in a river, the lands adjacent to the banks of which were part of a zemindari,—*Held* that the island was not the waste land of any village, or a portion of the holdings of any ryots in the zemindari, but that the zemindar possessed in it all the incidents of ownership, including the power of making leases. SUBBAYA *v.* YARLAGADDA ANKINIDU . . **1 Mad., 255**

44. ——— Land forming in river and gradually accreting to land on bank.—*Beng. Reg. XI of 1825.—Right of Government.*—Where land came up originally from the river as a small island, and gradually joined on to the plaintiff's estate after having been taken possession of by the defendant,—*Held* by Trevor, *J.*, that the Government alone was entitled to the land, and not the plaintiff, to whose estate the land had joined. *Held contra* by Glover, *J.*, that as the land was an accretion to the plaintiff's estate he was entitled to take possession of it under Regulation XI of 1825, the defendant's possession notwithstanding. MOHINEEMOHUN DOSS *v.* JUGGOBUNDOO BOSE . . **7 W. R., 103**

45. ——— Formation of land in navigable river.—*Proof of title.*—The re-formation of land in the bed of a navigable river is not *primâ facie* to be ascribed to a loss from any particular riparian estate, nor is the land which has been removed from an estate by sudden avulsion reclaimable, unless the circumstances supply evidences of identity. A title by accretion is not established by mere proof of general inclusive boundaries at a time preceding the formation of the chur, but there must be proof of the nucleus of accretion. The land gained will follow the title of the particular land forming the nucleus. EKOWRI SINGH *v.* HIRALALL SEAL **[2 B. L. R., P. C., 5: 11 W. R., P. C., 2: 12 Moore's I. A. 136**

SHAM CHAND BYSACK *v.* KISHEN PERSAUD SURMA **[18 W. R., 4: 14 Moore's I. A., 595**

46. ——— Island in large river.—*Proprietorship of alluvial land.—Beng. Reg. XI of 1825, s. 4.*—Though an island or land thrown up and surrounded by a river may become vested in Government under the provisions of Regulation XI of 1825, section 4, clause 4, it does not follow that, if the river which separates the island from the main land dries up after the island has been resumed by Government, the

ACCRETION—*continued.*

(1).—NEW FORMATION OF ALLUVIAL LAND —*continued.*

(*c*).—CHURS OR ISLANDS IN NAVIGABLE RIVERS —*continued.*

Island in large river—*continued.*

bed of the river becomes the property of Government in cases in which the bed of the river is not gained as an accretion to the island by gradual accession within the meaning of clause 1. SURNOMOYEE *v.* JARDINE, SKINNER AND CO. SURNOMOYEE *v.* WATSON & CO. **[20 W. R., 276**

47. ——— *Formation of lands* —*Beng. Reg. XI of 1825.*—In a suit brought on the 11th March 1872 to recover certain plots of land (*a*) as re-formations after diluviation of lands which had belonged to the plaintiffs and as accretions thereto; (*b*) under a title by prescription; it appeared that the lands had formed in the bed of a river in 1859: and that the plaintiffs took possession thereof as of re-formed lands and had been maintained in possession under awards under Act IV of 1840, but that in 1868 they were ousted by the Collector, who assessed the same under Regulation XI of 1825 and settled them with his co-defendants,—*Held* that whether or not in consequence of Act IX of 1847 the Government were entitled to assess the lands they were entitled to oust the plaintiffs and to take possession of the lands as lands which had originally formed as an island, and were at their first formation surrounded by water which was not fordable. WISE *v.* AMEER-UNNISSA KHATOON. WISE *v.* COLLECTOR OF BACKERGUNGE . . . . . **L. R. 7 I. A. 73**

48. ——— *Formation and attachment to estate of island chur formed in river.*—Defendants were owners, by purchase from Government, of a property called Oojan Chur, which in its origin was an island thrown up in the bed of the river. Plaintiff was owner of the original estate of *K.* of which a great part was cut off by a stream channel of the river; but afterwards re-appeared, and for some time lay in contiguity with defendant's chur, and separated from plaintiff's estate by the said channel. By the gradual filling up of the sota, re-formation became more and more extensive until the land again lay in contact with the plaintiff's estate. As it had been clearly ascertained by boundary marks and measurements that the re-formation took place on the original site of the plaintiff's land, the right of the plaintiff as by re-formation was held to be preferable to that of the defendants which rested upon accretion. BUDDUN CHUNDER SHAHA *v.* BEPIN BEHAREE ROY . . . . **23 W. R., 110**

(2).—RE-FORMATION AFTER DILUVIATION.

49. ——— Ownership in re-formed land.—Ownership in soil is not lost because the subject of it becomes submerged; the owner of the site or sub-soil remains owner of the surface, and on re-formation of the surface soil takes whatever falls within his known boundaries. Ordinarily there can be no right of accretion when the new formation is

3.115

ACCRETION—*continued.*

(2).—RE-FORMATION AFTER DILUVIATION —*continued.*

Ownership in re-formed land—*continued.*

on the site of what was formerly held by an individual as his private property. DWARKANATH ROY *v.* DINOBUNDHOO SINGH CHOWDHRY [15 W. R., 461

50. ——————— *Beng. Reg. XI of 1825, s. 4, cl. 1.*—Where new land is formed, whether it be a re-formation on an old site, or whether it is formed where no land ever previously existed, ownership is determined by the ownership of the adjacent land to which it has accreted. To defeat or prevent the right by accretion, the person who claims the land as a re-formation of his old land is required to prove some continuing right of property in himself; it is not enough for him to rely merely on identity of site. KATTEMONEE DOSSEE *v.* MONMOHINEE DABEE [B. L R. Sup. Vol. 353: 3 W. R., 51

LYON *v.* GRAY . . . 11 W. R., 189

51. ——————— *Land inundated and re-formed.*—The owner of land before it is inundated remains the owner of it when it is covered with water and after it becomes dry. IMAM BANDI *v.* HUR GOBIND GHOSE [7 W. R., P. C., 67: 4 Moore's I. A., 403

52. ——————— *Beng. Reg. XI of 1825, s. 4, cls. 1, 2, 3.*—Claims to alluvial lands under clause 2, section 4, Regulation XI of 1825 (*i.e.*, to lands as *re-formed lands*), are not superior to claims under clauses 1 and 3, of section 4, or under section 5 of that Regulation, *i.e.*, to lands as newly alluviated. WISE *v.* AMEERUNNISSA KHATOON 2 W. R., 132

53. ——————— *Beng. Reg. XI of 1825, s. 4, cls. 1 and 3.—Re-formation on old site.*—Proof of re-formation on an old site will not suffice to establish a claim under Regulation XI of 1825. Re-formations are governed by clauses 1 and 3, section 4, Regulation XI of 1825. A claim to hold the land under clause 2 can only be maintained by the old proprietor when the land has not been diluviated, but cut off by a change of the stream. KENNY *v.* SUMEEROONISSA . . . . . 3 W. R., 68

KALEE MONEE DEBIA *v.* COLLECTOR OF MYMENSINGH . . . . . 5 W. R., 55

54. ——————— *Land diluviated by river.—Riparian proprietors.*—Where property is wholly submerged by a river, land forming afterwards on the site will, when the ownership of that site is proved to exist in the former owner, remain in him, and the accretion will not belong to the adjacent proprietor. The decision in *Kattemonee* v. *Monmohinee Dabee* is erroneous in not regarding the site of the increment. LOPEZ *v.* MADDAN MOHAN THAKOOR . . . . . 5 B. L. R., 521 [14 W. R., P. C., 11 S. C. 13 Moore's I. A., 467

55. ——————— *Quære.*—To whom lands diluviated and afterwards re-formed belong. KIRTEE NARAIN CHOWDHRY *v.* PROTAB CHUNDER BUROOAH . . . . . W. R., F. B., 129

ACCRETION—*continued.*

(2).—RE-FORMATION AFTER DILUVIATION —*continued.*

Ownership in re-formed land—*continued.*

56. ——————— *Re-formation of lands washed away.—Beng. Reg. XI of 1825, s. 4.*—Lands washed away and afterwards re-formed upon the old site, which can be clearly recognized, are not lands "gained" within the meaning of section 4, Regulation XI of 1825; they do not become the property of the adjoining owner, but remain the property of the original owner. ROMANATH THAKOOR *v.* CHUNDERNARAIN CHOWDHRY . . Marsh, 136 [W. R., F. B., 45 1 Ind. Jur., O. S., 44

COLLECTOR OF TIPPERAH *v.* DOORGA PERSAD PARAY . . . . . W. R., 1864, 302

COLLECTOR OF DACCA *v.* KISHEN KISHORE CHATTERJEE . . . . . W. R., 1864, 273

57. ——————— *Diluviated lands.—Beng. Reg. XI of 1825, s. 4, cl. 2.*—Clause 2, section 4, Regulation XI of 1825, does not apply to the case of an estate entirely lost by diluvion KESHUBLALL CHOWDHRY *v.* WATSON AND CO. W. R., 1864, 64

58. ——————— *Diluviated lands, re-forming on old site.—Title by long possession.—Adverse possession.*—The doctrine in *Lopez's case* that diluviated lands, re-forming on their old site, remain the property of their original owner, does not apply to lands in which after their re-formation an indefeasible title has been acquired by long adverse possession, or otherwise. Where a plaintiff relies on an alleged adverse possession of lands for more than twelve years after their re-formation, the question to be decided is whether he has had such possession for twelve years. RADHA PROSHAD SINGH *v.* RAM COOMAR SINGH [I. L. R., 3 Calc., 796: 1 C. L. R. 259

varying on appeal COURT OF WARDS *v.* RADHA PROSHAD SINGH . . . 22 W. R., 238

59. ——————— *Land re-formed on site that can be identified.*—Where land re-forms by alluvion on a site capable of identification, the right of the owner of the original site to the chur is indisputable. SARAT SUNDARI DEBY *v.* SOORJYA KANT ACHARJYA . . . 25 W. R., 242

60. ——————— *Lands temporarily or permanently settled.*—Where lands submerged by a river re-form, and can be identified as having formed a part of a particular estate, they belong to the owner of that estate, whether his estate consists wholly of permanently-settled lands or whether it has been partly acquired as an alluvial accretion under temporary settlements made by Government with him as owner of permanently-settled lands. HURSAHAI SINGH *v.* LOOTF ALI KHAN [14 B. L. R., 268 23 W. R. 8: L. R. 2, I. A. 28

61. ——————— *Land re-formed on old sites.*—When land is gradually re-formed on two old sites identity of site can give no title to the former owners of the two old sites to the land re-

ACCRETION—*continued.*

(2).—RE-FORMATION AFTER DILUVIATION —*continued.*

Ownership in re-formed land—*continued.*

formed on such old sites respectively; nor can identity of site give any title to land gradually re-formed, when it is formed by gradual accession partly to one estate and partly to another. A person in possession of land is *prima facie* entitled to it, and to all increments to it. MUTHOORANATH MUZOOMDAR *v.* TARINEE CHURN SINGH . . **[8 W. R., 164**

62. ——— *Submersion of land.—Riparian rights.—Identification of site of land.*—In a suit for possession, where it was found that a rivulet had come in from a river and formed a disjunction between the disputed land and plaintiff's property, but that the rivulet was closed up and the river had returned to its proper channel, and on the surface of the disputed land there still remained marks of its having belonged to the plaintiff,—*Held* that the finding sufficiently identified the land in suit as the property of the plaintiff, within the meaning of the Full Bench Ruling in *Kattemonee Dossee* v. *Monmohinee Dabee, B. L. R. Sup., Vol. 353 : 3 W. R., 51. Held* also that as the last person found to have had land in occupation was the plaintiff, and as his possession had never been disturbed (the lands having ever since been submerged) there was a sufficient finding of possession to entitle plaintiff to a decree in confirmation of title. INDURJEET KOOER *v.* JUMNA DOSS . . . . . **14 W. R., 164**

63. ——— *Condition of land when re-formed.—Beng. Reg. XI of 1825, s. 4.—Right to possession.*—The rule, where a question arises as to the right to the possession of land, either gained by gradual accession or re-formation, or thrown up in a river or the sea, is that the condition of the land where it was originally gained by alluvion or thrown up, and became the subject of property and capable of cultivation, or occupation as such, must be looked to. If, after the land comes into existence and is capable of cultivation, it is taken into possession and occupied, the subsequent drying up of the channel between such land and the shore does not affect the occupier's right to possession as against every one except the Government or one who can show a better title. Section 4, Regulation XI of 1825 is not against this view. KALIPRASAD MAZUMDAR *v.* COLLECTOR OF MYMENSINGH **[6 B. L. R., 261 note: 13 W. R. 366**

64. ——— *Beng. Reg. XI of 1825, s. 4, Construction of.—"At the disposal of Government."*—The words "at the disposal of the Government" in clause 3, section 4, Regulation XI of 1825, mean that the property in, and absolute right of disposal of, the land is vested in the Government, and not that the Government has merely a right to the revenue. KHELLUT CHUNDER GHOSE *v.* COLLECTOR OF BHAUGULPORE . **W. R. 1864, 73**

(3).—PROCEDURE.

65. ——— **Procedure where rules under Beng. Reg. XI of 1825 are inapplicable.**—Where the special rules laid down in Regulation XI of

ACCRETION—*continued.*

(3).—PROCEDURE—*continued.*

Procedure where rules, etc.—*continued.*

1825 for the adjudication of questions of title to alluvial land are inapplicable, and no special custom exists, the decision of the case ought to proceed on general principles of equity and justice. SHEOGOLAM TEWAREE *v.* FAQUERA MISSER. . **3 Agra, 400**

66. ——— **Chur lands, re-formation on old site.**—*Beng. Reg. XI of 1825, s. 4, cls. 3 & 5.—Held* that clause 3, section 4, Regulation XI of 1825 is applicable when the chur land is thrown up for the first time, and is not capable of being identified; but where the land thrown up forms a portion of the old mouzah, and can be identified, clause 5, section 4 of the said enactment would be applicable; and in the absence of any particular local custom the claim in respect of such land must be decided according to the principles of equity. TODEE SINGH *v.* GARDNER **[2 Agra, 342**

67. ——— **Suit for alluvial lands.**—*Beng. Reg. XI of 1825, s. 5, cl. 5.*—In a suit for alluvial lands, if the defendant pleads, and can establish his plea, that the lands in question were gradual accessions to his estate, neither the ground of re-formation on the old site, nor that of prior possession for a short period, can avail the plaintiff. If, however, the plea be found against the defendant, the matter must be disposed of according to clause 5, section 5, Regulation XI of 1825. GOVIND NATH SANDYAL *v.* NUBOCOOMAR BANERJEE . . . **8 W. R., 206**

68. ——— *Beng. Reg. XI of 1825, s. 4, cl. 5.*—Where plaintiff alleges that his and the defendant's villages were washed away, and have re-formed on the same site, and no third party claims the new formation as an increment to his estate, the question of title will have to be determined by clause 5, section 4 of Act XI of 1825. JANNOBEE CHOWDHRAIN *v.* COLLECTOR OF MYMENSINGH **8 W. R., 287**

(4).—RIGHT OF PURCHASERS TO ACCRETIONS.

69. ——— **Re-formation since purchase.**—The purchaser of an estate found by actual measurement the year before to consist of a certain number of bigahs with a specified rental, can have no claim to re-formations of land belonging to the mehal as it originally stood. JUGOBUNDHOO BOSE *v.* KOOMOODINEE KANT BANERJEE CHOWDHRY **[19 W. R., 89**

70. ——— **Increments not mentioned in certificate of sale.**—Where a mehal which has been diminished by diluvion is sold at auction by the Collector, who apprizes the public of the existing area, his specification of such area in no way limits the terms of the certificate of sale, or restricts the right of the purchaser to claim thereafter any accretion to the estate, the increment being always a contingent right which the zemindar has. GUNGA NARAIN CHOWDHRY *v.* RADHIKA MOHUN ROY and

ACCRETION—*continued.*

(4).—RIGHT OF PURCHASERS TO ACCRETIONS—*continued.*

Increments not mentioned in certificate of sale—*continued.*

RADHIKA MOHUN ROY *v.* GUNGA NARAIN CHOWDHRY . . . . . **21 W. R., 115**
affirmed on review RADHIKA MOHUN ROY *v.* GUNGA NARAIN CHOWDHRY . . . **22 W. R., 23**
See IDAN *v.* NUND KISHORE . **25 W. R., 390**

71. ——— **Lands taken on Settlement from Government.**—Parties settling with Government are entitled to all the proprietary rights of the Government, including the re-formed lands, unless they take the estate at a reduced jumma from that fixed at the original settlement, in which case they are in the position of a proprietor who has accepted a remission of revenue in consideration of the loss of area of the land, a situation which disentitles them to the lands re-formed. KRISTO MOHUN BYSACK *v.* THE COLLECTOR OF DACCA . . **24 W. R., 91**

72. ——— **Purchase of land from Government.—Right to increments.**—Plaintiff bought a certain chur, situated between two branches of a river, from the Government, the sale notification stating that the chur contained a certain area and was subject to a certain jumma. It appeared that at a former time the chur had been much larger and extended over a site afterwards covered with deep water, but on which, and before the plaintiff's purchase, new land had formed by accretion to the opposite side of the channel. In a suit for possession of the newly-formed land on the ground that it was re-formation on an old site,—*Held* that what the Government sold and what plaintiff bought was the chur as it existed at the date of the purchase. *Gunga Narain Chowdhry* v. *Radhika Mohun Roy, 21 W. R. 115,* cited and distinguished. GHOLAM ALI CHOWDHRY *v.* THE COLLECTOR OF BACKERGUNGE **[2 C. L. R., 39**

73. ——— **Property not attached because submerged.**—*Submersion of contiguous estate.—Sale in execution of decree.—Right of purchaser.*—*F.* owned a share in a village, *M.*, which in 1875 was divided into two separate mahals, *K.* and *U.*, and Government revenue was separately assessed on each mehal. In 1876, *K.* was entirely submerged by the Ganges. On the 20th September 1877, *F.'s* share was sold in execution of a decree, and the auction-purchaser was put in possession. In the sale certificate, the village *M.* was named, without specific mention of either of the two mehals, and the Government revenue referred to was the amount assessed on *U.* only. Subsequently the river receded, and part of *K.* was again left dry, and it was treated by the revenue authorities as having accreted by alluvion to *U.*, in the proprietary possession of the auction-purchaser. *Held* that this view was erroneous, inasmuch as, before the auction-sale of 20th September 1877, the two properties were separate, being separately assessed with revenue, and the incidents of the ownership of one could not affect the ownership of the other; and since there was no such rule of law as would justify the proposition that simply because two

ACCRETION—*continued.*

(4).—RIGHT OF PURCHASERS TO ACCRETIONS—*continued.*

Property not attached because submerged—*continued.*

mehals are contiguous, and one of them is liable to be submerged, therefore it is nothing more or less than an accretion to the other. *Held* also that inasmuch as the mahal *K.*, being at the time under water, was not attached in execution of the decree against *F.*, and was not advertized for sale, and the revenue assessed thereon was not referred to in the sale-proceedings, and the sale-certificate contained no reference to it as the property sold, the sale of the 20th September 1877 did not convey any rights to the auction-purchaser in respect of *K.* *Mahadeo Dubey* v. *Bhola Nath Dichit, I. L. R. 5 All. 86,* referred to. FIDA HUSAIN *v.* KUTUB HUSAIN **[I. L. R., 7 All., 38**

ACCRETIONS, SUIT FOR FRESH—

See RELINQUISHMENT OR OMISSION TO SUE FOR PORTION OF CLAIM. **[9 B. L. R., 150**

ACCRETIONS TO PROPERTY FROM RENT—

See WILL—CONSTRUCTION . **5 B. L. R., 1**
S. C. 13 W. R., P. C. 41

ACCUMULATIONS—

1. ——— **Income.**—*Hindu widow.*—Accumulations are not income, and cannot be dealt with by a Hindu widow as such; they should be treated in the same way as the *corpus* of the estate. GROSE *v.* AMIRTAMAYI DASI **[4 B. L. R., O. C., 3: 12, W. R., O. C., 13**

2. ——— But income and accumulations are not the same thing; therefore, *quære,* whether she can deal with accumulations as she can with income. IN THE GOODS OF HARENDRANARAYAN. KAILASNATH GHOSE *v.* BISWANATH BIWAS . . . . . **4 B. L. R., O. C., 41**

3. ——— **Right of Hindu widow.**—*Accumulations of income from her husband's estate.*—A Hindu widow is entitled to the accumulations of income from her husband's estate. PANNALAL SEAL *v.* BAMASUNDARI DASI . . **6 B. L. R., 732**

4 ——— *Immoveable property purchased with accumulations.*—Immoveable property purchased by a Hindu widow with the profits of her husband's estate, there being no proof of any distinct intention on her part to sever such purchases from the estate and appropriate it to herself, *held* to form part of her husband's estate. GONDA KOOER *v.* KOOER OODEY SINGH . . **14 B. L. R., 159**

See CHOWDHRY BHOLANATH THAKOOR *v.* BHAGABATTI DEYI . . . **7 B. L. R., 93**

In that case it was held that though a Hindu widow cannot alienate property acquired by her out of funds derived from her husband, yet where she held under a deed which conveyed the property to her to enjoy for her lifetime and to incur all needful expenses, she was entitled to invest sums out of the

ACCUMULATIONS—Right of Hindu widow—*continued.*

income for the benefit of her daughter and granddaughter in the purchase of immoveable property for their maintenance. But this decision was, on the construction of the deed, reversed by the Privy Council. BHAGABATTI DEYI *v.* BHOLANATH THAKOOR [I. L. R., 1 Calc., 104

ACCUSED PERSON—

See BAIL.

[1 B. L. R., A. Cr., 7
I. L. R., 1 All., 151

ACCUSED PERSON, RIGHT OF—

See CASES UNDER PRISONER, PRIVILEGES OF.

See CASES UNDER WITNESS.

———*Notice and Specification of offence.—Criminal Process.*—An accused person is entitled to have conveyed to him by the process, whether summons or warrant, the same amount of information relative to the accusation made against him which should specify not only the technical designation of the offence, but the acts for which the accused would have to answer. RAMZAN ALI *v.* DURPO KOMILLA [24, W. R. Cr., 58

ACKNOWLEDGMENT—

See CASES UNDER MAHOMEDAN LAW—ACKNOWLEDGMENT.

ACKNOWLEDGMENT BY LETTER—

See STAMP ACT, 1879, s. 61 [I. L. R., 8 Mad., 11

ACKNOWLEDGMENT OF DEBT.

See CONTRACT ACT, s. 25.

[I. L. R., 4 Calc., 500
3 C. L. R., 554

See HINDU LAW—JOINT FAMILY—POWER OF ALIENATION—MANAGER. [14 B. L. R., 21

See CASES UNDER LIMITATION ACT, 1877, s. 19 (1859, s. 4, 1871, s. 20).

ACKNOWLEDGMENT OF SIGNATURE BY TESTATOR.

See WILL—ATTESTATION. [I. L. R., 1 Bom., 547

ACKNOWLEDGMENT OF TITLE.

See LIMITATION ACT, 1877, ART. 148 (1871, ART. 148, 1859, s. 1, CL. 15).

[13 B. L. R., 177
I. L. R., 1 All. 117, 642

ACQUIESCENCE.

See EXECUTION OF DECREE—EXECUTION AFTER AGREEMENT OR COMPROMISE. [I. L. R., 1 All., 368

See GUARDIAN—RATIFICATION.

10 Bom., 211

See HINDU LAW, JOINT FAMILY.—POWER OF ALIENATION.—MANAGER. [14 B. L. R., 21

ACQUIESCENCE—*continued.*

See CASES UNDER LACHES.

See LANDLORD AND TENANT—BUILDINGS ON LAND, RIGHT TO REMOVE.

[14 B. L. R., 201

See PRESCRIPTION—EASEMENT—LIGHT AND AIR . . . 6 B. L. R., 85
[12 B. L. R., 406

See PRINCIPAL AND AGENT AUTHORITY OF AGENT . . . 2 Agra, 129

1. ——— **Laches.**—*Doctrine of laches and applicability of.—Limitation.*—The equitable doctrine of laches and acquiescence does not apply to suits for which a period is provided in the Limitation Acts. RAM RAU *v.* RAJA RAU . 2 Mad., 114

TARUCK CHUNDER BHUTTACHARJEE *v.* HURO SUNKUR SANDYAL .. . . 22 W. R., 267

Contra UDA BEGAM *v.* IMAMUDIN

[I. L. R., 1 All., 82

2. ——— *Limitation.*—Mere laches or indirect acquiescence short of the period prescribed by the Statute of Limitation is no bar to the enforcement of a right absolutely vested in the plaintiff at the time of suit. *Semble.*—The doctrine of acquiescence, or laches will apply only to cases, if such there are, in which they can be regarded as a positive extinguishment of right. When they go merely to the remedy the courts have no power arbitrarily to substitute an extinguishing prescription different from that determined by the Legislature. PEDDAMUTTURLATY *v.* TIMINA REDDI . . . 2 Mad., 270

3. ——— **Delay.**—Circumstances, constituting delay and acquiescence discussed. JAMNADAS SHANKARLAL *v.* ATMARAM HARJIVAN.

[I. L. R., 2 Bom., 133

4. ——— **Delay in bringing suit.**—Long acquiescence held on the facts to bar a suit for possession after assignment. JAN KOONWAR *v.* RAM RUTTUN NEOGHY . . . 18 W. R., 500

5. ——— **Delay in enforcing rights with knowledge of them.**—Where the plaintiff in 1859 instituted a suit for a share of certain property which he admitted had been for nine years in the defendant's possession, and which the defendants alleged had been sold to them in 1850, *held* that the plaintiff's taking no steps during that time to enforce his alleged rights amounted to acquiescence on his part in the sale. NILATATCHI *v.* VENKATACHALA MUDALI . . . . . 1 Mad., 131

6. ——— *Presumption from long delay.—Estoppel.*—In a suit by plaintiffs (who had been in possession of the land in dispute under and ever since the date of a pottah granted to them by the Collector in 1843) to have their title under the pottah declared, the defendants were held, by their long acquiescence in taking no steps within 12 years to have the pottah declared invalid, to have concluded themselves from now saying that it was illegal and that the Collector had no power to grant it. SUNT LALL MISSER *v.* BHUROSEE ISSUR . 18 W. R., 57

ACQUIESCENCE—*continued.*

7. ——— **Delay in making objection.**—*Presumption of Consent.*—In a suit to avoid alienations effected by the plaintiff's father at a time when the plaintiff was living in commensality with his father as a member of a joint family, which suit was brought after 12 or 13 years had been allowed to go by without any objection, save the filing of a petition of protest in a Court of justice, whereof the vendees were not made aware,—*Held* that the plaintiff was rightly considered to have consented to the alienations. RAM KISHORE NARAIN SINGH *v.* ANUND MISSER . . . . . **21 W. R., 12**

8. ——— *Knowledge of transaction.—Presumption of consent.*—Before a man can be held to have given by his conduct an implied assent to a transaction, especially one which operates as a conveyance of a valuable estate, it must be shown that he was fully aware of what the transaction was, and what effect it would have upon his interests at the time he so conducted himself as to indicate assent. JAGO BUNDHOO TEWAREE *v* KURUM SINGH . . . . . **22 W. R., 341**

9. ——— *Suit to close a road.—Presumption of consent.*—The plaintiff not having opposed the making of a road until its completion was held not entitled to sue to have it closed. RADHA NATH BANERJEE *v.* JOY KISHEN MOOKERJEE . . . . . **1 W. R., 288**

10. ——— *Suit to close road.—Presumption of consent.*—If *A.* construct a road across *B.'s* land, *B.* can sue within the ordinary period of limitation, and no consent can be inferred from the fact that *B.* did not sue immediately after the commencement or completion of the road. HURO SOONDUREE DEBIA *v.* RAM DHUN BHUTTACHARJEE **[7 W. R., 276**

11. ——— **Delay in opposing erection of building.**—*Presumption of consent.*—In a suit for the demolition of a privy erected on plaintiff's land, it having appeared that plaintiff was aware of the erection of the privy and had allowed it to be completed and to remain standing for at least seven years, his application was refused. BROMO MOYEE DEBIA CHOWDRAIN *v.* KOOMODINEE KANT BANERJEE, and BARODA KANT BANERJEE *v.* KOOMODINEE KANT BANERJEE . . . **17 W. R., 467**

12. ——— **Erection of building without objection.**—Acquiescence must be inferred when a person stands by and allows another to erect a *pucka* building on his land, and a suit would not lie for the demolition of the building, but only for damages or rent of land. HURRO CHUNDER MOOKERJEE *v.* HULLODHUR MOOKERJEE . **W. R., 1864, 166**
NIL KANT SAHOO *v.* JUGOO SAHOO **[20 W. R., 328**

13. ——— *Building by trespasser on land.*—When a trespasser tortiously enters upon the land of another and builds a house thereon, the party injured is entitled to recover possession of the land by destroying the house, if there is no proof

ACQUIESCENCE—Erection of building without objection—*continued.*

of acquiescence on his part in the act of injury done. GOBIND PURAMANICK *v.* GOOROO CHURN DUTT **[3 W. R., 71**
GUJADHUR SINGH *v.* NUND RAM **1 Agra, 244**

14. ——— *Suit for restoration of land to former condition.*—The rights of a co-sharer in a joint estate were sold by auction, but it did not appear that a site held by him in the village passed by the sale, and the site remained in the possession of his heirs who sold it to the defendant, who erected a shop thereon. Twenty years after the auction sale, the plaintiffs, some of the co-sharers in the joint estate, sued for demolition of the house, and the restoration of the site to the village. *Held* that under the circumstances the claim could not be maintained. BAHADOOR *v.* SHADEE RAM . . **2 Agra, 3**

15. ——— *Right to remove building.*—Where *H.*, knowing that *B.* claimed certain land as his own, nevertheless purchased the land from a third person and erected a bungalow upon it, which *B.* did not interfere to prevent,—It was *held* that the English rule of equity, which under such circumstances, would allow *B.* to recover the land with the bungalow upon it, ought not to be applied in India, but that *H.* should be allowed to remove the bungalow he had erected. NARAYAN BIN RAGHAJI *v.* BHOLAGIR GURU MANJIR. HORMASJI SORABJI *v.* BHOLAGIR GURU MANGIR. BHOLAGIR GURU MANJIR *v.* HORMASJI SORABJI. **6 Bom., A. C., 80**

16. ——— *Building erected on land by purchaser, owner standing by.*—Where a purchaser claims to hold land which he has purchased from a third person on the ground that the owner of such land has acquiesced in the sale, the purchaser must show clearly that the real owner was aware of the sale at the time it took place. Where the owner of land was not aware of its being sold by his father to a third person, but having heard of such sale, subsequently stood by and allowed the purchaser to build upon the land,—It was *held* that the owner could not recover the land without compensating the purchaser for the building erected by him upon the land, and three months were allowed to the owner within which to pay such compensation. SAVAKLAL KARSAN DAS *v.* ORA NIZMUDDIN . . **8 Bom., O. C., 77**

17. ——— *Right of way, interruption of.*—*A.* had a right of way over *B.'s* land. He allowed *B.* to erect a house on the pathway and enjoy it for seven years. He then brought a suit to have the pathway re-opened by pulling down *B.'s* house. *Held, A.* must be taken to have acquiesced in the interruption of his right of way, and his claim was one that a Court of equity and good conscience would not enforce. BENI MADHAB DAS *v.* RAMJAY ROKH . **1 B. L. R., A. C., 213: 10 W. R., 316**

18. ——— When a man builds a house on land supposing it to be his own, or believing that he has a good title, and the real owner, perceiving his mistake, refrains from setting him right, and leaves him to persevere in his error, a Court of equity will not allow the owner to assert his

ACQUIESCENCE—Erection of building without objection—*continued.*

legal right against the other without at least making him full compensation. RAMA *v.* JAN MAHOMED

[3 B. L. R., A. C., 18; 11 W. R., 574

ARUNA CHELLUM CHETTY *v.* OLAGAPPAH CHETTY

[4 Mad., 312

19. ——— *Suit for ejectment.—Transferable tenure.—Landlord and tenant.—Permissive occupation.—B.* and *C.* and their father held lands for upwards of thirty-five years, and built houses on the same. *B.* and *C.* sold their tenures to *D.* and *E.* *A.*, the zemindar, who had not objected to the building, now sued to eject *D.* and *E.* as trespassers. Evidence was given that the tenures were, by the custom of the country, transferable. *Held, A.* could not eject *D.* and *E.* BENI MADHAB BANERJEE *v.* JAI KRISHNA MOOKERJEE

[7 B. L. R., 152: 12 W. R., 495

Upholding on appeal, KEMP, *J.* in S. C.

[11 W. R., 354

See ESHAN CHUNDER GHOSE *v.* HURRISH CHUNDER BANERJEE

[10 B. L. R., Ap. 5: 18 W. R., 19

20. ——— *Assignable interest.—Sale in execution of decree.*—The plaintiff permitted *B.* to erect a thatched dwelling-house with mud walls on a piece of land belonging to the plaintiff, and *B.* dwelt in it for more than forty years. *Held*, that *B.* had an assignable interest in the house and land, which could, therefore, be seized and sold in execution of a decree against *B.*, and that the purchaser who had obtained possession could not be dispossessed at the suit of the plaintiff. DURGAPRASAD MISSER *v.* BRINDABUN SOOKUL

[7 B. L. R., 159: 15 W. R., 274

21. ——— *Land let for building purposes.*—A landlord who allows his lessee to invest capital in erecting buildings on lands let for cultivation, and raises no objection for a considerable number of years, will not be allowed to disturb the holding. The fact of buildings having been permitted without objection to stand on lands for a considerable number of years is *prima facie* proof that the land had been originally leased for building purposes. BRAJA NATH KUNDU CHOWDRY *v.* STEWART

[8 B. L. R., Ap. 51: 16 W. R., 216

22. ——— *Permissive occupancy.—Right of possession as against purchaser.*—Where the defendant had been in possession of land for more than thirty years, and had without objection built upon the land, *held* that he had not by such permissive occupancy acquired a right to retain possession when served with notice to quit by a purchaser of the land. ADDAITA CHARAN DEY *v.* PETER DAS

[13 B. L. R., 417 note: 17 W. R., 383

23. ——— *Delay.—Erection of buildings.—Laches.—Limitation.*—The plea of acquiescence is applicable to suits for which a fixed term of limitation is prescribed by law, but mere delay in enforcing a right does not constitute acquiescence. The defendants took possession of, and erected buildings on, land which they knew belonged

ACQUIESCENCE—Erection of building without objection—*continued.*

to the plaintiff, and they had no claim to, without applying to the plaintiff for consent. The plaintiff abstained from suing to eject them for one or two years, knowing that the defendants were building on the land.—*Held*, under the circumstances, that the delay in the institution of the suit was not sufficient to deprive the plaintiff of her right to relief. UDA BEGUM *v.* IMAM-UD-DIN . I. L. R., 1 All., 82

24. ——— *Standing by and seeing building erected.—Right to removal.*—In a case in which plaintiffs sought to recover possession of some land on which defendants had constructed a pucka house and in which defendants pleaded that they had purchased a building right from a third party with whom plaintiffs had settled the land, and that plaintiffs had seen them building the house in question without offering any objections,—*Held*, that, having stood by and allowed defendants to build the house, plaintiffs could not sue to have the house removed. LALA GOPEE CHAND *v.* LIAKUT HOSSEIN

[25 W. R., 211

25. ——— **Cultivating land without objection.**—*Acquiescence.—Owner standing by and seeing person without title cultivate land.—Fraud and deceit.*—In order to prevent the owner of land who is charged with standing by and allowing another person, who believes he has a good title thereto, to enter on the land and spend money in improving it, from recovering possession thereof, fraud and deceit on the part of the owner must be clearly proved. *Dann* v. *Spurrier, 7 Vesey, 251;* and *Rama* v. *Jan Mahomed 3 B. L. R., A. C., 18: 11 W. R., 574* explained. LANGLOIS *v.* RATTRAY . 3 C. L. R., 1

26. ——— **Cultivation and changing character of land.**—*Landlord and tenant.—Injunction.—Delay.*—The tenant of an agricultural holding planted his jote with mango trees to the knowledge, but without the consent, of his landlord, thus changing the character of the land. More than three years afterwards the landlord sued for a mandatory injunction to have the mango trees removed. *Held* that having stood by for more than three years and allowed the tenant to spend his labour and capital upon the land without taking any action in the matter, the landlord was not entitled to a mandatory injunction. NOYNA MISSER *v.* RUPIKUN

[I. L. R., 9 Calc., 609: 12 C. L. R., 300

27. ——— **Acquiescence in title, by conduct.**—In a suit to recover possession of property it was held on the evidence that the plaintiffs had acquiesced in defendant's title, by their conduct. JEEBUN MUNDAL *v.* NADYAR CHAND ROY

[25 W. R., 461

28. ——— **Conduct defeating title.**—*Evidence of ratification.*—The plaintiff, a member of an undivided Hindu family, sued to recover a parcel of land which he alleged his uncle, the first defendant, to have wrongly transferred to the second defendant. The second defendant alleged a sale to him by the first defendant and a subsequent sale to the third defendant, and denied the plaintiff's title. The Munsif gave a decree for the plaintiff; on appeal the Principal Sudder Amin finding that the plaintiff

ACQUIESCENCE—Conduct defeating title —*continued.*

knew of the sale and treating the knowledge as evidence of acquiescence in it, reversed the decision of the Munsif. *Held*, reversing the decision of the Principal Sudder Amin, that such knowledge would not make the plaintiff a party to the sale by the first defendant, so as to bar his right to recover the land for which he sued in ejectment. A person who seeks to bar one who is *primâ facie* the legal owner, by evidence of ratification, or of facts cogent enough to prove one not a formal to be a substantial party, must make and prove such a case, for he is one who seeks to displace a legal title. RAJAN *v.* BASUVA CHETTI [2 Mad., 428

29. ——— **Presumption from allowing grant of certificate unopposed.**—In a rival claim between two Hindu widows of a deceased husband the plaintiff sued as mother and guardian of her infant son to establish his right as son and heir of his father. One defence among others was that the son was not legitimate and could not inherit. His legitimacy was established but the incapacity to inherit was sought to be proved by the plaintiff's virtual acknowledgment of the defendant's title as heiress on the grant to the defendant unopposed by the plaintiff of a certificate of heirship. *Held* that it was not the practice of the Courts in India or of the Privy Council to press against either an infant or a Hindu female a presumption by acquiescence in a rival claim from the mere non-contestation for a limited time of an adverse title. RAMAMANI AMMAL *v.* KULANTHI NAUCHEAR [17 W. R. 1: 14 Moore's I. A., 346

30. ——— **Not objecting to sale.**—*Suit to recover property sold.—Presumption of Consent.* —Where *R. K.*, acting ostensibly as recognized agent and manager of the family, sold part of the family property to the ancestors of the defendants, and the plaintiff who was then of age did not object to the sale, but afterwards sued to set aside the sale as to his share, on the ground that the property had been purchased by *R. K.* with the joint funds while the plaintiff was a minor and that it was sold by him without authority, the first Court gave him a decree for a one-fourth share of the property. *R. K.* appealed, but the other defendants did not appeal. The Judge, assuming the lower Court's finding to be correct, held that as plaintiff, who was of age at the time, did not object to the sale, he could not recover possession of property sold by *R. K.* as the recognized agent and manager. *Held* that *R. K.* could not found any right upon the presumption of plaintiff's consent, however such presumption might have availed the other defendants, purchasers from *R. K.*, who had not appealed. GOPAL CHUNDER LAHOORY *v.* ROY KISHORE LAHOORY 15 W. R., 467

31. ——— **Account made in course of usual dealing.**—The defendant in a suit for balance of payments made by plaintiff on his behalf, held not entitled to refuse to be bound by an account made up in accordance with the course of dealing which had practically been assented to by him and had been followed between the parties for many years. THAKOOR PERSHAD SINGH *v.* MOHESH LALL [24 W. R., 390

ACQUIESCENCE—*continued.*

32. ——— **Sending agent to settle rent.**—*Acquiescence in rate.*—The sending of an agent by a tenant to settle with the landlord as to the rent is not a virtual acquiescence in the rate of rent demanded. STALKART *v.* LALLA BHURRUT LALL . . . W. R. 1864, Act X, 115

33. ——— **Receipt of rent in lieu of grant of land.**—In a suit to recover possession of land it appeared that the defendant's father had in 1801 obtained possession on a lease of 280 bigahs from the Government of Kulabo, and that the plaintiff's father had in 1806 obtained a grant of 10 unspecified bigahs of the same land, but that he never asked to have them marked out and given to him *in specie*, and that he, and subsequently his sons, the plaintiffs, were content up to the year 1856 to receive from the defendant's family in respect of their grant the rent formerly paid by them to the Government for the same. The District Court reversed the decree of the Moonsiff, and threw out the claim to recover possession of the land on the ground that the plaintiffs must be taken after such a lapse of time to have acquiesced in the arrangement that a yearly rent was to be received without any particular land being marked out as theirs. *Held* that it was competent for the Assistant Judge to come to that conclusion under the circumstances, and that there was no ground for saying that there was any error of law in his decision, which was accordingly affirmed. SULE *v.* DHUNDIRAJ VENAYAK 3 Bom., A. C., 55

34. ——— **Accepting lower rent than that entitled to for long time.**—Where a landlord who may originally have had a right to collect a higher rent is for a long period of years content to accept a lower, it would be manifestly unjust to allow him to turn round upon the tenant at any time he pleases and demand the higher rent. ROOCHA RAM MISR *v.* NAGA DOSS . . 2 N. W., 92

35. ——— **Long possession by tenant without lease.**—An under-tenant who has dug a tank and been in possession undisturbed by the former proprietor for a long period, such acquiescence being equivalent to a lease, cannot be ejected by the putnidar. SREEMUNT RAM DEY *v.* KOOKOOR CHAND [15 W. R., 481

36. ——— **Allowing part owner to work forfeiture of tenure as if full owner.**—*Waiver of forfeiture.—Claim of portion of tenure.*— If *A.* allows *B.* to deal with an occupancy tenure as full owner, and by an attempted transfer, to work a forfeiture thereof without any objection on his part, *A.* will not be allowed to come in afterwards and claim a part of the forfeited holding on the ground that *B* was only part owner, and could, therefore, only work a forfeiture of his own share. MANIRULLAH *v.* RAMZAN ALI . . 1 C. L. R., 293

ACQUISITION OF GAIN, ASSOCIATION FORMED FOR—

See COMPANY—FORMATION AND REGISTRATION . I. L. R., 1 Bom., 550

See INJUNCTION—SPECIAL CASES—BREACH OF AGREEMENT. [I. L. R., 1 Bom., 550

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See CASES UNDER APPEAL IN CRIMINAL CASE.—APPEALS FROM ACQUITTAL.

See CASES UNDER AUTREFOIS ACQUIT.

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See CASES UNDER COMPLAINT—REVIVAL OF COMPLAINT . 19 W. R., Cr., 52

See HURT—CAUSING HURT.

[7 B. L. R., Ap. 25
16 W. R., Cr., 3

See TRANSFER OF CRIMINAL CASE.

[I. L. R., 2 Calc., 290

ACQUITTAL, JUDGMENT OF—

See CRIMINAL PROCEDURE CODE, 1882, s. 423 (1872, s. 284).

[I. L. R., 3 Mad., 48
I. L. R., 7 Mad. 213

ACQUITTAL, VERDICT OF—

See CASES UNDER REVISION—VERDICT OF JURY.

[I. L. R., 3 Calc., 189, 623

ACQUITTAL, PREVIOUS—

See PRISONS ACT, s. 45.

[I. L. R., 2 All., 301

ACT OF STATE—

See PARTIES—GOVERNMENT.

[10 W. R., P. C., 25
S. C. 11 Moore's I. A., 517

See RIGHT OF SUIT.—ACT IN EXERCISE OF SOVEREIGN POWER.

[I. L. R., 4 Mad., 244
I. L. R. 5 Mad., 273
I. L. R. 1 Calc., 11: 24 W. R. 309

1. ——— **Seizure of Raj of Tanjore.**—*Jurisdiction of Municipal Courts—Independent States.*—The transactions of Independent States between each other are governed by other laws than those which Municipal Courts administer. The seizure by the British Government, acting as a sovereign power, through its delegate, the East India Company, of the Raj of Tanjore, with the property belonging thereto, was, with its consequences, an act of State over which a Municipal Court has no jurisdiction. THE EAST INDIA COMPANY *v.* KAMACHEE BOYE SAHIBA . . . 4 W. R., P. C., 42
S. C. SECRETARY OF STATE FOR INDIA *v.* KAMACHEE BOYE SAHIBA . . . 7 Moore's I. A., 476

2. ——— **Arrest under Beng. Reg. III of 1818.**—*Jurisdiction of Municipal Courts.*—A Mahomedan subject of the Crown was arrested in Calcutta, taken into the mofussil, and there detained in jail, under a warrant of the Governor-General in Council in the form prescribed by Reg. III of 1818. *Held*, that such arrest and detainer were not acts of State, but matters cognizable by a Municipal Court. IN RE AMEER KHAN . . 6 B. L. R., 392

ACT OF STATE——*continued.*

3. ——— **Resumption of Jagir by East India Company.**—*Regulation law.*—Where lands were held by a jagirdar under the sovereign of an independent State on a jaidad tenure, *i.e.*, on a grant of land, together with the public revenues thereof, on the condition of keeping up a body of troops to be employed when called on in the service of the sovereign, and on the conquest of the State by the East India Company, the jagirdar remained in the same position to the Company,—*Held*, that the resumption of the lands by the Company, and the seizure of the arms and stores appertaining to the tenure, on the death of the jagirdar, was not an act of State, and therefore the Municipal Courts had jurisdiction to entertain a suit by the representatives of the jagirdar against the Government for the possession of the land, and for the value of the arms and stores. This was so, although, at the time of the resumption, the Regulation law was not introduced into the territories in which the jagir was comprised. FORRESTER *v.* SECRETARY OF STATE

[12 B. L. R., 120: 18 W. R., 349:
L. R. I. A. Sup. Vol. 10

4. ——— **Confiscation of territories of King of Delhi**—*Forfeiture.*—The status of the King of Delhi was that of a King recognized by the British Government; and the confiscation of his territories in 1857 was an act of State, and not an act done under color of any legal right of which a Municipal Court could take cognizance. His tenure of the territories assigned him by the Government was a tenure merely *durante regno*, and no power was conferred upon him of creating incumbrances which would survive his deposition. The word 'confiscation' does not necessarily import that the appropriation is to be made as a penalty for a crime, nor, when used in that sense, does it necessarily imply that the forfeiture has accrued upon conviction; but it may also be properly used as applicable to appropriations of property by Government as an act of State. SALIGRAM *v.* SECRETARY OF STATE

[12 B. L. R., 167: 18 W. R., 389:
L. R. I. A. Sup. Vol. 119

5. ——— **Confiscation by Governor of Foreign State.**—*Title to timber.*—The plaintiff brought a suit at Tonghoo in British Burma to recover possession of certain timber, which he alleged the defendants had wrongfully and in collusion with the Burmese Governor of Ninghan, taken out of his possession in foreign territory and removed to Tonghoo. The defendants stated that they had acquired the timber from the Governor of Ninghan in terms of an agreement between them and the Burmese Government. It appeared that the Governor of Ninghan had confiscated the plaintiff's timber in contravention of a royal mandate. After the institution of the suit, the defendants removed the timber from Tonghoo to Rangoon.—*Held*, that a British Municipal Court might enquire into the character of the act of the Governor of Ninghan, and was not bound to accept it as an act of State. BOMBAY BURMAH TRADING CORPORATION *v.* MAHOMED ALI SHERAGEE . 10 B. L. R., 345: 19 W. R., 123

ACT OF STATE—*continued.*

6. ——— Resumption by Government—*Act of State—Jurisdiction of Civil Court.*—By the treaty of the 31st July 1801 between the then Nawab of the Carnatic and the Governor in Council at Madras the sovereign rights of the Nawab in the Carnatic were vested in the East India Company.—*Held* that a resumption by the Madras Government of a Jaghir granted by former Nawabs, as Altamghah inam, before the date of the treaty and a re-grant by the Madras Government to another for a life estate only, was such an act of sovereign power by the East India Company as precluded the Supreme Court at Madras from taking cognizance of a suit by the heirs of the original grantee in respect of such resumption. EAST INDIA COMPANY *v.* SYEDALLY

[7 Moore's I. A., 555

7. ——— Resumption of village granted by Peishwa of the Deccan.—A village having been granted in inam by the Peishwa of the Deccan was, after the death of the grantee, seized by the mamlutdar or farmer of the revenues for an alleged debt due to him, and retained until the treaty of Poona in 1818 when it came into the possession of the British Government. In a suit instituted by the representatives of the original grantee for possession of the village, and payment of the arrears of revenue so sequestered, it was held by the Judicial Committee, affirming the decree of the Provincial and Sudder Courts, that the original resumption was the wrongful act of an individual, and not an act of the State: the British Government were therefore ordered to restore the village, but pursuant to Bom. Reg. V of 1827, s. 3, with only six years' arrears of revenue. MILLS *v.* MODEE PESTONJEE KHOORSHIDJEE

[2 Moore's I. A., 37

8. ——— Sequestration by British Government of private property of Independent Sovereign.—*Jurisdiction of Municipal Court.*—A sequestration by the officers of the British Government of the private property of the Angria of Kolaba, a native independent Sovereign, though made contrary to the express orders of the Court of Directors originally given, would not be liable to question in a Municipal Court if subsequently ratified, but *aliter* where there is no such ratification.

ZULEFF ALI *v.* YESHVADABAI SAHEB

[9 Bom., 314

9. ——— Seizure by right of conquest.—*Jurisdiction of Municipal Court.*—Where an estate is seized by the Crown in right of conquest, and not by virtue of any legal title, such seizure must be regarded as an act of State and is not liable to be questioned in a Municipal Court. *Secretary of State for India in Council* v. *Kamachee Boye Sahiba, 7 Moore's I. A. 476,* followed. BHAGWAN SINGH *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL . . . . L. R. 2, I. A. 38

ACT—1835—VIII—

See SALE FOR ARREARS OF RENT.—ACT VIII OF 1835.

ACT—1836—V—

See EXECUTION OF DECREE—STRIKING OFF EXECUTION PROCEEDINGS.

[18 W. R., 319

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See DAMAGES—MEASURE OF DAMAGES—BREACH OF CONTRACT.

[5 W. R., 277
8 W. R., 257

See LIMITATION ACT, 1877, ART. 120 (1859, s. 1, CL. 16.)

[5 W. R., 277
8 W. R., 257

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See LAND TENURE IN BOMBAY

[4 Bom., O. C., 1

See PARSIS

4 Bom., O. C., 1

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See SALT ACTS, BOMBAY.

[7 Bom., A. C., 89
10 Bom. 74

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See CONTRIBUTION, SUIT FOR—COSHARERS, LIABILITY OF.

[8 W. R., 333

———XVI—

See JURISDICTION OF REVENUE COURT.

[I. L. R., 1 Bom., 624
2 Bom. 193, 2nd Ed., 185

See LIMITATION ACT, 1877, ART. 47 (1859, s. 1, CL. 7) . . 10 Bom., 479

———XIX, s. 13—

See MAGISTRATE, JURISDICTION OF.

[5 Bom., Cr., 6

See SENTENCE—FINE.

I. L. R., 7 Bom. 280

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4 Mad., 277

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[3 Moore's I. A., 395

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See JUDICIAL OFFICERS, LIABILITY OF.

3 Bom., Ap. 1

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See DUTIES, LEVY OF.

[2 Bom. 2nd Ed., 75

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[10 B. L. R., 352, 353 note

See CASES UNDER INTEREST—ACT II OF 1839.

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See POSSESSION—PROOF OF TITLE. [2 B. L. R., P. C., 1

See CASES UNDER SURVEY AWARD.

——XIV—

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See SENTENCE—IMPRISONMENT. [I. L. R., 4 Mad. 335, and 335 note

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8 B. L. R., 335

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2 Agra, 280
6 N. W., 243, 272
3 N. W., 125

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2 N. W. 192, 229
3 N. W. 70, 75

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[6 W. R., Mis. 53

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S. C. 2 Ind. Jur., N. S., 191: 7 W. R., 199
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1 W. R., 341

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1 W. R., Mis. 28

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[I. L. R., 3 Bom., 422

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See JURISDICTION OF CIVIL COURT—RIGHT TO OFFICE. [2 Bom. 362, 2nd Ed., 342

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8 Bom., A. C., 83, 107
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——XIX—

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[9 Moore's I. A., 268

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[Marsh., 226

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See ENHANCEMENT OF RENT—EXEMPTION FROM ENHANCEMENT—UNIFORM PAYMENT OF RENT.
[B. L. R., Sup. Vol., 623: 7 W. R., 176

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[W. R., 1864, Act X, 101

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See LIMITATION ACT, 1877, s. 18 (1871, s. 19) . . I. L. R., 2 Calc., 1

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[9 Moore's I. A., 26

——— XXIX, s. 5—

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[1 Bom., 107

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See CONTRACT ACT, s. 25.
[I. L. R., 5 Bom., 258

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[I. L. R., 8 Bom., 413
7 Bom., A. C., 132
9 Bom., 33
1 Ind. Jur., N. S., 334: 6 W. R., 108.

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[I. L. R., 9 Mad., 431

See MAGISTRATE, JURISDICTION OF—POWERS OF MAGISTRATES.
[I. L. R., 9 Mad., 431

ACT—1847—I—

See JURISDICTION OF CIVIL COURTS—REVENUE COURTS—ORDERS OF REVENUE COURTS . . 16 W. R., 109

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——— IX—

See JURISDICTION OF CIVIL COURTS—REVENUE . . 19 W. R., 127
[14 B. L. R., 221, note: 18 W. R., 64

1. ——— **Beng. Reg. XI of 1825.**—*Chur in navigable river, Right of Government to.*—Act IX of 1847 does not alter the state of the law under Regulation XI of 1825, but merely lays down a procedure. There is nothing in Act IX of 1847 to prevent the Government from taking possession of a chur, after it has silted up, if the chur be one that the Government would be entitled to under Regulation XI of 1825. BUDRUNNISSA CHOWDHRAIN *v.* PROSUNNO KUMAR BOSE
[6 B. L. R., F. B., 255: 14 W. R., F. B., 25

2. ——— **Right of Suit.**—*Effect of an order for additional assessment.*—Certain land, which formed part of the plaintiff's zemindari, became, on its re-formation after submergence by a change in the course of the River Ganges, attached to the zemindari of *J.*, and it being found so attached, an additional jumma was, after proceedings taken by the revenue authorities under Act IX of 1847, assessed against *J.* in respect of it. In a suit in the Civil Court brought by the plaintiff against the Government, *J.*, and *L.*, an ijaradar under *J.*, to recover possession of the land,—*held*, that the suit was not barred by the proceedings under Act IX of 1847. Section 6 of that Act makes the orders passed under its provisions final only against the zemindar, not against third persons. Nor would section 9 bar the suit; the words of that section do not necessarily extend to forbidding a suit brought to recover property which the Government or its officers may be instrumental in keeping away from the rightful owner. *Held* on the facts, that the Government had not, by the proceedings under Act IX of 1847, or otherwise, interfered with the plaintiff's rights so as to entitle him to relief against it in the present suit. COLLECTOR OF MOORSHEDABAD *v.* ROY DHUNPUT SINGH BAHADOOR . . 15 B. L. R., 49: 23 W. R., 38

3. ——— *Settlement by Revenue authorities.*—Although a settlement made by the Revenue authorities under Act IX of 1847 is final, the fact of such settlement will not preclude a proprietor from seeking in a Civil Court to establish his right to the lands so settled. NARAIN CHUNDER *v.* TAYLER I. L. R., 4 Calc., 103: 3 C. L. R., 151

4. ——— **Rights of third parties.**—Act IX of 1847 does not affect any question between the person in possession and any person other than the Government. KALIPRASAD MAZUMDAR *v.* COLLECTOR OF MYMENSINGH
[6 B. L. R., 261, note: 13 W. R., 366

ACT—1847—IX—*continued.*

5. ——— **Right of assessment by Government of accreted lands.**—*Beng. Reg. XI of 1825.*—Act IX of 1847 refers to re-surveys of zemindari lands which the Government as such may cause to be made at certain intervals, and to assessment consequent on the changes ascertained by such re-surveys; but does not interfere with the rights of the Government, in its capacity of zemindar, to take possession of, and assess all accretions to, its own estates under Regulation XI of 1825. OBHOY CHURN CHOWDHRY *v.* THE COLLECTOR OF DACCA [4 W. R., 59

6. ——— **Land added to revenue-paying Estate.**—The words "land has been added to any estate paying revenue directly to Government" in Act IX of 1847, section 6, mean added to the estate as it is depicted on the survey map. RAM JEWAN SINGH *v.* COLLECTOR OF SHAHABAD [19 W. R., 127

DEWAN RAM JEWAN SINGH *v.* COLLECTOR OF SHAHABAD. . 14 B. L. R., 221, note [18 W. R., 64

7. ——— **ss. 6, 9—Assessment of accreted land.**—*Order of Board of Revenue when final under s. 6 of Act IX of 1847.*—The effect of the words "whose order thereupon shall be final" in section 6 of Act IX of 1847, is, that where an assessment has been made under section 6, which has been approved by the Board of Revenue, such assessment is final and cannot be called in question in a civil suit; but the fact of an assessment having been made is no bar to a suit raising the question whether the Board of Revenue had jurisdiction under section 6 of the Act to assess. Act IX of 1847 applies to land re-formed on the site of a permanently-settled estate. SARAT SUNDARI DABI *v.* THE SECRETARY OF STATE FOR INDIA IN COUNCIL . I. L. R., 11 Calc., 784

See FAHAMIDANNISSA BEGUM *v.* SECRETARY OF STATE FOR INDIA. [I. L. R., 14 Calc., 67.

——— **XX, s. 7—**

See SMALL CAUSE COURT—MOFUSSIL—JURISDICTION. [I. L. R., 6 Calc., 499

——— **s. 16—**

See LIMITATION ACT, 1871, ART. 11. [I. L. R., 3 Calc., 17

——— **1848—I—**

See OFFENCE COMMITTED BEFORE PENAL CODE CAME INTO OPERATION. [5 W. R., Cr., 8: 1 Ind. Jur., N. S., 97

1. ——— **XIII—Award.**—*Decision on non-appearance of parties.*—Act XIII of 1848 "for the greater security of possessory titles in the Presidency of Bengal, derived from awards made by the revenue authorities under Regulation VII of 1822, Regulation IX of 1825, and Regulation IX of 1833 of the Bengal Code," by section 3, enacted that no suit

ACT—1848—XIII—Award—*continued.*

should be entertained for contesting the justice of any award of the revenue authorities under any of these regulations made after the passing of the Act, after the expiration of three years from the date of the final award. A suit for the amendment of a map was referred by the Deputy Collector to an Ameen for the purpose of a local investigation, and the Ameen returned that, neither of the parties appearing before him, he was unable to make the investigation, whereupon the Deputy Collector struck the case out. *Held,* that this was not an award within the meaning of the Act. GOLAM KOODSEE CHOWDHRY *v.* RASHU CHUNDER GHOSE . Marsh., 323

2. ——— In order to apply the provisions of Act XIII of 1848 in regard to limitation, it was necessary to show that there was an award, *i.e.*, an adjudication after a contention between the parties before the survey authorities. HURREE MOHUN THAKOOR *v.* ANDREWS W. R., 1864, 30

3. ——— *Suit to assess land—Boundary suit.*—Act XIII of 1848 did not apply to bar a suit to assess land as rent-paying. A decision in a boundary suit decides only the question of right to possession of the land, irrespective of the right to assess. MAHOMED ALI KHAN CHOWDHRY *v.* JADUB CHUNDER CHUCKERBUTTY . W. R., 1864, 60

4. ——— **Awards made by Collectors.**—*Beng. Regs. VII of 1822, IX of 1825, and IX of 1833.*—Act XIII of 1848 was limited to awards made by Collectors under Bengal Regulation VII of 1822, IX of 1825, and IX of 1833, which gave to the revenue authorities judicial power to determine questions of possession and other matters with a right of appeal to the regular Courts against their awards. An order of the Collector for the mutation of names in the register is not an award of the nature contemplated by the Regulation XIII of 1848, and an appeal from it was not subject to the limitation of three years prescribed thereby. JEWALA BUKSH *v.* DHARUM SINGH [10 Moore's I. A., 511

5. ——— **Settlement award.**—*Suit to set aside.*—Act XIII of 1848 applied only to suits for contesting the justice of an award as between the contending parties, and not to suits for the purpose of amending a settlement and establishing the rights of persons who were not parties contesting between themselves before the Collector. KOMUL KISSEN SURKHUL *v.* BISSONATH CHUCKERBUTTY [B. L. R., Sup. Vol., Ap. 3 W. R., F. B., 128

PUREEAG SINGH *v.* SHIB RAM CHUNDER MUNDUL [3 W. R., 165

6. ——— **Thakbust award.**—*Beng. Reg. IX of 1825.—Act XIII of 1848.—Evidence of possession.*—A thakbust award of boundary made in the Lower Provinces may be an award, under Regulation IX of 1815, within the meaning of Act XIII of 1848. It would in any case be material evidence of possession. PRAHLAD SEN *v.* RAJENDRA KISHOR SINGH [2 B. L. R., P. C., 111 S. C. 12 W. R., P. C., 6.

ACT—1848—XIII—*continued.*

7. ——— Award.—*Decision under Butwara Law.*—The decision of a Collector under the Butwara Law was not an award within the meaning of Act XIII of 1848. Act XIII of 1848 only applies to awards made by the revenue authorities under Regulations VII of 1822, IX of 1825, and IX of 1833. PULTOO ROY *v.* GREEDHAREE SINGH [W. R., F. B., 12
1 Ind. Jur., O. S., 5

S. C. GREEDHAREE SINGH *v.* PULTOO ROY [Marsh., 37

8. ——— *Order of Collector under Reg. VII of 1822.*—The order of a Deputy Collector under Regulation VII, 1822, declaring the lands in dispute to be paykan jaghír lands, was an award within the meaning of Act XIII of 1848, and any suit to set it aside had to be brought within three years of the order. MODHOOSOODUN SINGH *v.* PURTEE BULLUB PAUL . . W. R., 1864, 140

9. ——— *Order of Collector rejecting claim to alluvial land.*—The order of a Collector rejecting a claim to alluvial lands on the ground that a settlement of them had already been concluded, was not an award within the meaning of section 3, Act XIII of 1848. SHURUT SOONDERY DABEE *v.* THE GOVERNMENT . 7 W. R., 42

10. ——— *Rejection of claim by survey officer.*—The rejection by a survey officer of a claim because it had not been brought forward sooner, was not an award within the scope of the special limitation of Act XIII of 1848. SHAMA SOONDERY DABEE *v.* PROSONNO COOMAR TAGORE [1 W. R., 114

11. ——— *Award adopting order under Act IV of 1840.*—An award of survey authorities adopting an Act IV order was not illegal, and was consequently governed by limitation under Act XIII of 1848. RAMGUTTY NAG CHOWDHRY *v.* BURODACHURN BOSE . . . 1 W. R., 120

12. ——— *Order of Superintendent of Survey striking off appeal.*—An order of a Superintendent of Survey striking off an appeal was not an award within the meaning of Act XIII of 1848. SHAM KANT BANERJEE *v.* GOPAL LALL TAGORE . . . . . 1 W. R., 328

13. ——— *Order of Commissioner.*—Nor was the order of a Commissioner striking an appeal off the file. JANOKEE CHOWDHRANEE *v.* DWARKANATH CHOWDHRY. [1 Hay, 555

RAM GOPAL ROY *v.* OMA SOONDRY DASSEE. [2 Hay, 41

14. ——— Deduction for disability.—No deduction on account of minority or other legal disability could be made from the period of limitation prescribed by Act XIII of 1848. MODHOOSOODUN SINGH *v.* PURTEE BULLUB PAUL [W. R., 1864, 140

ACT—1848—XIII—Deduction for disability—*continued.*

HURO CHUNDER CHOWDHRY *v.* KISHEN COOMAR CHOWDHRY . . . . 5 W. R., 27

The limitation for awards made under Bengal Regulations VII of 1822, IX of 1825, and IX of 1833 was afterwards provided for by Limitation Act XIV of 1859, section 1, clause 6, and Limitation Act IX of 1871, Sch. II, Art. 44, and is now contained in Art. 45 of Sch. II of the Limitation Act, 1877.

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See APPEAL TO PRIVY COUNCIL—APPEALABLE ORDERS . 5 Moore's I. A., 599

See NAWAB OF SURAT . 12 Bom., 156

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See CONTRACT—CONTRACT FOR GOVERNMENT SECURITIES OR SHARES. [Cor. 1: 2 Hyde, 121

See CONTRACT—WAGERING CONTRACT. [1 Ind. Jur., O. S., 126
1 Bom., 34
12 Bom., 51
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5 Moore's I. A., 109
6 Moore's I. A., 251

See INTEREST, OMISSION TO STIPULATE FOR—CONTRACTS. [9 Moore's I. A., 256

See PRINCIPAL AND AGENT—AUTHORITY OF AGENT . . 1 Bom., 34

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See TROVER . . 6 B. L. R., 581

——— 1849—I, s. 9—

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See CASES UNDER PENSIONS ACT VI OF 1849 . 4 Bom., A. C., 62, 65, 67

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See HINDU LAW—GUARDIAN—RIGHT OF GUARDIANSHIP . I. L. R., 1 All., 549

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See HINDU LAW—MAINTENANCE—WIDOW [I. L. R., 1 Bom., 559

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See CONTEMPT OF COURT—PENAL CODE, s. 174 . . . 5 Bom., Cr., 33

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See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—ACT XXVI OF 1850. [3 Bom., Cr., 36
5 Bom., Cr., 10
8 Bom., Cr., 12, 39

See NUISANCE—MISCELLANEOUS CASES. [1 Agra, Cr., 34

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5 Bom., Cr., 33

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See SALT ACTS, BOMBAY.

See SENTENCE—IMPRISONMENT IN DEFAULT OF FINE . 5 Bom., Cr., 61

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See BEYG. REG. III of 1818. [6 B. L. R., 392, 459

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See TOLLS . 6 W. R., Cr., 48
[2 B. L. R., A. Cr., 17
22 W. R., Cr., 76

ACT—1852—XI—

Inam Commissioner, Effect of decision of.—*Right of suit by inámdar against Government officer infringing decision.*—The Inám Commissioner's decisions, under Act XI of 1852, on matters falling within his jurisdiction, are final, except when, and as modified by an appeal to Government in its judicial capacity under the Act, and binding not only upon the inámdar, but upon the Government itself in its executive capacity, and where a Government officer infringes the rights of an inámdar thus determined, an action lies against him in the Civil Court. VASUDEV PANDIT *v.* THE COLLECTOR OF PUNA [10 Bom., A. C., 471

——— In an enquiry under Act XI of 1852 the Inám Commissioner, on the 30th January 1865, decided that a certain inám village should be continued to the male descendants of the original grantee. *Held*, that the decision of the Inám Commissioner was only intended to regulate the duration of the exemption of the inám village from assessment, and not to regulate the enjoyment of it as between the heirs of the original grantee. VASUDEV ANANT *v.* RAMKRISHNA . . I. L. R., 2 Bom., 529

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See LIMITATION ACT, 1887, ART. 180 (1859, s. 19). [B. L. R., Sup. Vol., 506

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See LIMITATION ACT, 1877, ART. 179 (1859, s. 20) . . 19 W. R., 301

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See PRIVY COUNCIL, PRACTICE OF ON APPEAL—RESTORATION OF APPEAL. [9 Moore's I. A., 26

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[3 Bom., Cr., 54
4 Mad. Ap., 9
6 Mad. Ap., 41
7 Mad. Ap., 8

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See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—RAILWAY ACT, 1854.
[3 Bom., Cr., 10

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[6 Mad. Ap., 41

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[6 Mad. Ap., 37

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[4 B. L. R., P. C., 31
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See EVIDENCE—CRIMINAL CASES—GOVERNMENT GAZETTE . 7 B. L. R., 63

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See PRIVILEGED COMMUNICATION.
[1 B. L. R., A. Cr., 8
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See CONFESSION—CONFESSIONS SUBSEQUENTLY RETRACTED.
[8 Bom., Cr., 103

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[1 Hyde, 289: 1 Ind. Jur., O. S., 128

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[Bourke, O. C., 59

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[1 Bom., 103

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See RIGHT OF SUIT—SUITS FOR INJURIES BY REPRESENTATIVES OF DECEASED.
[1 W. R., 251
2 N. W., 103
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[7 Bom., O. C., 113, 119, 120, note
8 Bom., O. C., 130
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See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—ACT XXII OF 1855.
[5 Bom., Cr., 14

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[Bourke, O. C., 41

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[Bourke, Ad. 1, 15
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6 Bom., O. C., 98

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See INTEREST, OMISSION TO STIPULATE FOR—CONTRACTS.
[I. L. R., 3 Mad., 125

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[6 N. W., 358
10 Bom., 382
12 B. L. R., 451: 20 W. R., 317:
21 W. R., 352
12 C. L. R., 161
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[I. L. R., 9 Bom., 233

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[5 B. L. R., 500: 14 W. R., 308

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[17 W. R., Cr., 11
I. L. R., 12 Calc., 536

See HIGH COURT, JURISDICTION OF.
[I. L. R., 3 Calc., 298
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[I. L. R., 7 Calc., 376

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See MINISTERIAL OFFICERS. [17 W. R., 226

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See WARRANT OF ARREST. [8 Bom., Cr., 1

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See CERTIORARI, WRIT OF. [10 Bom., 102, 109, note

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See HINDU LAW—WIDOW—DISQUALIFICATION—REMARRIAGE. [2 B. L. R., A. C., 199

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See HINDU LAW—REVERSIONER—ARRANGEMENTS BETWEEN WIDOW AND REVERSIONER. [1 Agra, 140

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See GUARDIAN—APPOINTMENT. [I. L. R., 4 All., 195

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See ABETMENT . 7 W. R., Cr., 53

1. ——— Excise Act, X of 1871—Effect of.—Act XXI of 1856 was not repealed, so far as it related to the Lower Provinces of Bengal, by Act X of 1871. QUEEN *v.* KHETTER NATH SHAHA [22 W. R., Cr., 31

2. ——— Abkari Laws.—*Realization of fine.—Criminal Procedure Code (Act XXV of 1861), s. 61.—Act VIII of 1869.*—The provisions of section 61 of the Criminal Procedure Code, 1861, did not apply to fines imposed under Act XXI of 1856; such fines cannot be levied by distress and sale of the offender's property. QUEEN *v.* JUNGLI BELDAR [8 B. L. R., Ap., 47

S. C. GOVERNMENT *v.* JUNGLI BELDAR. [17 W. R., Cr., 7

3. ——— s. 22.—A Magistrate may impose a fine exceeding R1,000 under Act XXI of 1856, section 22 of the Criminal Procedure Code, 1861, notwithstanding. QUEEN *v.* SUROOP CHUNDER DUTT. [7 W. R., Cr., 29

ACT—1856—XXI—*continued.*

4. ——— ss. 38 and 50.—*Illegal sale of opium.—Revocation of license.*—According to section 38, Act XXI of 1856, no conviction can be had under section 50 against a person whose license has not been recalled. QUEEN *v.* RAM DASS [16 W. R., Cr., 69

5. ——— s. 43.—*Liability to penalty.—Licensees' servants.*—Under section 43, Act XXI of 1856, only persons holding licenses, and not their servants, are subject to the penalties specified in the section. QUEEN *v.* RAMKISHEN . 8 W. R., Cr., 4

6. ——— *Sale of liquor by agent.*—Where a person sells liquor in contravention of and under colour of a license which stands not in his own name, but in that of the person for whom he is the recognized agent, he cannot be allowed to evade the provisions of section 43 of Act XXI of 1856 by setting up that it is not a license to himself. IN THE MATTER OF THE PETITION OF ISHEN CHUNDER SHAHA [19 W. R., Cr., 34

7. ——— ss. 43, 44.—*Sale by servant.—Liability of owner of shop.*—Where a sale of an excess quantity of gánja took place and the man effecting the sale pleaded that he was only a servant, while the owner contended that he did not conduct the shop, and gave no authority to his servant to sell gánja in excess of his license,—*Held* that the owner of the shop was responsible for the offence committed and liable to the fine which had been imposed on him. QUEEN *v.* SRISTIDHUR SHAHA . 25 W. R., 42

8. ——— ss. 48 and 90.—*Distillation of spirits.*—To warrant a conviction under Act XXI of 1856, section 48, the accused must have manufactured some country spirit made by the native process of distillation as described in section 90 of the Act, or they must have sold spirituous or fermented liquors or intoxicating drugs. QUEEN *v.* KOYLAS BOONA [22 W. R., Cr., 8

——— s. 49—

See SUMMARY TRIAL. [I. L. R., 3 Calc., 366: 1 C. L. R., 442

——— s. 50—

See SECTIONS 38 AND 50. [16 W. R., Cr., 69

——— s. 53—

See OPIUM, ILLEGAL POSSESSION OF. [20 W. R., Cr., 54

——— s. 90—

See SECTIONS 48 AND 90. [22 W. R., Cr., 8

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See CATTLE TRESPASS ACT, 1857.

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See ARBITRATION—ARBITRATION UNDER SPECIAL ACTS—ACT VI OF 1857.
See LAND ACQUISITION ACT, 1857.
See MANDAMUS.
[2 Ind. Jur., N. S., 214

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See COLLECTOR . . 4 Mad Ap., 1

——— XI, s. 1—

See FORFEITURE OF PROPERTY.
[8 B. L. R., 83: 17 W. R., 80
2 Ind. Jur., N. S., 124

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See APPEAL—ACTS—COMPANIES ACT 1857 . . 6 Bom., A. C., 185
See CASES UNDER COMPANY.
See CONTRACT ACT, s. 23.
[3 Bom., O. C., 45, 159

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See CASES UNDER FORFEITURE OF PROPERTY.
See LIMITATION, ACT XXV OF 1857.
[13 B. L. R., 445: 22 W. R., 17

——— ss. 1, 2, and 3—

——— *Construction of.*—The words in section 3, Act XXV of 1857, "such an offence as aforesaid," refer to the offences mentioned in section 2, as well as to the offence of mutiny mentioned in section 1. GANESHLAL *v.* AMIR KHAN.
[8 B. L. R., 83: 17 W. R., 80

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See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—ACT I OF 1858.
[4 Mad. Ap., 21

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[6 B. L. R., 392, 459

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See FORFEITURE OF PROPERTY.
[2 Agra, 324
2 N. W., 75

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See NAWAB OF CARNATIC'S ACT.
[9 Moore's I. A., 456

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[I. L. R., 7, Bom. 15: I. L. R., 8 Bom., 280

ACT—1858—XXXV—

See CASES UNDER LUNATIC.

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See LETTERS PATENT, HIGH COURT, N.-W. P., CL. 12.
[I. L. R., 4 All., 159

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See JUDICIAL OFFICERS, LIABILITY OF.
[I. L. R., 9 Calc., 341: 13 C. L. R., 185

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See CASES UNDER APPEAL—ACTS—ACT—XL OF 1858.

See CERTIFICATE OF ADMINISTRATION.
[2 B. L. R., A. C., 129: 10 W. R., 62
I. L. R., 5 Calc., 219: 4 C. L. R., 398
8 W. R., 115
12 W. R., 1 9

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[B. L. R., Sup. Vol., 199: 3 W. R., 82
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W. R., 1864, Mis., 2

See JUDICIAL COMMISSIONER, ASSAM.
[12 W. R., 424

See CASES UNDER MAJORITY, AGE OF.

See MINOR—LIABILITY ON CONTRACTS.
[I. L. R., 3 All., 852

See MINOR—CUSTODY OF MINOR
[4 B. L. R., Ap., 36
S. C. 13 W. R., 112
23 W. R., 340

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—ACT XL OF 1858.
[15 W. R., 369

1. ——— s. 2.—Application of Act.—*Hindu Law.—Power to deal with minor's property without certificate of administration.*—Section 2 of Act XL of 1858 does not preclude the natural and legal guardian of a Hindu minor from dealing with the minor's property by mortgage or otherwise, within the limits allowed by the Hindu law, without having acquired a certificate of administration from the Civil Court. HEIT SINGH *v* THAKOOR SINGH
[4 N. W., 57

2. ——— *Hindu and Mahomedan Law.*—There is no indication whatever in Act XL of 1858 of any intention to alter or affect any provision of Hindu or Mahomedan law as to guardians who do not avail themselves of the Act. The scope of the enactment is merely to remove legislative prohibitions, to confer expressly a certain jurisdiction, and to define exactly the position of those who avail themselves of, or are brought under, the Act, leaving persons to whom any existing rules of law apply unaffected. RAM CHUNDER CHUCKERBUTTY *v.* BROJONATH MOZUMDAR . I. L. R., 4 Calc., 929
[4 C. L. R., 247

ACT—1858—XL—s. 2.—Application of Act —*continued.*

3. ——————— *Mahomedan Law.* —Act XL of 1858 comprises the cases of all minors not under the Court of Wards and not being European British subjects, and acts irrespective of the Mahomedan law, which can be no guide to the Civil Court in determining whether an applicant should or should not have letters of administration. AKIMA BIBEE *v.* AZEEM SARUNG . . **9 W. R., 334**

4. ——————— *Mahomedan Law.* —Act XL of 1858 authorizes a Court to select a guardian irrespective of the law of the parties (*e.g.*, Mahomedan law), but does not prevent the selection of a guardian indicated by such law if he be a fit person. MOHUNNUDDY BEGUM *v.* OOMDUTOONISSA **[13 W. R., 454**

5. ——————— *Provision made by will for guardianship.*—Where a testator makes due provision for the guardianship of his minor son, Act XL of 1858 does not contemplate the interference of the Court in its summary jurisdiction. ANUND COOMAR GANGOOLY *v.* RAKHAL CHUNDER ROY **[8 W. R., 278**

1. ——— **s. 3.—Application for certificate.**—*Form of application.*—An application for a certificate under Act XL of 1858 need not refer to the estate of the deceased, but ought merely to set forth that there is property to which the minor is entitled, and of which the applicant claims the right to have charge. KOOSOOM KAMINEE DEBEE *v.* CHUNDER KANT MOOKERJEE . **23 W. R., 346**

2. ——————— *Party having no right to possession.*—A certificate under section 3 of Act XL of 1858 is purely an authority for the administration of property, and ought not to be issued where there is neither present right nor prospective possession. NOBIN CHUNDER SHAHA *v.* RAJNARAIN SHAHA . . . . . **9 W. R., 582**

3. ——————— *Guardian and Minor.—Ground for refusal of certificate.*—An application for a certificate under Act XL of 1858 (which, if successful, would, in effect, prolong the minority of an infant from eighteen to twenty-one) should not be granted when the alleged minor is admittedly on the point of attaining the age of eighteen, unless under particular circumstances, as where very great weakness of mind is proved, or where it is shown that there is some absolute necessity for making such order. IN THE MATTER OF THE PETITION OF NAZIRUN. MUHAMDEE *v.* NAZIRUN **[I. L. R., 6 Calc., 19 6 C. L. R., 210**

4. ——————— *Minority.—Majority Act (IX of 1875), s. 3.*—In the interval between an application for a certificate of administration to the property of a minor under section 3 of Act XL of 1858 and the issue of the certificate, the minor attained the age of 18 years and signed a promissory note. *Held*, that the certificate afforded no defence to a suit on the note. STEPHEN *v.* STEPHEN **[I. L. R., 8 Calc., 714 10 C. L. R., 533**

ACT—1858—XL—s. 3.—Application for certificate—*continued.*

5. ——————— *Minority.—Majority Act (IX of 1875), s. 3.*—A certificate of guardianship under Act XL of 1858 takes effect, not from the date when it is applied for, nor when an order granting it is passed, but from the date when it is actually issued. Therefore where an application for a certificate was made in 1877, and an order granting it was passed in December 1879, but the certificate was not issued until December 1881, —*Held*, that the minor, in respect of whose property the certificate was applied for who had between the date of the application and the issue of the certificate attained the age of 18 years, and signed a promissory note, was not entitled to take advantage of section 3 of the Majority Act, 1875, and set up the plea of minority as a defence to a suit on the note. STEPHEN *v.* STEPHEN (ON APPEAL) . **I. L. R., 9 Calc., 901 [13 C. L. R., 430**

6. ——————— *Guardian, Appointment of.—Period from which appointment dates.*—The making of an order appointing a guardian under Act XL of 1858, and not the subsequent taking out of the certificate, is that by which a guardian is appointed of the person and property of a minor within the meaning of section 3 of the Indian Majority Act. CHUNEE MUL JOHARY *v.* BROJONATH ROY CHOWDHRY . . **I. L. R., 8 Calc., 967 [11 C. L. R., 315**

7. ——————— *Period from which authority of guardian dates.—Court Fees Act (VII of 1870), s. 6.*—Section 6 of the Court Fees Act (VII of 1870), which says that a certificate under Act XL of 1858 (among other documents) "shall not be filed, exhibited, or recorded in any Court of Justice or received or furnished by any public officer," unless a certain fee be paid, means that such certificate cannot come into existence until the person who has the permission of the Court to obtain it deposits the requisite amount of stamp duty. Independently of this section, however, the preparation of such a certificate after the order granting it, is not a purely ministerial act: it must then be applied for by the grantee: and it is from the date of the certificate being actually taken out, and not from the date of the order granting it, that a guardian of the person and property of a minor is to be considered as appointed under Act XL of 1858. Where, therefore, on a petition for such a certificate by *J.*, an order was made that the "application be allowed," and in a suit on certain bonds in which suit the minor in respect of whose person and property the petition for a certificate was made, was a defendant, he was represented by *J.*, by whom no certificate had been actually taken out. *Held*, in a suit by the minor to set aside the decree as not binding on him, that without the certificate *J.* had no authority to appear on behalf of the minor, and the latter not having been properly represented in the suit brought against him was entitled to have the decree set aside. *Stephen* v. *Stephen, I. L. R., 8 Calc., 714: S. C.* on appeal, *I. L. R., 9 Calc., 901*, followed: *Chunee Mul Johary* v. *Brojonath Roy Chowdhry, I. L. R., 8 Calc., 967*, dissented from. SAHAI NAND *v.* MUNGNIRAM MARWARI . . . **I. L. R., 12 Calc., 542**

ACT—1858—XL—s. 3—*continued.*

8. ——————— **Right to sue without certificate.**—*Acts of guardians without certificates.*—Act XL of 1858 declares that a person shall not be competent to institute a suit in Court in respect of property of which he claims the charge until he shall have obtained a certificate; but not that every act of a guardian who has not such a certificate shall be null for the want of one. SHOOGHURY KOER *v.* KOSHISHT NARAIN SINGH . . **8 W. R., 331**

9. ——————— **Certificate of Guardianship.**—*Certificate ordered, but not issued, Effect of—Limitation.*—A certificate of guardianship, obtained under section 3 of Act XL of 1858, takes effect from the time it is issued, and not from the date of the order directing its issue. *Sahai Nand* v. *Mungniram Marwari, I. L. R., 12 Calc., 542,* followed. NOWBAT ROY *v.* LALA KEDAR NATH. **[I. L. R., 13 Calc., 219**

10. ——————— **Right to sue without certificate.**—*Manager without certificate.*—A manager has no authority to deal with the claims or debts and liabilities attaching to the estate of a minor without having taken out a certificate under Act XL of 1858. TUSNEEP HOSSEIN *v.* SOOKHOO **[14 W. R., 453**

SOBHA KOOERREE *v.* HURDEY NARAIN MOHAJUN . **[25 W. R., 97**

11. ——————— *Guardian without certificate.—Validity of acts.*—Without a certificate under Act XL of 1858 a Court may refuse to hear even a natural guardian of right. When the Court, in the exercise of the discretion vested in it, does hear him, the absence of the certificate will not vitiate the proceedings. The private acts of a natural guardian without a certificate under Act XL of 1858 are not vitiated by law. LALLA BHOODMUL *v.* LALLA GOWREE SUNKUR . . . **4 W. R., 71**

12. ——————— *Permission to sue by guardian.*—A party who sues as guardian of a minor may, for good and sufficient reasons, be allowed to sue without a certificate obtained under Act XL of 1858. *Held,* that this permission may be given by the Court in which a suit by the guardian may be brought. TARAMONEE CHOWDHRANI *v.* RAJBIDEE CHOWDHRANI . . . . **2 Hay, 575**

13. ——————— *Father.*—A father cannot sue on behalf of his minor son without having obtained the certificate prescribed by Act XL of 1858, and any decision passed in the case would be irregular, as being passed in the absence of the party *primâ facie* principally interested. SHIAM SOONDER *v.* NARAIN DAS . . . . **2 Agra, 343**

MADHO RAO APA *v.* THAKOOR PERSHAD **[3 Agra, 127**

14. ——————— *Grandmother.*—A grandmother is not competent to represent her minor grandson without having obtained the certificate prescribed by section 3, Act XL of 1858. RUTNEE *v.* ROGHOBEER DYAL . . . **2 Agra, 278**

ACT—1858—XL—s. 3—Right to sue without certificate—*continued.*

15. ——————— *Mother.*—A mother may be allowed, under section 3, Act XL of 1858, to sue as guardian of her minor son without having taken out a certificate. MUNRA JHUNNA KOONWAR *v.* LALJEE ROY . . **1 W. R., 121**

OODOY CHAND JHA *v.* DHUNMONEE DEBIA **[3 W. R., 183**

RAMDHUN DOSS *v.* RAM RUTTON DUTT **[10 W. R., 425**

16. ——————— *Ground for dismissal of suit.*—When a Court of first instance allows a mother to institute a suit on behalf of her minor son, the Judge on appeal has no reason to dismiss the suit on the technical grounds that no certificate had been granted to her under section 3, Act XL of 1858. GOONOMONEE DEBIA *v.* RAM KOMUL SANDLE . . . . **17 W. R., 144**

See AUKHIL CHUNDEE *v.* TRIPOORA SOONDUREE **[22 W. R., 525**

17. ——————— Section 3, Act XL of 1858, gives discretion to the Court to admit a party to sue without a certificate. ANUND CHUNDER GHOSE *v.* KOMUL NARAIN GHOSE **[2 W. R., 219**

LUCHMEE KOONWAR *v.* BHUGWAN DOSS **[6 W. R., Mis., 116**

SHEOBURRUT SINGH *v.* LALLJEE CHOWDHRY **[13 W. R., 202**

BONOMALLY KESH *v.* HUNGSHESSUR ROY **[17 W. R., 492**

SOBHA KOOERREE *v.* HURDEY NARAIN MOHAJUN **[25 W. R., 97**

18. ——————— *Held,* that the plaintiff, not being legally or formally appointed manager or guardian of a minor's estate or person, was incompetent to maintain the suit on his (the minor's) behalf, especially when the minor's natural father has been appointed as such under Act XL of 1858, and has not been discharged from his office. SETUL PERSHAD *v.* BIRJ MOHUN DASS . **1 Agra, 25**

19. ——————— *Waiver of objection.—Duty of Judge.*—That the persons who sue on behalf of minors are their natural guardians is not a sufficient reason for neglecting the directions of law which require that the minors shall be represented by persons who have obtained certificates, or by persons who, when the property is of small value, are specially permitted by the Court to sue or defend the suit on behalf of minors. The fact that the defendant's pleader did not press the objection does not relieve the Judge from the duty imposed on him of seeing that the minors were properly represented. ZORAWAR SINGH *v.* JAWAHIR SINGH **[3 Agra, 167**

20. ——————— *Guardian.—Held,* that the institution of a suit by a guardian on behalf of minors, without due authority having been

ACT—1858—XL—s. 3—Right to sue without certificate—*continued.*

obtained, is illegal. DHUNRAJ KOOEREE *v.* ROODUR PERTAB SINGH . . . . **3 Agra, 300**
[S. C. Agra, F. B., Ed. 1874, 155

21. ——————— *Son adopted pending suit.*—When adoption takes place while a suit is pending on the part of the widow and the adopted son is a minor, it is necessary that he should be substituted for his adoptive mother as the party preferring the appeal, and be duly represented in conformity with the provisions of section 3, Act XL of 1858. COLLECTOR OF BAREILLY *v.* NURAEN DAY
[3 Agra, 349

22. ——————— *Stranger.*—A stranger cannot bring an action on behalf of a minor without a certificate under Act XL of 1858. GOBERDHUN *v.* GIRWAR . . . . **3 Agra, 92**

23. ——————— *Surbarakar.*—A surbarakar cannot sue on behalf of a minor without permission of the Court, or a certificate under Act XL of 1858. BODH SINGH *v.* LOCHUN SINGH
[3 Agra, 220

24. ——————— *Permission of Court.*—From the fact that in a former suit the plaintiff's mother was arrayed among the parties as his guardian as well as from the line of defence she then adopted, and in the absence of any evidence to the contrary, it was presumed that she had the permission of the Court to appear and represent the minor's interest in that suit, and therefore the decision in that suit was held to be binding on the minor in a subsequent suit where the same question was raised. BONOMALLY KESH *v.* HUNGSHESSUR ROY
[17 W. R., 492

25. ——————— *Suit by unauthorized guardian.*—Where a person representing herself as a guardian neither took out a certificate under Act XL of 1858, nor obtained the permission of the Court under section 3 of that Act to appear in the suit without a certificate,—*Held*, that the minor was not bound by any act of the alleged guardian, nor was he bound to sue within three years from the order passed by the Court under section 246, Act VIII of 1859, rejecting her petition of objection to a sale of attached property. SEEENATH KOONDOO *v.* HURREE NARAIN MUDDUCK . . . . **7 W. R., 399**

26. ——————— *Reg. X of 1793.*—*Suit on behalf of minors.*—In a case in which Regulation X of 1793 has no application, the Court may, under section 3, Act XL of 1858, allow a friend or relative of the minor to institute a suit on his behalf, and where the guardian omits to take steps for the protection of the infant, the Court may allow another person to sue for the benefit of the latter. MODHOO SOODUN SINGH *v.* PRITHEE BULLUB PAUL
[16 W. R., 231

27. ——————— *Guardian or next friend.*—In a suit brought on behalf of a minor by

ACT—1858—XL—s. 3—Right to sue without certificate—*continued.*

his next friend, it is not necessary for the next friend to have a certificate under Act XL of 1858, provided he have in fact permission of the Court to sue. ALIM BAKSH FAKIR *v.* JHALO BIBI
[I. L. R., 12 Calc., 48

28. ——————— *Next friend.*—*Civil Procedure Code (Act XIV of 1882), s. 440.*—Section 440 of the Civil Procedure Code, read with section 3 of Act XL of 1858, does not make the receipt from the Court of a written permission to sue compulsory upon the next friend of an infant plaintiff. NEWAJ *v.* MAKSUD ALI. **I. L. R., 12 Calc., 131**

29. ——————— *Suit on behalf of minor.—Permission to relative to sue.*—The mother of a minor, who had not obtained a certificate under Act XL of 1858, instituted a suit on behalf of the minor for some property of small value. She did not ask the Court in which she instituted the suit for permission to institute it, as required by section 3 of that Act, but the Court entertained it, the defendant not raising the objection that it had been instituted without permission, and it was decided on the merits in favour of the minor. *Held* that, under these circumstances, it must be taken, notwithstanding there was no order allowing the mother to sue, that the suit was instituted with the Court's permission. KEDAR NATH *v.* DEBI DIN . . . **I. L. R., 4 All., 165**

30. ——— **Right of holder of certificate to defend suits connected with minor's estate.**—Under section 3 of the Bengal Minor's Act (XL of 1858), the Civil Court has no power to refuse to admit a person who has obtained a certificate of administration under the Act, to defend a suit on the minor's behalf, as guardian of such minor. BALDEO DAS *v.* GOBIND SHANKAR. **I. L. R., 7 All., 914**

31. ——— **Right to defend without certificate.**—*Appearance on behalf of minor.*—No judgment or order passed in a suit, to which a minor subject to the provisions of Act XL of 1858 is a party, will bind him on his attaining majority, unless he is represented in the suit by some person who has either taken out a certificate, or has obtained the permission of the Court to sue or defend on his behalf without a certificate. Permission granted to sue or defend on behalf of a minor, under section 3 of Act XL of 1858, should be formally placed on the record. MRINAMOYI DABIA *v.* JOGODISHURI DABIA
[I. L. R., 5 Calc., 450: 5 C. L. R., 361

See PIRTHI SINGH *v.* LOBHAN SINGH
[I. L. R., 4 All., 1

32. ——————— *Permission to relative to defend.*—The mother of a minor, who did not hold a certificate under Act XL of 1858, was sued on behalf of the minor. She did not obtain permission to defend the suit on behalf of the minor, but the Court allowed her to answer to the suit on behalf of the minor. *Held* that, under these circumstances, it must be inferred that the Court had given her permission to defend the suit, as required

ACT—1858—XL—s. 3—Right to defend without certificate—*continued.*

by section 3 of Act XL of 1858, and therefore the decree made against her in the suit as representing the minor was binding on the latter. JANKI *v.* DHARAM CHAND . . . . . **I. L. R., 4 All., 177**

33. ———— Right to represent minor without certificate.—*Discretion of Court.*—A person who does not hold a certificate under Act XL of 1858 is not debarred by section 3 from representing a minor as plaintiff or defendant in a suit; but the Court has the fullest discretion, when the property is of small value, or for any other sufficient cause, to dispense with the production of a certificate. SREEMUNT KOONDOO *v.* SHARODA SOONDUREE DOSSEE AND BHUJOHURREE PARAMANICK *v.* SHARODA SOONDUREE DOSSEE . . . . . **8 W. R., 197**

34. ———— — *Suit on behalf of a minor.*—*Subject of suit of small value.*—A suit can be prosecuted or defended by a relative, on behalf of a minor, without a certificate under Act XL of 1858, when the subject-matter of the suit is of a small value. A suit to recover real and personal property of the value of R7,260 was allowed to be prosecuted by the brother of a minor, on behalf of himself and his minor brother, under section 3, Act XL of 1858. NABADWIP CHANDRA SIRKAR *v.* KALINATH PAL **[3 B. L. R., Ap., 130**

HURENDER LAL SAHOO *v.* RAJENDER PERTAB SAHEE . . . . . **1 W. R., 260**

———— s. 4—

See SECTION 7.

———— s. 5.—Property in several districts.—*"Residence" of minor.*—*Held* by Loch, *J.*, that the word "residence" used in section 5, Act XL of 1858, is not the place where the minor may be dwelling at or about the time when the application for a certificate under the Act is made, but the paternal family house or the family residence of the minor in which every member of the family has an interest, and in which they usually reside; Ainslie, *J.*, being of opinion that though ordinarily that might be taken to be the meaning of the word, yet circumstances might arise in which it might be taken to mean otherwise. MAHOMED HOSSEIN *v.* AKBUR HOSSEIN **[17 W. R., 275**

———— s. 6—

See SECTION 7.

1. ———— Enquiry by Court.—*Conduct of applicant.*—A Civil Court may defer passing orders on an application for a certificate under Act XL of 1858, pending an enquiry by the Collector as to the alleged fraud of the manager, and the state of the accounts and the assets of the property. MOHESH CHUNDER SEIN *v.* THE COLLECTOR OF DINAGEPORE . . . . . **16 W. R., 312**

2. ———— — The summary enquiry provided by section 6 of Act XL of 1858 refers to the grant of the certificate to the parties claiming it, but no part of the Act allows third parties to demand an enquiry into matters which have nothing to do with the genuineness of the grant. MELTOON BIBI *v.* GIBBON . . . . **12 W. R., 101**

3. ———— — *Change of Guardian.*—One manager cannot shift off the responsibility from himself and resign the appointment, and another one take up the appointment without the provisions of section 6, Act XL of 1858 (requiring issue of a notice of such application or the fixing of a day for the hearing of the application), being duly carried out. JUGODUMBA KOER *v.* MIRCHA KOER **[17 W. R., 269**

———— s. 7—

See SECTION 21.

1. ———— Qualification for guardianship.—*Right to certificate.*—It is not the policy of Act XL of 1858 to prevent parties from performing their natural duties by the younger members of their family who may be deprived of their parents, and it should not be considered as an axiom that an uncle or other near relative will necessarily defraud a minor, and ought therefore to be refused a certificate under that Act. MAHOMED SALEH *v.* GOVERNMENT **[W. R., 1864, Mis., 26**

2. ———— — Section 7 looks as much to the fitness of the relative as to his propinquity; and when two relatives claim the right to administer, the Court is at liberty to disregard the latter qualification and look to the former. AKIMA BIBEE *v.* AZEEM SARUNG . . . . **9 W. R., 334**

3. ———— — In the grant of a certificate to a guardian under Act XL of 1858, unless under peculiar circumstances, fitness is to be preferred to mere nearness of relationship. AMAN KHAN *v.* HOSEENA KHATOON . **9 W. R., 548**

4. ———— — Before appointing a guardian the Judge should satisfy himself of the applicant's fitness for the office. RAM DYAL GOOYA *v.* AMRIT LALL KHAMAROO . **9 W. R., 555**

5. ———— — In appointing a manager of a minor's estate a Judge has to consider not only the nearness of kindred, but also the suitableness of the person to be appointed. KHOODEE MONEE DOSSEE GHOSSANEE *v.* KOYLASH CHUNDER GHOSE . . . . . **4 W. R., Mis., 22**

6. ———— — The mere fact that a near relative who desires to have charge of the property is a *purda-nashin* is not of itself a disqualification such as takes away the right to a certificate under section 7. KURUPPOOL KOER *v.* COLLECTOR OF SHAHABAD . . . . **20 W. R., 432**

7. ———— — Under section 7, Act XL of 1858, a person claiming a right to have the charge of the property of a minor by virtue of a will is entitled, if the will be a genuine instrument, to a certificate of administration, notwithstanding the exist-

ACT—1858—XL—s. 7—Qualification for guardianship—*continued.*

ence of a natural guardian of the minor in the person of his mother. BHOOBUN MOHINEE DEBEE *v.* POORNOO CHUNDER BANERJEE . **17 W. R., 99**

8. ——————— **and ss. 4 and 6.**—*Appointment of guardian.*—Under sections 4, 6, and 7, Act XL of 1858, the Court has power to appoint a guardian other than the father of a minor, for the purpose of instituting suits and protecting the property of the minor. ETWARI *v.* RAM NARAYAN RAM . . . . . **4 B. L. R., Ap., 71 [13 W. R., 230**

9. ——————— *Certificate of guardianship to Minor.—Procedure.*—Where an application was made by a Hindu female for a certificate of administration under Act XL of 1858 in respect of an estate which she alleged to belong to an adopted son,—*Held,* that the Judge ought merely to have enquired whether the boy was a minor, and whether the petitioner being a near relative was a fit person to be entrusted with the charge of the minor's property. BROHMO MOYEE CHOWDHRANI *v.* CHITTURMONEE CHOWDHRANI . . **8 W. R., 25**

10. ——————— **Accounts, filing in Court.**—An administrator holding a certificate under section 7, Act XL of 1858, is not bound to file in Court periodical accounts of moneys realized and disbursed on account of the minor. IN RE SONKALLY KOONWAR **[6 W. R., Mis., 53**

11. ——————— **Account of guardianship.**—*Resignation of guardianship.*—Under section 7, Act XL of 1858, a manager appointed to the estate of a minor cannot in any way get rid of or resign that trust without the permission of the Court, and without duly accounting to his successor for all moneys received and disbursed by him. KALEE PERSHAD SINGH *v.* POORNO DEBIA . **15 W. R., 398**

——————— **s. 9—**

See SECTIONS 12 AND 21.

——————— **Procedure where no near relative.**—*Appointment of guardian.—Collector.—Person with certificate.*—Under Act XL of 1858, section 9, the Judge has no power to appoint the Collector as manager of the estate of the minor, until he is satisfied that no person has established title to a certificate under a will or deed, and that there is no relative willing and fit to be entrusted with the charge of the property; and both these alternatives must be proved to the Court in the ordinary way by evidence brought before the Court. HYDER REZA *v.* COLLECTOR OF PURNEAH **[22 W. R., 490**

——————— **ss. 9, 10, 11, and 12.—Procedure where no near relative.**—The powers given by sections 10, 11, and 12 of Act XL of 1858 only accrue upon the happening of the contingency which is mentioned in section 9. KURUPPOOL KOER *v.* COLLECTOR OF SHAHABAD . **20 W. R., 432**

ACT—1858—XL—*continued.*

——————— **ss. 10 and 12.—Power to cancel certificate and grant another.**—When the estate of a minor consists in whole or in part of land, or any interest in land, and when such application is made, the Court can only proceed to act in accordance with the provisions of section 12 of Act XL of 1858, and has no jurisdiction to grant another certificate to any fit person, such a course being confined to cases in which the property is of the description indicated by section 10. SAKHAWAT ALLY *v.* NOORJEHAN BEGUM **[I. L. R., 10 Calc., 429**

——————— **s. 12—**

See SECTION 21.

1. ——————— **Appointment of Collector.**—*Power to appoint Collector to take charge of minor's estate.*—Under the provisions of sections 9 and 12 of Act XL of 1858 the minor's estate cannot be made over to the Court of Wards, but the Collector should be directed, under section 12 of that Act, to take charge of the estate of the minor, and he thereupon becomes invested with authority to appoint a manager of the property, and a guardian of the person of the minor. IN THE MATTER OF THE PETITION OF SIDHOO LAL . . . . . **2 N. W., 398**

2. ——————— *Trust created under will for religious and charitable purposes.*—Where a trust is created under a will for certain purposes mentioned in the will,—*e.g.*, the maintenance of religious worship, charitable institutions, &c.,—the properties belonging to the trust cannot be taken charge of by the Collector under Act XL of 1858. RAJESSUREE DABIA *v.* JOGENDRO NATH ROY **[23 W. R., 278**

3. ——————— *Dispute as to guardianship.*—Where two persons were fighting to get hold of the property, and the probability was that the minor would suffer if the property lay in the hands of either, the Court could not say that either person was a fit person to be appointed manager, and therefore, under section 12, ordered the property to be made over to the charge of the Collector, with direction to appoint a manager of the property and a guardian of the person of the minor. JUGODUMBA KOER *v.* MIRCHA KOER . **17 W. R., 269**

4. ——————— **Joint property, Interest in.**—*Specification of share of minor.*—Where on an application for the appointment of a manager to the estate of a deceased Rajah, a Zilla Judge, notwithstanding a contention raised before him as to the extent of the minor's interest in the property, passed an order strictly within the provisions of section 12, Act XL of 1858, his successor was held to have acted without jurisdiction in having, upon a subsequent application, passed an order specifying the shares of the minor and the opposing party. COLLECTOR OF TIRHOOT *v.* RAJCOOMAR DEO NUNDUN SINGH **[10 W. R., 218**

5. ——————— *Certificate under Act XL of 1858 in respect of interest of sons in*

ACT—1858—XL—s. 12—Joint property, Interest in—*continued.*

ancestral property.—Under Hindu law the interest in ancestral property taken by sons immediately on their birth is an estate and interest in immoveable property in respect of which a certificate of administration under Act XL of 1858 may be granted during the lifetime of their father. DHERAJ KOER *v.* ADJOODHYA BUX SINGH . . . **3 N. W., 91**

6. ———— *Property of minor.—Share of minor in joint family property under Mitakshara Law.*—Where the joint property of an undivided joint family governed by the Mitakshara law is enjoyed in its entirety by the whole family, and not in shares by the members, one member has not such an interest therein as is capable of being taken charge of and separately managed under the provisions of Act XL of 1858. SHEO NUNDUN SINGH *v.* GHUNSAM KOOEREE . **21 W. R., 143**

AJHOLA KOOERÉE *v.* DIGAMBUR SINGH **[23 W. R., 206**

7. ———— *Partition.*—*B.*, a Hindu governed by the Mitakshara law, died, leaving two minor sons, *J.* and *K.*, and also a widow, *L.*, and two minor sons by her; the mother of *J.* and *K.* having predeceased him. On *J.'s* attaining majority, the Court of Wards, which had taken possession of all the property, withdrew from the management; and *L.* then applied, under Act XL of 1858, and obtained a certificate with respect to the shares of *K.* and her two minor sons. Subsequently *K.* having attained majority, his share was excluded from the operation of the certificate. On the death of *J.*, leaving *H.*, his widow, and an infant son by her, *H.* applied for a similar certificate, under Act XL of 1858, with respect to the property of her son, and it appeared that *K.* was incapable of managing the property. *Held*, that though the certificate granted to *L.* had been improperly obtained, *H.* was not entitled to one, as, no partition having taken place since *B.'s* death, the property was still the joint family property. HOOLASH KOER *v.* KASEE PROSHAD . . . **[I. L. R., 7 Calc., 369**

8. ———— s. 12 and s. 9.—Appointment of Collector.—Where a certificate under Act XL of 1858, which had been granted to the two widows of a deceased Hindu, was recalled, simply because, in consequence of their disagreement, joint management had become impossible, and the District Judge refusing the application of the widow, who was the minor's mother, to be made sole manager, directed the Collector under section 12 to take charge,—*Held* that, in the absence of any ground to remove her summarily, the Court was bound to grant the application of the minor's mother as the nearest relative, and to allow her the management until some cause to remove her was duly made out. NISTARINEE DEBEE *v.* COLLECTOR OF 24-PERGUNNAHS **[23 W. R., 330**

9. ———— Power of Court to limit nature or extent of property.—Where a manager is appointed under Act XL of 1858, the Civil Court

ACT 1858—XL—Power of Court to limit nature or extent of property—*continued.*

has no authority to restrict or limit, by description or otherwise, the nature or extent of the minor's property. SHEO PROSUNNO CHOBEY *v.* GOPAL SURU **[15 W. R., 529**

———— s. 16—

See SECTION 21.

1. ———— s. 18.—Power of Guardians.—*Certificated Guardians.—Power of Uncertificated Guardians.—Managers.*—The rules laid down in Act XL of 1858, from section 18 downwards, apply only to certificated managers and to guardians appointed under the Act. Section 18 applies in terms to a manager acting under a certificate, and to such manager only; it confers on him generally the powers of the owner, but in regard to acts of alienation beyond certain limits, it requires that his acts, in order to be valid, should have the previous sanction of the Court; such provisions are altogether unsuitable to the case of a manager entirely unconnected with the Court. RAM CHUNDER CHUCKERBUTTY *v.* BROJONATH MOZUMDAR **[I. L. R., 4 Calc., 929: 4 C. L. R., 247**

2. ———— Power of guardian to sell or mortgage.—*Sanction of Court.*—Act XL of 1858 does not prevent a guardian, who has obtained a certificate thereunder, from selling or mortgaging property in Calcutta without the sanction of the Court. GOPALNARAIN MOZUMDAR *v.* MUDDOMUTTY GUPTEE . . . **14 B. L. R., 21**

3. ———— Mortgage by guardian without sanction of the Court.—Where a guardian had mortgaged certain property of a minor without previously obtaining the sanction of the Court under section 18 of Act XL of 1858, but it was found that the mortgage transaction was a proper one, and there had since been a decree in a suit in which the minor was properly represented under which the property had been sold, the irregularity as to the mortgage being made without the sanction of the Court was not allowed to prevail. ALFUTUNNISSA *v.* GOLUCK CHUNDER SEN **[15 B. L. R., 353, note**

4. ———— *Grounds for recall of certificate.*—Where a guardian, appointed under Act XL of 1858, mortgaged certain immoveable property of the minor without obtaining the sanction of the Court under section 18 of that Act, and it appeared he was related to, and jointly interested with, the minor in the management of the property,—*Held*, that it was not a sufficient cause to recall the certificate unless it was made clear that in the mortgage transactions he had acted in bad faith, or had injured, or was likely, or had intended, to injure the interests of the minor. IN THE MATTER OF THE PETITION OF BUSUNTO COOMAR GHOSE **[15 B. L. R., 351, note**

S. C. BROJENDRO NARAIN ROY *v.* BUSUNTO COOMAR GHOSE . . . . **13 W. R., 300**

ACT—1858—XL—s. 18—*continued.*

5. ——— **Sale by Guardian without sanction of the Court.**—*Invalidity of sale.—Refund of purchase-money.*—A sale of a minor's immoveable property by a guardian appointed under Act XL of 1858, and who was also the *kurta* of the joint family of which the minor was a member, is invalid if made without the sanction required by section 18 of that Act, even though the sale may have been for the benefit of the minor and made in good faith to pay off the debts of the ancestor. Where, however, it was found that the purchaser had acted *bonâ fide* and had paid a fair price for the property, he was held entitled to a refund of so much of the purchase-money as had been expended for the benefit of the minor. SHUBUT CHUNDER CHUTTOPADHYA *v.* RAJKISSEN MOOKERJEE . **15 B. L. R., 350**

6. ——— **Mortgage by Administrator of a minor's property.**—*Purchaser with notice, Title of.—Duties of Purchaser.*—A mortgage of the property of a minor made by the administrator appointed under Act XL of 1858 is invalid, unless the sanction of the Court has been previously obtained under section 18 of the Act. Where the administrator was sued, as representing the minor, by the mortgagee, and made no defence to the suit, and the property was sold, under a decree so obtained, to the mortgagee, by whom it was again sold to a third person, who knew that the administrator had executed the mortgage in that capacity,—*Held,* that the decree did not protect the mortgagee who purchased at the Court sale, nor her vendee, from suit by the minor for recovery of the property. DEBI DUTT SAHOO *v.* SUBODRA BIBEE **[I. L. R., 2 Calc., 283 25 W. R., 449**

7. ——— **Mortgage by certificate-holder without sanction.**—*Contract Act IX of 1872, s. 23.*—A mortgage by a person holding a certificate of administration in respect of the estate of a minor under Act XL of 1858 of immoveable property belonging to the minor without the sanction of the Civil Court previously obtained is void with reference to section 18 of that Act and section 23 of the Contract Act, even though the mortgage-money was advanced to liquidate ancestral debts and to save ancestral property from sale in the execution of a decree. CHIMMAN SINGH *v.* SUBRAN KUAR **[I. L. R., 2 All., 902**

8. ——— **Power of Guardian.**—*Purchaser from Guardian.—Per* GARTH, *C. J.*—Previously to the passing of Act XL of 1858, where a suit was brought by a minor on coming of age, to recover property sold by his guardian during his minority, it was generally incumbent upon the purchaser to prove that he acted in good faith; that he made proper enquiries as to the necessity for the sale; and had honestly satisfied himself of the existence of that necessity. Now, under section 18 of that Act, the Civil Court not only has the power, but is bound to enquire into the circumstances of each case, and to determine whether, as a matter of law and prudence, it is right that any proposed sale or mortgage of the minor's property should take place; and if the Court, upon the materials and information brought before it by the guardian, makes an order for sale, a purchaser under such an order is not bound to make the same enquiry which the Judge has made, and to determine for himself whether the Judge has done his duty properly and come to a right conclusion. Where a plaintiff alleges fraud or illegality as a ground for setting aside a sale made under section 18, the onus lies upon him to make out a *primâ facie* case of fraud or illegality, and to show that the debt, which formed the consideration for the sale in such case, was one for which the minor was not responsible. *Per* PRINSEP, *J.*—A stranger purchasing from a guardian, acting under the authority granted under section 18 of Act XL of 1858, will be entitled to every protection from the Courts, so long as it is not shown that he acted in a fraudulent or collusive manner, knowing that the debts, for the liquidation of which the purchase-money would be applied, were not debts lawfully binding on the minor. The burden of proof in such a case would lie heavily on the person seeking to set aside the alienation. But where the purchaser is himself the creditor, and therefore has the means of satisfying a Court as to the origin and nature of the debts and how they are binding on the minor, the burden of proof is shifted on the purchaser, when the plaintiff has established a *primâ facie* case. SIKHER CHUND *v.* DULPUTTY SINGH . . . **I. L. R., 5 Calc., 363 [5 C. L. R., 374**

9. ——— **Mortgage by Guardian without sanction of the Court.**—A mortgage without the sanction of the Judge by a guardian of a minor appointed under Act XL of 1858 is absolutely void, and a decree obtained upon a mortgage so executed cannot be enforced against the property of the minor. BUCHRAJ RAM *v.* RAM KISHEN SINGH **[11 C. L. R., 345**

10. ——— **Procedure on application for leave to deal with property.**—*Order of Civil Court authorizing lease of minor's property.*—On an application under section 18 of Act XL of 1858 for leave to deal with the property of an infant, the Civil Court is bound to determine the question whether the proposed mode of dealing with it would, if sanctioned, be for the benefit of such infant: and the petition should contain all the materials reasonably required to enable the Court to decide that question. The decision of GARTH, *C. J.*, in *Sikher Chund* v. *Dulputty Singh* followed. IN THE MATTER OF THE PETITION OF SHRISH CHUNDER MOOKHOPADHYA. **[I. L. R., 6 Calc., 161**

——— s. 19—

See SECTION 21.

1. ——— s. 21—Sections 7 and 19.—**Recall of certificate.**—*Power of Court to recall certificate granted under s. 7, Act XL of 1858.*—A certificate granted under section 7, Act XL of 1858,

ACT—1858—XL, s. 21—Sections 7 and 19. —Recall of certificate—*continued.*

can be recalled summarily under section 21. Where the application for recall is based on charges of waste and mismanagement, the certificate may be so recalled, if a sufficient case is made out, without any account having previously been taken in a regular suit under section 19. IN THE MATTER OF THE PETITION OF SHURWAR HOSSEIN KHAN [B. L. R., Sup. Vol., 720 2 Ind. Jur., N. S., 200

S. C. NAUNEE BIBEE *v.* SURWAR HOSSEIN [7 W. R., 522

2. ——— *Mode of revocation.*—It is not necessary to institute a regular civil suit in order to obtain the revocation of a certificate of guardianship. MAHOMED NUKSHUND KHAN *v.* AFZUL BEGUM . . . . . 3 N. W., 149

3. ——— An order cannot be made in the Summary Department declaring a sale made by a manager invalid as being not within the scope of section 18, and granting an injunction to prevent the demolition of a house. That must be done by a regular suit. MUKBUMUNNISSA *v.* ABDOOL JUBBAR . . . . . 17 W. R., 171

4. ——— *Bengal Act IX of 1879.—Application to cancel certificate of guardianship and grant another.*—Where an application is made under the provisions of section 21 of Act XL of 1858 to have a certificate granted under that Act recalled and a fresh certificate granted to another, the applicant should set forth in his petition a sufficient cause for such course being taken, and the Court should thereupon proceed to enquire *judicially* whether such sufficient cause is established. SAKHAWAT ALLY *v.* NOORJEHAN BEGUM [I. L. R., 10 Calc., 429

5. ——— *Ground for recall.* An order for a certificate may be revoked under section 21, Act XL of 1858, if the Judge sees sufficient cause for its revocation in the conduct of the party in whose favour it was granted. TUSNEEF HOSSEIN *v.* SOOKHOO . . 14 W. R., 453

6. ——— and s. 12.—A Zilla Judge, having ordered the grant of a certificate under Act XL of 1858 to a widow with reference to the property of her deceased husband, afterwards, at the instance of the Collector, and on hearing all the parties claiming or objecting, set aside his order and directed the Collector to take charge of the estate,—*Held* that the order, though the Judge professed to make it under section 12, Act XL of 1858, was really made under section 21. CHUNDER COOMAR ROY *v.* COLLECTOR OF JESSORE AND BUSSANT COOMAREE DOSSEE *v.* COLLECTOR OF JESSORE . . . . . 13 W. R., 243

7. ——— *Ground for recall.—Marriage of minor.*—The marriage of a minor is not a sufficient cause, within the meaning of section 21, Act XL of 1858, for withdrawing a certificate as manager granted under that Act; there must be some

ACT—1858—XL, s. 21—*continued.*

neglect in the performance of duty, or some cause of a similar kind rendering it improper to continue the manager in the appointment. JUGODUMBA KOER *v.* MIRCHA KOER . . . . 17 W. R., 269

8. ——— *Neglect of duty by manager of estate.—Enquiry.—Manager appointed by will.*—Where a case is started showing that elder sons are neglecting their duty as managers of an estate to the material injury of a minor son, the Judge is bound to institute enquiry. ANUND COOMAR GANGOOLY *v.* RAKHAL CHUNDER ROY . . 8 W. R., 278

9. ——— *Failure to produce accounts.*—An applicant for a certificate under Act XL of 1858, having alleged that the appointed guardians had neglected their charge in various ways, the Judge called upon the guardians to produce their accounts, and on their failing to do so took away their certificate, and gave it to the applicant. *Held*, that the Judge would have been justified by section 21 in cancelling the guardians' certificate, if sufficient cause were shown; but he had no authority to do what he did, the accounts which a Judge can call for under that section being those which a discharged guardian is to furnish to his successor in office, and the only way in which a guardian retaining office can be made to furnish such accounts is by a regular suit brought by a relative or friend of the minor. RAM DYAL GOOYE *v.* AMRIT LALL KHAMAROO . . . . . 9 W. R., 555

10. ——— *Waste by Hindu widow.*—Acts of waste on the part of the widow in regard to her husband's property, if proved, would be a ground for withdrawing a certificate granted to her under Act XL of 1858. BHAGWANEE KOONWAR *v.* PARBUTTY KOONWAR . . 2 W. R., Mis. 13

11. ——— *Interference of Court with guardians of minors.*—A person apprehending danger to the health or life of a minor should ask the Court's interference under section 21, Act XL of 1858. LUCKHEE NARAIN AUNG BHEEM *v.* SOORUJ MONEE PAT MOHADAYE . 2 W. R., Mis. 6

12. ——— *Mismanagement.—Procedure.*—A certificate having been granted to *A.* under Act XL of 1858 in 1872 on the death of the father of a minor, in 1882, the mother of the minor applied that the certificate should be recalled on the ground of mismanagement, and that another should be granted to herself. The District Judge, assuming that the minor was a member of a joint family, held that the original certificate ought never to have been granted, recalled the certificate and dismissed the application. *Held*, that *A.* having obtained the certificate brought himself within the jurisdiction of the Court under Act XL of 1858, and that the Court ought to have considered the charges against him. DEORANI KOER *v.* PARUSMAN NARAIN 12 C. L. R., 546

13. ——— Selling the minor's property, or allowing portions of it to be unnecessarily

ACT—1858—XL, s. 21—*continued.*

sold, justifies the recall of a certificate of guardianship. GOONOOMONEE DOSSEE *v.* BRABOSOONDUREE DOSSEE . . . . . **18 W. R., 258**

14. ——— Removal of Guardian.—*Immorality of guardian.*—Where charges of immorality were brought against the holder of a certificate under Act XL of 1858, it was held to be the duty of the Judge to enquire into the truth of the charges and the fitness of the certificate-holder. MOHUNUDDY BEGUM *v.* OOMDUTOONISSA . **13 W. R., 454**

15. ——— ——— *Summary procedure.*—Act XL of 1858 does not empower a Judge to remove summarily a guardian not appointed by the Court, but under a will of the minor's grandfather. LAKHI PRIYA DASI *v.* NABIN CHUNDRA NAG **[3 B. L. R., A. C., 37 11 W. R., 370**

16. ——— ——— *Ground for removal.*—A certificate of guardianship was cancelled under section 21, Act XL of 1858, in a case where the guardian, without any sufficient cause or justification, and without legal advice, withdrew an appeal made to set aside a sale of the estate of the minors, and at the same time dealt with the auction purchaser and obtained a putnee of a portion of that very property in the name of his own wife. PITAMBER DEY MOZOOMDAR *v.* ISHAN CHUNDER DUTT BISWAS **[18 W. R., 169**

17. ——— ——— *Ground for removal.*—An application for the removal of guardians or parties appointed to take charge of the estate of a minor under Act XL of 1858, section 7, must be supported by proof of malversation or misconduct such as would afford sufficient ground for removal. RAJESSUREE DEBIA *v.* JOGENDRO NAUTH ROY **[23 W. R., 278**

18. ——— Removal of manager of estate.—*Grounds for removal.*—A manager of the estate of a minor appointed by will is liable to removal only upon proof of actual malversation, or that by reason of mental incapacity, conviction of felony, or by some other incapacitating cause, he has become incapable of managing the property; but not merely on the ground that another person would manage the property better. He is, it seems, subject to removal upon summary application under Act XL of 1858, section 21; but if the ground upon which his removal is applied for involves an investigation of accounts, such investigation must be made in a regular suit under section 19, previous to such summary application under section 21. MUDHOOSOODUN SINGH *v.* COLLECTOR OF MIDNAPORE **[Marsh., 244**

19. ——— and s. 16.—Power of Judge to order accounts from Guardian.—*Discharged guardian.*—A Judge has no power under section 16 or 21, Act XL of 1858, to order a discharged guardian of a minor to file his accounts.

ACT—1858—XL, ss. 21 and 16.—Power of Judge to order accounts from Guardian—*continued.*

Section 21 refers to the procedure as between discharged guardians and their successors, and not to a case where the contest is between the owner of the estate and a discharged guardian. DOOLUN SINGH *v.* TORUL NARAIN SINGH . **4 W. R., Mis. 3**

1. ——— Procedure.—*Objections to certificate.*—A certificate under Act XL of 1858 having been granted to a party as guardian of an adopted minor, it was objected that the minor's adoption had not been legal. *Held*, that as there was no doubt of the fact of adoption, whether the adoption should on enquiry prove legal or not, the certificate was rightly given, and as the objector did not claim to be appointed guardian, he had no *locus standi* to object to the appointment of another person. KISTO KISHORE ROY *v.* ISSUR CHUNDER ROY . **15 W. R., 166**

2. ——— ——— *Party asserting rights adversely to minor.—Discretion of Court where a will is propounded.*—Where an application is made for a certificate under Act XL of 1858, a party asserting certain rights adversely to the minor cannot be admitted as a party to the record, but must seek his remedy in a regular suit. Where the will propounded by an applicant is a genuine document the certificate prayed for must be granted, notwithstanding the existence of any "natural guardian," no discretion being left to the Court in such a case. PUROMA SOONDUREE DOSSEE *v.* TARA SOONDUREE DOSSEE . . . . . **9 W. R., 343,**

3. ——— ——— *Security-bond, Order to furnish.—Power of District Judge.—Assignment of bonds.—Succession Act, s. 257.—Quære,*—Whether the Judge of a District Court is competent to call upon a person to whom he grants a certificate under Act XL of 1858 to furnish security; and whether, where he has done so, and security-bonds have been given to him, he can assign them in the manner provided in section 257 of the Succession Act 1865. AMAR NATH *v.* THAKUR DAS **I. L. R., 5 All., 248**

4. ——— ——— *Application for certificate.—Limitation.*—The lapse of six years was held to be no sufficient ground for a Judge's refusal to enquire into the merits of an application for a certificate under Act XL of 1858, that law providing no limitation as to the time within which such applications are to be made. PUROMA SOONDUREE DOSSEE *v.* TARA SOONDUREE DASSEE . **9 W., R. 343**

——— s. 28 and s. 6.—Right of appeal.—*Creditor.—Enquiry.*—Only persons who claim a right to have charge of property in trust for a minor under a will or deed have a right to make applications under Act XL of 1858, and they alone have a right of appeal under section 28. A mere creditor has no *locus standi* in the proceedings before the Judge, and not right to have his objections gone into. MELTOON BIBEE *v.* GIBBON . . . **12 W. R., 101**

ACT—1858—XL—*continued.*

1. ——— s. 29, Jurisdiction.—"*Civil Court.*"—The Court of the Judicial Commissioner of Assam is the Civil Court contemplated by section 29, Act XL of 1858. KALEEKA PERSHAD BHUTTACHARJEE *v.* DHUKHINA KALI DABEE [W. R., 1864, Mis. 34

2. ——— *Court of District Judge.*—The Civil Court to which the charge of minors and their property is entrusted by Act XL of 1858 is the Court of the Judge of the district. MOHAMUDDEE BEGUM *v.* OOMDUTOONISSA [15 W. R., 271

3 ——— *Estate in territories of Maharajah of Benares.*—An application for a certificate under Act XL of 1858 regarding estates situate in the territories of the Maharajah of Benares should be made in the Court of the Judge of Benares. KUDUM KOONER *v* BUDLA SINGH [1 N. W., Ed. 1873, 163

ACT—1859—I—

See MERCHANT SEAMEN'S ACT.

——— s. 58—

See SHIPPING LAW—MARITIME LIEN. [2 Hyde, 273
6 Bom., O. C., 138

——— s. 83—

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—MERCHANT SEAMEN'S ACT, 1859 . . 4 Mad., Ap. 23
[7 Mad., Ap. 32

See MERCHANT SHIPPING ACT, 1854, s. 243. 8 Mad., 85

——— s. 111—

See EVIDENCE—CRIMINAL CASES—DEPOSITIONS . . . 1 Hyde, 195

——— ss. 201, 202—

See SHIPPING LAW—CERTIFICATES. [1 Mad., 270

———III—

See CANTONMENT MAGISTRATE. [4 Bom., A. C., 187
I. L. R., 9 Bom., 454

———VIII—

See CIVIL PROCEDURE CODE, 1882.

———IX, DECREE UNDER—

See GOVERNMENT OFFICERS, ACTS OF. [5 B. L. R., 312

——— s. 20—

See LIMITATION ACT, IX OF 1859. [13 B. L. R., 292

ACT—1859—X—

See BENGAL RENT ACT, 1869.

See EXECUTION OF DECREE—DECREES UNDER RENT LAW. [1 B. L. R., A. C., 177, 216
5 B. L. R., 115
7 W. R., 8

See CASES UNDER LIMITATION ACT, XIV OF 1859—APPLICATION OF.

See REVIEW—ORDERS SUBJECT TO REVIEW . . . . 3 N. W., 22
[4 N. W., 171
12 W. R., 195

See WITHDRAWAL FROM SUIT. [2 B. L. R., S. N., 11
S. C. 10 W. R., 373
11 W. R., 3
15 W. R., 260

——— DECISION UNDER—

See CASES UNDER RES JUDICATA—RENT SUITS.

——— Object of Act X of 1859.—*Rights existing prior to Act.*—The object of Act X of 1859 was to re-enact the provisions of existing laws relative to the rights of ryots, and not in any way to destroy those rights. If, therefore, the plaintiff had a *gorabundee* tenure existing before the enactment of Act X (and it had been found that the plaintiff's *gorabundee* tenure had been recognized in a long series of decisions commencing from the year 1846), the enactment of that Act in nowise deprived him of his rights in that tenure. LEELANUND SINGH *v.* NIRPUT MAHTOON . . 17 W. R., 306

——— Date of passing of Act.—The period of limitation within which a suit might be brought for rent due at the time of the passing of Act X of 1859, must be reckoned from 29th April 1859 (the date of the passing of the Act), and not from 1st August 1859 (the date on which the Act came into operation). LACHMIPAT SING *v.* MAHOMED MOONEER . . B. L. R., Sup. Vol., 32
[W. R., F. B., 32

——— s. 77—

See STATUTES, CONSTRUCTION OF. [3 N. W., 51
Agra F. B., Ed. 1874, 243

——— XI—

See CASES UNDER SALE FOR ARREARS OF REVENUE.

——— s. 5.—Manager of estate under attachment.—*Sale for arrears of revenue.—Portion of estate.*—Act XI of 1859 is, to a great extent, a remedial Act, passed for the benefit of the subject, and in order to relax the stringency of former Statutes, whereby the Crown was empowered to sell estates for non-payment of revenue. Section 5 of the said Act applies to estates which are under attachment issued

ACT—1859—XI, s. 5.—Manager of estate under attachment—*continued.*

under Act VIII of 1859, and which are in the hands of a manager appointed on the application of the judgment-debtor for the purpose of liquidating the debts. Such attachments are not superseded by the appointment of such manager. The words "arrears of estates under attachment" apply to cases where a portion only of an estate is under attachment, as well as to cases in which the whole estate has been attached. BUNWARI LALL SAHU *v.* MOHABIR PERSAD SINGH . . . . . **12 B. L. R., 297**
[S. C. L. R., 1 I. A., 89

Affirming on appeal the decision of High Court. MOHABER PERSAUD SINGH *v.* COLLECTOR OF TIRHOOT . . . . . **13 W. R., 423**

——— **ss. 5 & 6.—Notification of sale, specification of.**—*"Estate," Meaning of.*—Under section 6 of Act XI of 1859, it is not necessary that a notification should specify the owners of an estate or the owners of shares in the estate. *Secretary of State, &c.,* v. *Rashbehary Mookerjee, I. L. R., 9 Calc., 591,* followed. All that is necessary under that section is that the notification should specify the estate or shares in the estate to be sold, and in selling a share in an estate it is unnecessary to specify the shares or mouzahs of which that share is composed. The word "estate," as there used, ordinarily means "mehal;" but the term also applies to a portion of a mehal with regard to which a separate account has been opened, but not to an undivided portion of a mehal as to which separate accounts are not kept. RAM NARAIN KOER *v.* MAHABIR PERSHAD SINGH **[I. L. R., 13 Calc., 208**

——— **s. 9—**

See CONTRACT ACT, ss. 69 & 70.
[I. L. R., 12 Calc., 213

——— **ss. 10 & 11—**

See CO-SHARERS—SUITS WITH RESPECT TO JOINT PROPERTY—POSSESSION, SUIT FOR . . . . . **21 W. R., 38**

See SALE FOR ARREARS OF REVENUE—INCUMBRANCES . **1 W. R., 27**

——— **s. 31—**

See SALE FOR ARREARS OF REVENUE—PURCHASERS, RIGHT OF.
[I. L. R., 11 Calc., 359

——— **s. 33—**

See LIMITATION ACT, 1877, ART. 95 (1871, ART. 95) **I. L. R., 3 Calc., 300**

——— **Suit for damages.**—Section 33, Act XI of 1859, contemplates an action against the individual wrong-doer, irrespective of Government and co-parceners. GUNGA NARAIN BOSE *v.* CORNELL **[10 W. R., 442**

——— **Receipt of sale-proceeds.** The receipt by a decree-holder of a portion of the

ACT—1859 XI, s. 33—Receipt of sale-proceeds—*continued.*

surplus sale-proceeds lying in deposit in a Collector's Court without opposition on the part of the judgment-debtor is not such a receipt as is contemplated by section 33, Act XI of 1859. MOHABEER PERSHAD SINGH *v.* COLLECTOR OF TIRHOOT
[13 W. R., 423

——— **s. 36—**

See BENAMI TRANSACTION—CERTIFIED PURCHASER . **I. L. R., 12 Calc., 302**
[11 W. R., 382
5 W. R., 56

——— **s. 37—**

See ENHANCEMENT OF RENT—EXEMPTION FROM ENHANCEMENT BY UNIFORM PAYMENT OF RENT
[I. L. R., 4 Calc., 793

See GHATWALI TENURE.
[B. L. R., Sup. Vol., 559

See CASES UNDER SALE FOR ARREARS OF REVENUE—PROTECTED TENURES.

——— **"Settlement."**—In Act XI of 1859, section 37, the word "Settlement" refers not to the permanent settlement but to the settlement which took place after resumption by Government of the lands previously held as lakhiraj. RAJ CHUNDER CHOWDHRY *v.* BUSHEER MAHOMED . **24 W. R., 476**

——— **s. 39—**

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—REGISTERS
[I. L. R., 9 Calc., 116

——— **s. 53—**

See SALE FOR ARREARS OF REVENUE—INCUMBRANCES
[I. L. R., 4 Calc., 607

ACT—1859—XIII—

See COMPENSATION—CRIMINAL CASES—DISMISSAL OF COMPLAINT.
[4 Mad., Ap. 68

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—CRIMINAL BREACH OF CONTRACT . **I. L. R., 7 Mad., 354**

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—MADRAS ACT III OF 1865
[4 Mad., Ap. 64

——— **s. 2—**

See CONVICTION . . **4 Bom., Cr., 27**

See SENTENCE—IMPRISONMENT
6 Mad., Ap. 24
4 Bom., Cr., 37

1. ——— **Bricklayer.**—*Workman—Contractor, Liability of.*—A person whose ordinary business was that of a contracting bricklayer and who did

ACT—1859—XIII—Bricklayer—*continued*—

not himself work, received an advance, contracted to get certain earth-work done on a race-course and committed a breach of contract. *Held*, that he was not an artificer, workman, or labourer within the meaning of Act XIII of 1859. GILBY *v* SABHU PILLAI [I. L. R., 7 Mad., 100

2. ——— **Butcher.**—*Supplying skins by contract.*—A butcher contracting to supply skins is not within Act XIII of 1859. ANONYMOUS [7 Mad., Ap. 13

3. ——— **Coolies.**—*Contract for coolies to work for specified time, Breach of.*—Where a contract was made by the defendant that a number of coolies should be brought by him to an estate, and remain at work on the estate for a specified time, and there had been a breach of the contract,—*Held*, that the case was within section 2 of Act XIII of 1859. ANONYMOUS . . . . 3 Mad., Ap. 25

4. ——— *Advances to coolies in Assam.*—Coolies in Assam who have received advances in contemplation of work to be done may be proceeded against under Act XIII of 1859. QUEEN *v.* GAUB GORAH . . . . 8 W. R., Cr., 6

5. ——— **Mahout or elephant driver.**—A mahout or elephant driver does not come within the provisions of Act XIII of 1859. MUNI CHUNDRA *v.* HARIRAM AHOM . . . 8 C. L. R., 254

6. ——— **Sub-contractor.**—*Liability for breach of contract for work undertaken upon an advance.—Workman.*—The petitioner, who as sub-contractor had engaged to do certain work for which he was paid an advance, but did not himself work, was convicted by a Magistrate, under section 2 of Act XIII of 1859, of the offence of breach of contract, and sentenced to undergo one month's imprisonment in default of his failure to fulfil the contract. *Held*, that he was not an artificer, workman, or labourer within the meaning of section 2 of Act XIII of 1859. The conviction and sentence were accordingly set aside. IN RE THE PETITION OF BÁLKRISHNA SHÁLIGRAM . . . . I. L. R., 10 Bom., 96

7. ——— **Domestic servants.**—*Artificers.—Workmen.—Labourers.*—Act XIII of 1859 does not apply to contracts for a "chakri," domestic or personal service, but to contracts to serve as artificer, workman, or labourer. IN THE MATTER OF DOMESTIC SERVANTS . . 2 B. L. R., A. Cr., 32

S. C. QUEEN *v.* SOOBHOI . 12 W. R. Cr., 26

8. ——— *Breach of contract to supply wood.*—A breach of contract to supply wood does not fall within the purview of Act XIII of 1859. IN THE CASE OF THE UPPER ASSAM TEA COMPANY *v.* THOPOOR . . . . . 4 B. L. R., Ap. 1

9. ——— **Service for agricultural and other purposes.**—*Breach of contract by artificers, workmen, and labourers.*—Act XIII of 1859

ACT—1859—XIII—Service for agricultural and other purposes—*continued.*

(to provide for the punishment of breaches of contract by artificers, workmen, and labourers in certain cases extended to all the collectorates of the Bombay Presidency by notification of the Government of Bombay dated 10th of May 1860) does not apply to a contract whereby a person, in consideration of receiving R45, bound himself to another to render service for "agricultural and other purposes" for the period of one year. EMPRESS *v.* BHAGABAN BHIVSAN [I. L. R., 7 Bom., 379

10. ——— **Labourer in silk factory.**—*Breach of contract by labourer.*—Where a labourer contracted with the manager of a silk factory for a money-consideration to work at the factory for four months in a year for a period of three years, and broke the terms of his contract, he was held liable to a prosecution under Act XIII of 1859, and the order of the Magistrate holding that such a contract was an unreasonable one, and therefore one which ought not to be enforced by him, was set aside. KOONJOBEHARRY LALL *v.* DOOMNEY. KOONJOBEHARRY LALL *v.* RUGHOONATH DOME . 14 W. R., Cr., 29

See LYALL & CO. *v.* RAM CHUNDER BAGDEE [18 W. R., Cr., 53

11. ——— **Non-specification of nature and extent of work.**—*Contract to supply labourers and get labour performed.*—A contract to supply labourers and to get labour performed by them, even though the nature and extent of the work are not clearly specified, falls within the provisions of Act XIII of 1859. ROWSON *v.* HANAMA MESTRI [I. L. R., 1. Mad., 280

12. ——— **Advance to labourer.**—*Breach of contract.*—Act XIII of 1859 relates to fraudulent breaches of contract, and does not apply where an advance has not only been worked off by a labourer, but an actual balance is due to him. TARADOSS BHUTTACHARJEE *v.* BHALOO SHEIKH [8 W. R., Cr. 69

13. ——— *Contract to supply labourers.*—A contract, in consideration of an advance of money to supply labourers to do certain work on an estate, falls within the scope of Act XIII of 1859, and the fact that such contract contains covenants to pay penalties in default of supplying the labourers, and to repay the advance, if necessary, by personal labour for five years, does not take the contract out of the operation of the Act, so as to make illegal an order directing the contractor to be imprisoned for failure to comply with an order to repay the advance. RÁMÁSÁMI *v.* KANDASÁMI [I. L. R., 8 Mad., 379

14. ——— *Contract to work until repayment of advance made.*—Defendant in consideration of an advance of money received from complainant bound himself to work for complainant until the repayment of the sum advanced. For breach of this contract the complainant proceeded against the defendant under Act XIII of 1859. *Held*, that the contract was not within the Act. ANONYMOUS [7 Mad., Ap. 31

ACT—1859—XIII—Advance to labourer—*continued.*

15. ——————— *Loan.—Deduction from wages.*—Having agreed to work for wages in a tannery and received R10 from *M.*, his employer, *T.* promised to work off the advance by allowing *M.* to deduct 8 annas a week from his weekly wages—*Held*, that the provisions of Act XIII of 1859 were applicable to this contract. QUEEN *v.* TALUKANAM **[I. L. R., 7 Mad., 131**

16. ——————— *Gold and silver given to workman.*—On the construction of section 2 of Act XIII of 1859,—*Held*, that gold and silver money given to an artificer as raw material wherewith to make the article contracted for, is an "advance of money" within the meaning of the section. ANONYMOUS . . . . **6 Mad., Ap. 24**

17. ——— **Advance of grain and money.**—*Order to repay value of work not performed.* An advance of money and grain having been made to a labourer for work to be done, the labourer failed to complete the work, and an order was passed by a Magistrate, under section 2 of Act XIII of 1859, directing repayment of the balance of the advance not worked off by the labourer. *Held* that, as it was not proved that the labourer was offered and accepted the grain in lieu of money to be advanced, the order was illegal. KONDADU *v.* RÁMUDU **[I. L. R., 8 Mad., 294**

18. ——— **Working off previous debts.**—*Breach of contract of service.—Labourer.*—A labourer agreed to serve in consideration of money due from him on account of previous debts. He served for three months only, and then quitted service in violation of the agreement. He was prosecuted and convicted of breach of contract of service under Act XIII of 1859. *Held*, that he was not liable to be dealt with criminally, because there was no fraudulent breach of contract within the meaning of Act XIII of 1859, and because, further, no money in advance was received, the consideration for the agreement to serve being an old debt. REG. *v.* JETHYA VALAD VESTYA . . . **9 Bom., 171**

19. ——— **Advance in consideration of exclusive services until repayment.**—*Masters and workmen.—Breach of contract on the part of workmen.—"Station."*—An employer of workmen residing and carrying on business in the city of Mirzapur, alleging that he had advanced money to certain workmen on the understanding that they would work for him and no one else until they had repaid such money, and that they had broken such contract by leaving his employment, made a complaint against such workmen under Act XIII of 1859, which had been extended to the "station" of Mirzapur by the Local Government. It appeared that such money was advanced by way of loan, and without any reference to the wages of such workmen or the payment for the work performed by them, and that no deduction on account of such advance was ever made from their wages or the payments made to them. *Held*, that the contract between the parties was something quite

ACT—1859—XIII—Advance in consideration of exclusive services until repayment—*continued.*

different from any contract contemplated by Act XIII of 1859, and that Act was therefore not applicable. *Held* also, that it was doubtful whether that Act applied locally, as it was not shown that the city of Mirzapur was comprised within the "station" of Mirzapur. IN THE MATTER OF THE PETITION OF RAM PRASAD *v.* DIRGPAL . **I. L. R., 3 All., 744**

20. ——— **Enquiry under Act.**—*Breach of contract by artificer.*—The enquiry to be made under section 2 of Act XIII of 1859 is not an enquiry into an offence which may be tried summarily. POLLARD *v.* MOTHIAL . **I. L. R., 4 Mad., 234**

21. ——— **Imprisonment.**—*Criminal breach of contract.—Procedure.—Imprisonment.*—Where an order has been made by a Magistrate under Act XIII of 1859, section 2, for the fulfilment of a labour contract, a sentence of imprisonment for disobeying such order without complaint made, and without taking statements from the accused, is illegal, although the accused, before the order was made, may have stated their inability to perform the work stipulated for. SRINIVASA *v.* PONNAMBALAM **[I. L. R., 5 Mad., 376**

22. ——————— *Order of Magistrate for imprisonment for breach of contract.—Right of civil suit.*—The imprisonment of a defendant by order of the Magistrate under Act XIII of 1859 does not preclude the plaintiff from proceeding by civil suit for recovery of money advanced to the defendant for the performance of work. VERNEDE *v.* ABDUL GIRI CHINNA SWÁMI . **2 Mad., 427**

——— **XIV—**

See LIMITATION ACT, 1859.

——— **XV—**

See CASES UNDER PATENTS.

——— **s. 22—**

See LIMITATION ACT, 1871, ART. 11. **[I. L. R., 3 Calc., 17**

See TRANSFER OF CIVIL CASE. **[I. L. R., 5 All., 371**

——— **XXIV—**

See MADRAS POLICE ACT.

——— **s. 48—**

See JURISDICTION OF CRIMINAL COURT—EUROPEAN BRITISH SUBJECTS. **[5 Mad., Ap. 25**

See SENTENCE—IMPRISONMENT. **[5 Mad., Ap. 35**
3 Mad., Ap. 9
4 Mad., Ap. 54
7 Mad., Ap. 22

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See ESTOPPEL—ESTOPPEL BY CONDUCT. [5 Mad., 466

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See APPEAL—CERTIFICATION OF ADMINISTRATION . 1 Ind. Jur., N. S., 365
[7 Bom., A. C., 71
2 N. W., 146
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13 W. R., 395
17 W. R., 566
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See CASES UNDER CERTIFICATE OF ADMINISTRATION.

See LETTERS OF ADMINISTRATION. [Bourke Test, 6

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—DECISION OF MAGISTRATE AS TO POSSESSION— [2 B. L. R., A. Cr., 27

See PROBATE—POWER TO GRANT AND FORM OF . . Bourke Test, 3

See REVIEW—ORDERS SUBJECT TO REVIEW . I. L. R., 1 Calc., 101
[5 Mad., 417
I. L. R., 1 All., 287

See RIGHT OF SUIT—SUITS TO ANNUL CERTIFICATE OF ADMINISTRATION. [5 Mad., 283

See SUCCESSION ACT, s. 331. [7 Mad., 121

See WILL—CONSTRUCTION [I. L. R., 2 Calc., 45

——XXVIII—BOUNDARY ACT, MADRAS.

1 ——— s. 25.—Power of Government to extend time for appeal.—The proviso contained in section 25 of Act XXVIII of 1860 gives a discretionary power to the Government of extending the time for appeal by suit at all times even *after* the expiry of the period limited. KRISHNAREDDI GOVINDAREDDI *v.* STUART . I. L. R., 1 Mad., 192

2. ——— A suit by way of appeal against a decision of a Revenue Survey officer in 1876, under section 25 of the Madras Boundary Act, 1860, was dismissed on second appeal in 1881 by the High Court, on the ground that it was barred by limitation, inasmuch as the suit was instituted one day after the time prescribed by the said Act. The plaintiffs thereupon applied to the Governor in Council, under section 25 of the said Act, to extend the period so as to allow the plaintiffs to bring a second suit. This application was granted and the plaintiffs brought a second suit against the decision of the

ACT—1860—XXVIII, s. 25—Power of Government to extend time for appeal—*continued.*

Revenue Survey officer. *Held,* that the order of the Governor in Council was not *ultra vires,* and that the second suit was not barred. VENKATRÂMANA *v.* THIR SINGH . . . I. L. R., 7 Mad., 280

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See ARMS ACT.

——XXXII—

See INCOME TAX ACT, 1860.

See RIGHT OF SUIT—SUIT FOR REFUND OF INCOME TAX . 14 W. R., 276
[11 W. R., 425

——XXXVI—

See STAMP ACT XXXVI OF 1860.

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See SPECIAL APPEAL—SMALL CAUSE COURT SUITS . 12 B. L. R., 224, 261
[6 W. R., 7
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See SUPERINTENDENCE OF HIGH COURT—CHARTER ACT, s. 15—EXECUTIVE ORDER. [10 B. L. R., Ap. 4

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See CUSTODY OF CHILDREN.
[10 B. L. R., 125
14 Moore's I. A., 309, 17 W. R., 77

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7 W. R., 321
3 W. R., Ref. Rep., 5
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[10 W. R., 283

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See CASES UNDER LIMITATION ACT, 1859, OPERATION OF.

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——1862—IV, s. 10—

See BANK OF BENGAL.
7 B. L. R., 653 : 16 W. R., 203

——VIII, s. 4—

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[3 B. L. R., A. C., 126, 235
5 B. L. R., Ap. 10
7 B. L. R., 653
I. L. R., 5 Bom., 621
2 Mad., 321
3 Mad., 71

——XV, s. 1—

See SENTENCE—COMMUTATION OF SENTENCE . B. L. R., Sup. Vol., 869

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[1 Bom., 100

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[I. L. R., 2 Calc., 225
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See JURISDICTION OF CRIMINAL COURT—OFFENCE COMMITTED DURING JOURNEY . . . . . 1 Mad., 193

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[1 B. L. R., O. Cr., 1, 15
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[1 Ind. Jur., O. S., 94

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[2 Agra, 239

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[1 N. W., Pt. 13, p. 211., Ed. 1873, 264
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2 N. W., 33
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See PARTIES—PARTIES TO SUITS—CO-SHARERS . . . 2 Agra, 299

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[4 N. W., 165

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[2 N. W., 244, 261
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[2 W. R., 241

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[4 N. W., 7, 169
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See PARTITION—MISCELLANEOUS CASES.
[3 Agra, 298
1 N. W., 81, Ed. 1873, 134

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See RES JUDICATA—DECISIONS OF REVENUE COURTS . I. L. R., 2 All., 294

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See PARTITION—FORM OF PARTITION. [2 N. W., 26

——— s. 47—

See PARTITION—RIGHT TO PARTITION—GENERAL CASES . . 2 Agra, 272

——— s. 53—

See JURISDICTION OF CIVIL COURT—REVENUE COURTS—PARTITION, N.-W. P. [7 N. W., 346

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See APPEAL . W. R., 1864, Mis., 25; [4 N. W., 3; 3 Mad., 93; I. L. R., 4 Mad., 295; 21 W. R., 368

See JURISDICTION OF CRIMINAL COURT—GENERALLY . I. L. R., 1 Mad., 55

See RIGHT OF SUIT—SUITS RELATING TO CHARITIES . I. L. R., 11 Calc., 33; [I. L. R., 8 All., 31

See SUPERINTENDENCE OF HIGH COURT—CHARTER ACT, s. 15 . 18 W. R., 396

1. ——— **Suit for declaration of trusts of a temple.**—In bringing a suit under Act XX of 1863 it is not necessary to show that the temple was one which was formerly under control of the Board of Revenue. The Act applies to property in Calcutta. GANES SING *v.* RAMGOPAL SING [5. B. L. R., Ap. 55

2. ——— **Suit to establish right to share in management of temple.**—The suits referred to in Act XX of 1863, as needing the authority of the Court for their jurisdiction, are solely suits charging trustees, managers, or committees with misfeasance, malversation of the temple property, or neglect of duty. There is nothing in the Act to oust the jurisdiction of the ordinary Courts over suits to establish a right to share in the management. AGRI SARMA EMBRANDRI *v.* VISTNU EMBRANDRI and JANADHANA EMBRANDRI *v.* PALABUL KASAVA EMBRANDRI . . 3 Mad., 198

3. ——— **Right of person interested to sue for misfeasance by managers, &c.**—*Public Endowment.*—In the case of a public endowment transferred to trustees, managers, or superintendents of such lands under Act XX of 1863, any person or persons interested (and the interest need not be a

ACT—1863—XX—Right of person interested to sue for misfeasance by managers, &c.—*continued.*

pecuniary one) in the religious establishment, in its worship or service, or in its trusts, has a right of suit, after leave obtained from a Civil Court against such trustees, &c., for misfeasance, or breach of trust, or neglect of duty. KUNEEZ FATIMA *v.* SAHEBA JAN [8 W. R., 313

4. ——— **Suit for removal of mohunt and appointment of another.**—A suit for the removal of the present mohunt of a religious endowment and for the appointment of the petitioner in his place, is not of such a nature as is contemplated by Act XX of 1863. KISHORE BON MOHUNT *v.* KALEE CHURN GIREE . . 22 W. R., 364

5. ——— **Suit to compel heir of manager to make good deficiency.**—*Leave of Court.*—Act XX of 1863 does not apply to a suit brought by the *dharmakarta* of a temple and one of its worshippers to compel the defendant, as heir of the late manager, to make good, out of the property inherited by him, the deficiency in the *devasthanam* funds caused by breach of trust and misappropriation by the late manager. The leave of the Civil Court for the institution of such a suit is not necessary, and the suit is maintainable. The right of instituting such suits is not a privilege accorded by Act XX of 1863, but a pre-existing right. JEYANGARULAVARU *v.* DURMA DOSSJI . . 4 Mad., 2

6. ——— **Suit to eject Dharmakarta or agents from temple.**—*Right of Government to divest itself of power of interfering with appointment.—Madras Reg. VII of 1817.*—Plaintiffs, members of the committee appointed under Act XX of 1863, sued to eject defendants (the *dharmakarta* and his agents) from the possession and management of the temple dedicated to Sri Viraragava Swami at Trivellore and to establish their (plaintiffs') right to the possession and control of the said temple. Defendants denied the right of the plaintiffs to exercise any control whatever over the temple. This right depended upon whether, at the period of the passing of Act XX of 1863, the nomination vested in, was exercised by, or was subject to the confirmation of, the Government, or any public officer. It was admitted that, in 1842, the Board of Revenue did, so far as it could, divest itself of all right to interfere with the appointment of *dharmakarta,* but it was contended for the plaintiffs that it was not in the power of the Board of Revenue so to divest itself of the duties imposed upon it by Regulation VII of 1817. *Held* that, assuming the Board of Revenue to have had such a right, there was nothing in Regulation VII of 1817 to prevent them from renouncing that right if they chose. VENKATESA NAYADU *v.* SHAGATOPA SHRI SHAGATOPA SWAMI [7 Mad., 77

7. ——— **Jurisdiction.**—*Clause in deed of endowment excluding jurisdiction.*—The jurisdiction given to Courts by Act XX of 1863 cannot be excluded by any clause in a deed of endowment. IMDAD HOSSEIN *v.* MAHOMED ALI KHAN [23 W. R., 150

ACT—1863—XX—*continued.*

1. ——— s. 3. **Power of committee appointed under the Act.**—A committee, appointed under Act XX of 1863, has power to dismiss the trustees or superintendents of temples described in section 3 of the Act, without having recourse to a civil suit; but such power can only be exercised on good and sufficient grounds. CHINNA RANGAIYANGAR *v.* SUBRAYA MUDALI . . . **3 Mad., 334**

2. ——— **Removal by Committee of Superintendent of Pagoda.**—*Ground for removal.*—Where there were not good and sufficient grounds for the removal from office of the defendants, superintendents of a pagoda, within section 3 of Act XX of 1863, by the committee appointed under that Act, the High Court confirmed the decree of the Civil Judge dismissing a suit brought by the plaintiffs, who had been appointed by the committee as superintendents in place of the defendants, for the recovery of the pagoda, and the property belonging to it. CHINNA RANGAIYANGAR *v.* SUBRAYA MUDALI . . . . . **3 Mad., 338**

3. ——— **Committee, Suit by, to enforce right of control.**—The committee of a district duly appointed under Act XX of 1863 are entitled to maintain a suit in a Civil Court without having obtained the leave of the Court to bring the suit, as well when the object of the suit is to establish their right of control under section 3 of the Act, as when it is sought to enforce such control against the officers of the temple subordinate to them. VENKATASA NAIDU *v.* SADAGOPASMA IYER **[4 Mad., 404**

1. ——— s. 4.—**Power of committee to call for accounts from trustees of temple.**—A District Committee appointed under Act XX of 1863 has no right to call for accounts from trustees of temples which are within section 4 of the Act. VENKATABALA KRISHNA CHETTIYAR *v.* KALIYANARAMAIYANGAR . . . . **5 Mad., 48**

RAMIENGAR *alias* RAMANUGA CHARIYAR *v.* GUANASAMBANDA PANDARASANNADA **[5 Mad., 53**

2. ——— **Right to restoration of endowment of which plaintiff had been deprived under Mad. Reg. VII of 1817.**—The plaintiff, claiming to be the owner of a *muth* and certain land attached to it under a grant from the Rajah of Tanjore, from the possession of which he had been ejected by the Collector of Tanjore in 1856 on charges of breach of trust and other misconduct, sued to recover the possession of the lands and mesne profits. The Civil Judge found that the grant was for the performance of religious ceremonies and pious observances only, and that the plaintiff had led a vicious life and been guilty of malversation in his office, and, being of opinion that the plaintiff had been properly deprived of the lands belonging to the *muth*, under Madras Regulation VII of 1817, dismissed the suit. *Held*, that under section 4 of Act XX of 1863 the plaintiff became entitled on the passing of the Act to the restoration of the endowment. JUSAGHERI GOSAMIKE *v.* COLLECTOR OF TANJORE . . . **5 Mad., 334**

ACT—1863—XX, s. 4 *—continued.*

3. ———**Right to control affairs of temple.**—*Transfer of property.—Form of order.—Right of suit.*—In 1849, the Board of Revenue, acting under Bengal Regulation XIX of 1810, interfered in the management of the affairs of a temple. In a suit relating to the affairs of the temple instituted in 1878, it did not appear whether any transfer of property had been made under section 4 of Act XX of 1863, but it did appear that, in 1865, the Judge of Patna had appointed a manager of the temple. *Held*, that the right of the Government officers to control the affairs of the temple had been sufficiently proved. DHUREUM SING *v.* KISHEN SINGH **[I. L. R., 7 Calc., 767: 9 C. L. R., 410**

——— ss. 4 and 5.—**Power to appoint trustees on vacancy in office.**—*Malabar Devasams.—Jurisdiction of District Courts.*—The District Courts have no power to appoint trustees under section 5 of Act XX of 1863 upon a vacancy occurring in the office of trustee, unless property has been actually transferred to the former trustee under the provisions of section 4. ITTUNI PANIKKAR *v.* IRANI NAMBÚDRIPÁD . . **[I. L. R., 3 Mad., 401**

——— s. 7.—**Power of appointment in committee.**—The defendant was sued as the trustee of a pagoda to recover a certain sum of money for which he had not accounted. The defendant was dismissed by three members of the district committee, which consisted of six members, the other three members refusing to sign the order of dismissal. The plaintiffs were appointed trustees in place of the defendant by the members who dismissed the defendant. *Held*, that the appointment of the plaintiffs was invalid under section 7, Act XX of 1863, and that they were not entitled to sue the defendant. PANDURUNGY ANNACHARIYAR *v.* IYATHORY MUDALY **[4 Mad., 443**

——— s. 8.—**Resignation of member of a committee of Temple.**—A member of a committee of a temple, appointed under section 8 of Act XX of 1863, can retire from his office of his own will. TIRUVENGADA *v.* RANGAYYANGAR and GOPAL RAM *v.* RANGAYYANGAR **[I. L. R., 6 Mad., 114**

1. ——— s. 14.—**Suit for wrongful dismissal from Temple by officer.**—A suit by an officer of a mosque, temple, or religious establishment, for wrongful dismissal from his office is not a suit for misfeasance within the meaning of section 14, Act XX of 1863. AMIN SAHIB *v.* IBRAM SAHIB **[4 Mad., 112**

2. ——— ——— **Right to sue for removal of trustees.**—*Religious endowment.*—Section 14 of Act XX of 1863 is sufficiently general in its terms to empower any person interested in any temple, mosque, or religious endowment, or in the performance of the trusts relating thereto, to sue the trustee, manager, or superintendent, or the member of a committee appointed under the Act, for misfeasance, and also to empower the Court to order the removal

ACT -1863 XX, s. 14—Right to sue for removal of trustees—*continued.*

of a trustee, &c. The tomb of a reputed saint became a place of pilgrimage and an endowment was made for the maintenance of the shrine and for the performances of certain religious ceremonies. There was a practice on the part of the proprietors and the managers of the institution to divide among themselves the residue of the income, and to dispose by way of sale or mortgage of the share enjoyed by them. *Held*, that this was a religious institution within the meaning of Act XX of 1863. The 14th section of the Act empowers the Civil Court to remove trustees for misfeasance, &c., and it does not recognize any difference in respect of trustees whether hereditary or selected. FAKURUDIN SAHIB *v.* ACKENI SAHIB . . . **I. L. R., 2 Mad., 197**

3. ——————— **Suit to restrain manager from allowing property to be removed.**—*Form of order.—Injunction—Civil Procedure Code, 1877, s. 30.*—Section 14 of Act XX of 1863 is generally applicable to all religious endowments, and while it in one sense restrains the ordinary Courts from dealing with cases against trustees of religious endowments, it gives special facilities for suits in the principal Civil Court of the district by any of the persons interested in these endowments. *Quære,*—Whether, considering the provisions of section 30 of the Civil Procedure Code, the retention of section 14 of Act XX of 1863 is at all necessary? An order under section 14, Act XX of 1863 should be mandatory, and not prohibitory. Where a sacred book was kept at a temple, and was an object of veneration to the members of the sect entitled to worship there,—*Held*, that a suit would lie under section 14 of Act XX of 1863, by some of the persons interested in the temple, to restrain the superintendent from removing the book to another place, and that he should be directed to retain it as a portion of the furniture of the temple. DHURRUM SINGH *v.* KISHEN SINGH **[I. L. R., 7, Calc., 767: 9 C. L. R., 410**

4. ——————— **Trustee of Temple, Qualifications of.**—*Duty of Committee—Misfeasance.*—Act XX of 1863 does not require that a person appointed by a committee to be a trustee of a temple should be of any particular sect, and although it may be desirable that the trustee of a temple should be of the sect to which the temple belongs, the appointment of a Sivite to be trustee of a Vishnuvite temple does not amount to an act of misfeasance, neglect, or breach of trust on the part of the committee within the meaning of section 14 of the Act. GANDAVATHARA AYYANGAR *v* DEVANAYAGA MUDALI **[I. L. R., 7, Mad., 222**

5. ——————— **Jurisdiction of Civil Court.**—*Endowment.—Religious endowments, Application of Act to.*—Act XX of 1863 only applies to certain religious trusts and endowments which had been or might come to be under the management of the Government; and section 14 of that Act, although in its terms it appears to be more general than the earlier sections, applies in fact only to the same religious endowments to which the rest of the Act applies. *Panch Cowrie Mull* v. *Chunnoo Lall, I. L. R., 3 Calc., 563: 2 C. L. R., 121,* cited and followed (*see* under Endowment). KALI CHURN GIRI *v.* GOLABI . . . . . **2 C. L. R., 128**

6. ——————— *Suit to recover land on behalf of temple.*—The provisions of section 14 of Act XX of 1863 (*Religious Endowments Act*) do not oust the jurisdiction of the ordinary Courts except in the cases specified therein. A suit for recovery of immoveable property on behalf of a temple, alleging, by way of misfeasance and breach of trust, that the defendants (the managers of the temple) had forged documents and usurped temple property, without any prayer for the removal of the managers, or for damages, or for a decree for specific performance of any act by the managers, is not a suit for which a special jurisdiction is provided by the Act. MAHALINGA RAU *v.* VENCOBA GHOSAMI **I. L. R., 4 Mad., 157**

7. ——————— **Trustee, manager, or superintendent of mosque.**—*Application of Act.*—The words "trustee, manager, or superintendent of a mosque," &c., mentioned in Act XX of 1863, mean the trustee, manager, or superintendent of a mosque, &c., to which the provisions of the Act are applicable, not the trustee, &c., of *any* mosque. And such persons are those to whom the provisions of Regulation XIX of 1810 were applicable. The mosques, &c., to which the provisions of that Regulation were applicable, were mosques for the support of which endowments had been granted in land by the Government of the country or by individuals; and the mosques, &c., to which the provisions of Act XX of 1863 apply are, not *any* mosques, &c., but any mosques for the support of which endowments in land have been made by the Government or private individuals. JAN ALI *v.* RAM NATH MUNDUL. **[I. L. R., 8 Calc., 32 9 C. L. R., 433**

8. ——————— **Suit by committee against manager for misappropriation.**—*Jurisdiction of Civil Court.—Leave to sue.*—A committee appointed under Act XX of 1863 may, without leave of the Court previously obtained, sue their manager, or superintendent, for damages for misappropriation, and for an injunction. The provisions of Act XX of 1863, section 14, do not apply to such suits by the committee themselves. PUDDOLABH ROY *v.* RAMGOPAL CHATTERJEE . **I. L. R., 9 Calc., 133 11 C. L. R., 333**

9. ——————— **Suit against dismissed trustee to recover temple property.**—A suit by the trustees to recover the property of a temple from an ex-trustee who has been properly dismissed from his office by the temple committee is not governed by section 14 of Act XX of 1863. VERASAMI NAYADU *v.* SUBBA RAM . . **I. L. R., 6 Mad., 54**

10. ——————— **s. 14 and s. 15.—Suit to carry out endowment.**—In a suit by the *mutwalli* of a large Mahomedan establishment, acting on behalf of

ACT—1863—XX, ss. 14 & 15.—Suit to carry out endowment—*continued.*

the Mahomedans of the neigabourhood, to secure the performance of trusts of a deed of appropriation by a Mahomedan, the plaintiff was held, with reference to the words of section 14 and 15, Act XX of 1863, to be a person interested in the preservation of the trust, and a proper person to bring the suit. He was not required under those sections to have any interest in the trust, direct or immediate, or any share in the management of the property. DOYAL CHUND MULLICK *v.* KERAMUT ALI . . **12 W. R., 382**

——— **s. 18.—**

See ENDOWMENT.

[I. L. R., 3 Calc., 563

1. ——— **Leave to sue.**—*Public and private endowments.—Reg. XIX of 1810—Jurisdiction of Civil Court.—Suit to remove Mutwalli.*—*A.*, a Mahomedan lady, executed a *wakfnama* purporting to dedicate the whole of her property to an *imambara* in her house, for the purpose of perpetuating various Shiah ceremonies. By the *wakfnama* she constituted herself joint-mutwalli with one *B.*, and caused the names of herself and *B.* as mutwallis to be substituted in the Collector's register for her own name as owner. On the death of *B.*, *A.* acted as the sole mutwalli. The *wakfnama* was publicly registered. But though the property was styled "wakf," and *A.* the mutwalli thereof, in all documents connected with the estate, *A.* all along continued to deal with it as absolute proprietress, and the dedication, though made in 1852, was never under the control of the Board of Revenue or of local agents. In a suit, which the plaintiffs obtained leave to institute under section 18 of Act XX of 1863, to remove *A.* from the mutwallship, on the ground of misfeasance,—*Held*, the wakfnama did not constitute a public religious establishment within the meaning of Act XX of 1863, and that, therefore, the Judge below had no authority to give the plaintiffs, under section 18, leave to sue; and that his decision was consequently *ultra vires*. Section 18 of Act XX of 1863 applies only to such religious establishments as were under the control or superintendence of the Board of Revenue or of local agents under Regulation XIX of 1810, and were transferred to trustees or managers under section 4 of the Act. DELROOS BANOO BEGUM *v.* ASHGAR ALLY KHAN

[15 B. L. R., 167: 23 W. R., 453

Affirmed by the Privy Council. So far as it held that the endowment created by the document was not of such a public character as would sustain a suit under Act XX of 1863, not dissented from. ASHGAR ALI *v.* DELROOS BANOO BEGUM . **I. L. R., 3 Calc., 324**

2. ——— *Right of beneficiaries under deed of endowment.*—Act XX of 1863, while it empowers persons to sue whose right to sue, independently of the Act, may be doubtful, does not deprive persons claiming to be beneficiaries under a deed of endowment of the right to sue, which they have independently of the Act, nor does it impose on them the necessity of obtaining the sanction to institute the suit required by section 18 of the Act. KULAB HOSSEIN *v.* MEHRUM BEEBEE

[4 N. W., 155

ACT—1863—XX, s. 18—Leave to sue—*continued.*

3. ——— *Suit to have trusts of endowment carried out.*—An appropriator, who sues on the ground that the trust created, so far as it related to the appointment of mutwallis, had never been acted upon, and that the original rights of the appropriator remain, is at liberty to bring such a suit without leave of the Court, under section 18 of Act XX of 1863. HIDAITOONNISSA *v.* AFZUL HOSSEIN

[2 N. W., 420

4. ——— *Order of Civil Court as to title, Effect of.*—*Semble,*—That an order of the Civil Court, under section 18 of Act XX of 1863, refusing leave to institute a suit, and deciding that the temple was governed by a hereditary *dharmakarta*, and therefore within section 3 of the Act, was not conclusive upon the question of title between the parties. VENKATASA NAIKAR *v.* SRINIVASSA CHARIYAR. SRINIVASSA CHARIYAR *v.* VENKATASA NAIKAR . . . . . **4 Mad., 41**

5. ——— **Costs.**—*Suit for benefit of a trust.*—Where a suit under Act XX of 1863 is for the benefit of a trust, and no party to the suit is in fault,—*e.g.*, where the right to the succession is disputed, and it is necessary to secure the property,—the Court may order the costs to be paid out of the estate; but where a person is in fault, no such order ought to be made. SOOKRAM DOSS *v.* NUND KISHORE DOSS . . . . . **22 W. R., 21**

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[6 B. L. R., 196

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[6 B. L. R., 180

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[7 W. R., 508

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[3 B. L. R., A. C., 135

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[2 Ind. Jur., N. S., 340

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——*Criminal Procedure Code (Act XXV of 1861), s. 404—Distribution of fine.—Possession of opium.*—Upon the conviction of certain persons under section 20, Act XIII of 1867, for illicit possession of opium, the Magistrate sentenced them to payment of a fine, and directed that, upon the realisation thereof, one half should be paid to the Inspector of Police who had apprehended the prisoners, but refused to pay the other half in accordance with section 30 (for reasons set forth in his order) to the person who gave the information. On a reference by the Sessions Judge to the High Court,—*Held*, the High Court could not interfere under section 404 of the Code of Criminal Procedure. The distribution of the fine under section 30, Act XIII of 1867, formed no part of the Magistrate's judgment. QUEEN *v.* RAMDYAL SINGH . . 8 B. L. R., Ap. 7
[16 W. R., Cr., 65

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[6 B. L. R., Ap. 11, 12
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[6 N. W., 373

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1. —— **Certificate Tax.**—*Neglect to take out certificate.—Fine.*—The fine imposed under section 17, Act IX of 1868, for neglect to take out a certificate, must not be less than twice the amount for which such certificate should be taken out. QUEEN *v.* RAM GOBIND CHUCKERBUTTY. . . . 2 B. L. R., Ap. 40
[11 W. R., Cr., 13

2. —— **Complaint for neglecting to take out certificate.**—*Collector also Magistrate.*—Where it is sought to recover the penalty described in section 17, Act IX of 1868, from any person who omits to take out a certificate, the Collector who issued the notice should prefer a complaint before a Magistrate, and the Collector cannot prefer the complaint before himself in his capacity of Magistrate. ANONYMOUS . 4. Mad., Ap. 62

3. —— *Magistrate, Powers of.*—A Magistrate was held to have acted rightly in dismissing a complaint under section 17 of Act IX of 1868, because there was no evidence that the names of the accused were included in the list mentioned in section 17. In a prosecution under this Act, a Magistrate must proceed in the manner laid down in Chapter XV of the Code of Criminal Procedure, 1861, and must require proof of all the facts which go to constitute the offence. QUEEN *v.* KHETTRO MOHUN GHOSE
[11 W. R., Cr., 56

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[1 N. W., 117, Ed. 1873, 203
5 N. W., 108, Agra, F. B., Ed. 1873, 276
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See EXTRADITION ACT, 1879.

——— 1880 - XV, s. 3—

See GUARDIAN—APPOINTMENT OF GUARDIAN . . I. L. R., 5 Bom., 306

——— 1881—V—

See PRACTICE—TESTAMENTARY MATTERS. [I. L. R., 5 Bom., 638

See CASES UNDER PROBATE.

——— XII—

See NORTH-WESTERN PROVINCES RENT ACTS.

——— XXIII—

See DEKKHAN AGRICULTURISTS' RELIEF ACT, 1881.

——— XXVI—

See HUNDI . . I. L. R., 6 All., 78

See NEGOTIABLE INSTRUMENTS ACT, 1881.

——— 1882—IV—

See TRANSFER OF PROPERTY ACT.

——— V, ss. 60 and 61—

See WASTE LANDS . I. L. R., 8 All., 69

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See CASES UNDER COMPANY.

——— VIII—

See PENAL CODE.

——— XIV—

See CIVIL PROCEDURE CODE, 1882.

——— XV—

See SMALL CAUSE COURT, PRESIDENCY TOWNS.

——— XXII—

See DEKKHAN AGRICULTURISTS' RELIEF ACT, 1881 . I. L. R., 9 Bom., 320

——— 1884—III—

See EXTRADITION ACT. [I. L. R., 9 Bom., 333

See HIGH COURT, JURISDICTION OF—HIGH COURT, BOMBAY. [I .L. R., 9 Bom., 333

——— 1885—VIII—

See BENGAL RENT ACT, 1885.

ACTION IN REM—Owner indirectly impleaded.—*Towage Contract.—Vice-Admiralty.*—The *M. S.*, a steam tug, was hired to tow the barque *N.* down the Hughli, and in consequence of the negligence of the master of the tug whilst so employed, and of his wilful disobedience to the order of the pilot on board the *N.*, the latter ran foul of a sailing vessel, the *S. F.*, considerable damage being done to both sailing vessels. The *S. F.* took proceedings against the *N.* for the damage sustained, and an action *in rem* was brought (pending the proceedings taken by the *S. F.*) by the *N.* against the tug to recover damages, including any damages that the *N.* might have to pay to the owners of the *S. F.* The defence set up by the tug was, protection under its towage contract, which was to the effect that the proprietors of the tug should not be responsible under any circumstances for any loss or damage to any vessel whilst in tow of the tug, whether the same should have happened through the default of the master or other sailors, &c., of the tug, or through the incompetence or want of skill of the pilot in charge. The Court below held that the accident was due to the wilful disobedience of the master of the tug in not obeying the pilot on board the *N.*, and that such misconduct was a "default" within the meaning of the clause in the towage contract; but inasmuch as the action was one *in rem* and not against the proprietors, the clause was no answer to the suit. *Held on appeal*, that the clause was a sufficient answer; for that, although in every case of a proceeding *in rem* the suit is directly against the ship itself, still the owner of the ship must always be considered as indirectly impleaded. THE "MARY STUART" *v.* THE "NEVADA" [I. L. R., 10 Calc., 866

ACTS DONE IN EXERCISE OF SOVEREIGN POWERS.

See CASES UNDER ACT OF STATE.

See RIGHT OF SUIT—ACT DONE IN EXERCISE OF SOVEREIGN POWER
[I. L. R., 1 Calc., 11
I. L. R., 3 All., 829
I. L. R., 4 Mad., 344
I. L. R., 5 Mad., 273

ACTS DONE IN PUBLIC CAPACITY.

See COLLECTOR.
[I. L. R., 1 Bom., 318, 628

ACTS OF PARTIES AS EVIDENCE OF INTENTION.

See ESTOPPEL—ESTOPPEL BY CONDUCT.
[4 B. L. R., P. C., 16

ADDITION OF WORDS TO CONTRACT AFTER SIGNATURE.

See CASES UNDER CONTRACT—ALTERATION OF CONTRACT.

ADEN, COURT OF RESIDENT AT—

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[I. L. R., 10 Bom., 258

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—THEFT.
[I. L. R., 10 Bom., 258, 263

ADJOURNMENT.

See CIVIL PROCEDURE CODE, 1882, ss. 100, 101 (1859, s. 111).
[9 B. L. R., Ap. 15
18 W. R., 141

See CIVIL PROCEDURE CODE, 1882 s. 156.
[18 W. R., 325
24 W. R., 202

See PRACTICE—CIVIL CASES—ADJOURNMENT . . I. L. R., 7 Calc., 177

See WITNESS—CIVIL CASES—SUMMONING WITNESSES . I. L. R., 9 Bom., 308

ADJOURNMENT FOR CONVENIENCE OF COUNSEL.

See PRACTICE—CIVIL CASES—AFFIDAVITS.
[9 B. L. R., Ap. 10
10 B. L. R., Ap. 57

ADJOURNMENT FOR FINAL DISPOSAL, DISMISSAL OF SUIT AFTER—

See CASES UNDER CIVIL PROCEDURE CODE, 1882, s. 158.

ADJOURNMENT OF CRIMINAL TRIAL.

See PRACTICE—CRIMINAL CASES.
[6 Mad., Ap. 30

ADJUSTMENT OF CLAIMS.

See DEBTOR AND CREDITOR.
[2 B. L. R., P. C., 98

ADMINISTRATION.

See CASES UNDER CERTIFICATE OF ADMINISTRATION.

See LETTERS OF ADMINISTRATION.

——————— Suit for—

See SECURITY FOR COSTS—SUITS.
[10 B. L. R., Ap. 25

See HINDU LAW—PRESUMPTION OF DEATH . . I. L. R., 1 All., 53

See WILL—RENUNCIATION BY EXECUTOR.
[I. L. R., 4 Calc., 508

1. **——— Petition for administration summons.**—*Plaint.*—A petition for an administration summons may be ordered to be taken as a plaint, and as the foundation of an administration suit. IN THE MATTER OF THE ESTATE OF FENN. MACKINTOSH *v.* WILKINSON . 3 B. L. R., Ap. 3

2. **——— Suit for share of estate of deceased.**—*Recorder, Power of.*—Where one son of a deceased party sued in the Recorder's Court another son who had obtained a certificate under Act XXVII of 1860, for his share of the deceased's estate, it was held that the Recorder had no power to transform the suit into a general administration suit. OH LING TEE *v.* AWKINIFEE . . 10 W. R., 86

3. **——— Suit by creditor.**—*Misjoinder.—Multifariousness.—Practice.*—The principle of the rules that the creditor of a deceased person suing for administration is in the same situation with regard to all other persons as if he were bringing an action at law against the administrator, and that a debtor to the estate of a deceased person can only be made answerable as such debtor by the representative of the deceased's estate, is to be adhered to in this country, where there is a different procedure. Therefore, where, to a suit brought against the Administrator-General as administrator of the estate of one *W. B.* by a creditor of the deceased, other persons who also had a claim against the estate were made defendants, on the allegation that they had realized and were in possession of assets of the estate of the deceased,—*Held*, that there being nothing to show that such persons were in the position of an executor or administrator *de son tort*, or that they had been partners with the deceased, or that they could not be sued, if necessary, by the legal representative himself, and there being no other circumstances which would make it equitable that they should be sued jointly with the legal representative, they were wrongly made parties, and the suit ought to be dismissed as against them for misjoinder. Even assuming the facts were such that the plaintiff was entitled to sue them as legal representatives of the estate, he should not mix his own claim with that which the Administrator-General might have against them. DHUNRAJ *v.* BROUGHTON . . . 15 B. L. R., 296

ADMINISTRATION—*continued.*

4. ——— **Suit by creditor on behalf of all other creditors.**—*Legal personal representative.—Receiver, Suit by.*—Persons interested in the estate of a testator, not being the legal personal representatives of the testator, will not be allowed to sue persons possessed of assets belonging to the testator, unless it is satisfactorily made out that there exist assets which might be recovered, and which, but for such suit, would probably be lost to the estate. Such a suit may be supported where the relations between the legal personal representative and the debtor to the estate present a substantial impediment to the prosecution by the legal personal representative of a suit against the debtor to recover the assets of the testator, and where there is a strong probability of the loss of such assets unless such a suit be allowed. But where there is an administration suit already pending, the proper course to pursue is to obtain an order in the administration suit, directing either a suit to be brought in the name of the legal personal representative, or appointing a Receiver to sue; and in this country the Courts might have the power to direct such Receiver to sue in his own name.
ORIENTAL BANK CORPORATION *v.* GOBINLOLL SEAL.
[I. L. R., 10 Calc., 713

5. ——— **Injunction.**—*Order on summons under Act VI of 1854.*—The Court will restrain by injunction a creditor from proceeding in an administration suit, after an order has been made on a summons obtained by another creditor, under section 24 of Act VI of 1854, for the administration of the same estate. LUTCHEEMUND SETT *v.* KOMULMONEY DOSSEE . . . . **1 Ind. Jur., N. S., 9**

6. ——— **Dividend in respect of debt against the estate.**—*Proof of debt.—Date from which amount of debt is to be estimated.*—In the administration by the Court of the estate of a deceased, the dividend in respect of a debt against the estate is to be estimated on the amount of the debt at the date of the order for payment, and not at the date of proof. AGRA AND MASTERMAN'S BANK *v.* ROBINSON. IN THE MATTER OF THE LAND MORTGAGE BANK OF INDIA . . **6 B. L. R., Ap. 140**

7. ——— **Decree in administration suit, Effect of.**—*Subsequent suit to set aside sale by executor.*—A decree in an administration suit brought by the parties whose interest had been sold against the executor of their father's will, by whom the sale had been made, held to be no bar to the maintenance of a suit against the purchaser to have the sale set aside. DHONENDRO CHUNDER MOOKERJEE *v.* MUTTY LALL MOOKERJEE
[14 B. L. R., 276
23 W. R., 6: L. R., 2 I. A., 18

8. ——— **Supplemental suit.**—*Debts due by appointed managing members under the will of the testator.—Limitation.*—*A.* and *B.*, two of the sons of one *N.*, had been declared, in a suit brought to administer *N.'s* estate, to be indebted to the estate; it was also declared in such suit that a certain sum of money should be set apart for the performance of certain religious ceremonies, and paid into Court. *A.*

ADMINISTRATION—Supplemental suit —*continued.*

and *B.* died without having satisfied their debt. In a suit supplemental to the former suit, the descendants of the sons of *N.*, amongst whom were the descendants of *A.* and *B.*, claimed to be entitled to their share in the interest on the funds in the hands of the Court, and sought for a division of such accumulation of interest. *Held* that, notwithstanding that the debt due from *A.* and *B.* to the estate was barred, the descendants of *A.* and *B.* could not be allowed to share in the accumulations of interest in the hands of the Court without first satisfying the debt due by their ancestors to the estate. LOKENATH MULLICK *v.* ODOYCHURN MULLICK . **I. L. R., 7 Calc., 644**

9. ——— **Liability of the share of one of next-of-kin for a debt due by him to the intestate.**—*Debt barred at the date of the death of the intestate.—Semble,* that the rule followed by the Courts of Equity in England, whereby, notwithstanding the provision of the Statutes of Limitation, the share of one of the next-of-kin in the estate of an intestate while in the hands of the administrator, is liable for a debt due by the next-of-kin to the deceased, though barred at the date of the death of the latter, is to be applied in the Courts of British India. DHANJIBHAI BOMANJI GUGRA'T *v.* NAVAZBA'I . . . **I. L. R., 2 Bom., 75**

10. ——— **Accounts.**—*Liability of Executor.*—Without intending to rule that, in all cases when an ordinary administration account has been directed, the value in money of a specific chattel shown to have been possessed by an executor, and not forthcoming, is to be charged against him,—*Held,* that, notwithstanding the language of the decree, it was in the undoubted circumstances of this case, within the competency of the master in taking the account, and within the competency of the Court upon the report, to charge the executor for the value of certain property, it being impossible to doubt that the original executor had possessed himself of the property, and that the property so possessed was not forthcoming and accounted for. As to payments stated in the schedule and in the discharge, as made on account of just demands on the estate, it is competent to the executor to prove them as having been made on other dates than those stated in the schedule and discharge. AGA MAHOMED ROHIM SHERAZEE *v.* ALLY MAHOMED SHOOSTRY
[4 W. R., P. C., 106

ADMINISTRATION BOND.

——— **Assignment of Bond.**—*Succession Act, s. 257.*—Upon a petition presented to the High Court for the transfer of an administration bond under section 257 of the Succession Act, on the allegation that the administratrix had refused to pay certain moneys due to the petitioners on a promissory note given to them by the deceased, and it being admitted that the estate of the deceased was capable of meeting the alleged claim,—*Held,* on a *primâ facie* case having been made out, that under the circumstances it was competent for the High Court, on a petition being presented to it for the assignment of an administra-

ADMINISTRATION BOND—Assignment of Bond—*continued.*

tion bond, to pass an order authorizing the transfer of it, and empowering the assignee to sue as a trustee for the benefit of the creditors. IN THE GOODS OF SAUNDERS . . . . . 6 N. W., 62

ADMINISTRATOR.

See LETTERS OF ADMINISTRATION.
[I. L. R., 6 Bom., 452, 703

See MAHOMEDAN LAW—WILL.
[I. L. R., 6 Bom., 703

——— **Decree against—**

See SUCCESSION ACT, s. 282.
[12 B. L. R., 287

——— **Suit by—**

See HINDU LAW—WILL—CONSTRUCTION—VESTED AND CONTINGENT INTERESTS.
[I. L. R., 1 Bom., 269

——— *Liability of administrator in distribution of assets.—Actual knowledge.—Semble,* that an administrator who pays such debts as he knows of otherwise than equally and rateably as far as the assets of the deceased will extend, in accordance with the provisions of section 282 of Act X of 1865, is personally liable for any loss occasioned to a creditor of the deceased by such improper distribution of the assets. In order to charge such administrator, his knowledge must be actual, as distinguished from a constructive or imputable knowledge. ASIATIC BANKING CORPORATION *v.* AMADOR VIEGAS
[8 Bom., O. C., 20

ADMINISTRATOR-GENERAL.

See ILLEGITIMACY.
[11 B. L. R., Ap. 6

See CASE UNDER LETTERS OF ADMINISTRATION.

See SUCCESSION ACT, s. 282.
[I. L. R., 10 Calc., 929

1. ——— **Authority to pay debt barred by limitation.**—The Administrator-General of Madras is authorized to pay a barred debt. ADMINISTRATOR-GENERAL *v.* HAWKINS
[I. L. R., 1 Mad., 267

2. ——— **Liability of Administrator-General in respect of breaches of trust by Intestate Executor.**—*Held, per* NORMAN, *J.* (PHEAR, *J.*, dissenting), that the Administrator-General who had taken out administration to the estate of an executor by whom a breach of trust had been committed by his pledging for his own benefit certain assets of his testatrix, and had redeemed the said assets with office money and applied the money recovered as part of the defaulting executor's estate, was not personally liable to make good the amount to the testatrix's estate. GREENWAY *v.* HOGG
[Cor., 97: 2 Hyde, 3: Bourke, A. O. C., 111

ADMINISTRATOR-GENERAL—*continued.*

3. ——— **Right of retainer in satisfaction of his own debt.**—The Administrator-General appointed under Act VIII of 1855 has the same right of retainer in satisfaction of his own debt as that which an ordinary executor or administrator has. RITCHIE *v.* STOKES . . 2 Mad., 255

4. ——— **Right of, to retain assets.**—Right of Administrator-General to retain assets in his hands in respect of contingent debts. SHEPHERD *v.* HOGG . . . . . Cor. 67

5. ——— **Grant of letters of administration to.**—*Act XXIV of 1867, s. 17.*—When ordinary letters of administration to the estate of a deceased Hindu are granted to the Administrator-General under Act XXIV of 1867 (but not under section 17 of that Act), his title does not relate back to the death of the deceased, nor to the date of the Judge's order directing such letters to be issued, but accrues only as from the date of the grant of such letters. *Quære,*—Whether, if letters are issued to the Administrator-General under section 17 of that Act, the case would be otherwise, or his powers greater. LALLCHAND RAMDAYAL *v.* GUMTIBAI; GHELLA PEMA *v.* GUMTIBAI . . 8 Bom., O. C., 140

ADMINISTRATOR-GENERAL'S ACT VIII OF 1855.

See LETTERS OF ADMINISTRATION.
[1 Bom., 103
1 Ind., Jur. O. S., 139
Bourke Test., 6

——— **Recall of letters of administration granted to Administrator-General.**—*Commission.*—When letters of administration which had been granted to the Administrator-General of Madras were recalled, and he had merely taken manual possession of cash, Government promissory notes, and the title deeds of leaseholds belonging to the deceased, the High Court, under section 22 of Act VIII of 1855, allowed him commission at the rate of 2½ per cent. on the cash and the value of the notes, but refused to allow it on the leaseholds. IN THE GOODS OF SIMPSON . . . . . 1 Mad., 171

——— **Danger of misappropriation.**—*Debts of deceased person.*—The bare possibility that the Act of Limitation may ultimately become a bar to the recovery of assets is not such danger of misappropriation as warrants the granting to the Administrator-General of an order under section 12 of Act VIII of 1855. *Semble,*—A debtor to the estate of a deceased person cannot apply for an order under that section. IN THE GOODS OF GIRDIR DAS VALLABA DAS . . . 1 Mad., 234

——— **ACT XXIV OF 1867, s. 15—**

See ILLEGITIMACY . 11 B. L. R., Ap. 6

——— **s. 17—**

See ADMINISTRATOR-GENERAL.
[8 Bom., O. C., 140

ADMINISTRATOR-GENERAL'S ACT XXIV OF 1867—*continued.*

——— **s. 33.—Right to payment out of assets.**—*Distribution of assets.*—Plaintiff, on the 15th June, 1868, immediately after the death of his debtor, brought a suit against the debtor's widow (1st defendant) for recovery of the debt, and, before judgment, obtained attachment and sale of property of the deceased, the sale-proceeds being kept in deposit in the Court. These proceedings took place in June and July; and on the 15th August administration was granted to the Administrator-General, the widow not having taken out administration. On the 28th September, the Administrator-General was, on plaintiff's application, made defendant in place of the widow, and the suit proceeded against him to decree. Before plaintiff applied to execute this decree, the amount of the sale-proceeds was, by the direction of the Civil Judge, handed over to the Administrator-General; accordingly, on this ground, plaintiff's application to the District Moonsiff for execution was rejected. He appealed unsuccessfully to the Civil Court.—*Held,* on special appeal, that section 33 of Act XXIV of 1867 took away plaintiff's right to payment otherwise than rateably with the other creditors. HANINABALU SANNAPPA *v.* COOK . **6 Mad., 346**

——— **s. 60.**

See RES JUDICATA—ADJUDICATIONS. **[I. L. R., 3 Calc., 340**

See REVIEW—ORDERS SUBJECT TO REVIEW . . **I. L. R., 3 Calc., 340**

——— **ACT II OF 1874.**

See LETTERS OF ADMINISTRATION. **[I. L. R., 4 Calc., 770**

——— **s. 27.**

See LETTERS PATENT, HIGH COURTS, CL. 15 **[I. L. R., 1 Mad., 148**

——— **Commission payable to.**—*Collection of debts.*—Where there has been only collection, but no distribution of the assets by the Administrator-General, an order under section 27, Act II of 1874, allowing commission at a certain rate, ought, in accordance with the rule laid down in section 54 of the Act, to award only half of the full commission of 5 per cent. IN THE GOODS OF CHENGALROYA NAIKER. SOMASUNDARAM CHETTI *v.* ADMINISTRATOR-GENERAL . . . . **I. L. R., 1 Mad., 148**

——— **s. 35.**

See COSTS—COSTS OUT OF ESTATE. **[I. L. R., 10 Bom., 248, 350**

See COSTS—SUIT OR APPEAL ONLY PARTLY DECREED. **[I. L. R., 12 Calc., 357**

See SUCCESSION ACT, S. 282. **[I. L. R., 10 Calc., 929**

——— **s. 54.**

See SECTION 27. **I. L. R., 1 Mad., 148**

ADMINISTRATOR-GENERAL'S ACT II OF 1874—*continued.*

——— **s. 63.**

See RES JUDICATA—ADJUDICATIONS. **[I. L. R., 3 Calc., 340**

See REVIEW—ORDERS SUBJECT TO REVIEW . . **I. L. R., 3 Calc., 340**

ADMIRALTY ACTS.

See CASES UNDER JURISDICTION—ADMIRALTY.

ADMIRALTY COURT, PRACTICE OF—

See SHIP, ARREST OF. **[15 B. L. R., Ap. 3**

ADMISSION.

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1. ADMISSIONS IN STATEMENTS OR PLEADINGS 134
2. ADMISSIONS BY OR AGAINST THIRD PERSONS . . . 142
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See CASES UNDER ESTOPPEL.

See MASTER AND SERVANT. **[21 W. R., 405**

See CASES UNDER PLEADER—AUTHORITY TO BIND CLIENT.

See PRINCIPAL AND AGENT—AUTHORITY OF AGENTS . **13 B. L. R., 177**

See VARIANCE BETWEEN PLEADING AND PROOF—ADMISSION OF PART OF CLAIM.

1. ADMISSIONS IN STATEMENTS AND PLEADINGS.

1. ——— **Statement of Party.**—*Evidence.*—A statement made by a party is not, *ipso facto,* conclusive against him, though it may be used against him and may be evidence, more or less weighty, possibly even conclusive, according to the circumstances of each case, and the result come to by judicial investigation. AYETUN *v.* RAMSEBUK PODDAR . . . . . **12 W. R., 156**

2. ——— *Proof of contents of document.*—The statement of a party to a suit is admissible evidence against him to prove the contents of a written instrument. MUTTUKARUPPA KAUNDAN *v.* RAMA PILLAI . . . **3 Mad., 158**

3. ——— *Proof of contents of document.*—The case of *Muttukaruppa Kaundan* v. *Rama Pillai, 3 Mad., 158,* applies to the defendant's admission of a transaction embodied in a written document not receivable in evidence, and is no authority whatever for construing a document, present to the Court, upon a defendant's admission. MÂHÂLATCHMI AMMÂL *v.* PALANI CHETTI **[6 Mad., 245**

ADMISSION—*continued.*

1. ADMISSIONS IN STATEMENTS AND PLEADINGS—*continued.*

4. ——— **Statement in former suit.**—*Evidence Act, 1872, s. 18.*—A statement made by the defendant in another suit may be used as an admission within the meaning of section 18 of the Evidence Act. HURISH CHUNDER MULLICK *v.* PROSUNNO COOMAR BANERJEE . . . **22 W. R., 303**

LALLA JUGDEO SAHOY *v.* DIGAMBUR ROY **[22 W. R., 304 note**

KASHEE KISHORE ROY CHOWDHRY *v.* BAMA SOONDUREE DEBIA CHOWDHRAIN **[23 W. R., 27**

5. ——— *Statements filed in Court.*—In a suit by a daughter for property left by her father, in which the defendants relied upon certain admissions said to have been made by plaintiff relinquishing the share in the inheritance left by her father, and in which they also set up a will of the father conveying the property to others, the Lower Court should have enquired into the genuineness of the will, and required the defendants to prove that the admissions, which plaintiff impugned, emanated from her, or from some one duly authorized by her to make them. The mere fact that the admissions were contained in statements filed in a Court of Justice in her name does not necessarily prove that they were made by her. ASMUTOONISSA BEBEE *v.* ATTA HAFIZ . . . . **8 W. R., 468**

6. ——— In a former suit by *A.* against his agent for an account of the collections of a certain share in land *B.* intervened and was made a party. In that suit the Court declared *A.* to be the zemindar, and as such entitled to the rents and to an account. *Held,* that that finding was binding against *B.* in a subsequent suit against him by *A.* for recovery of the same share. Similarly, an admission made by *B.* in the former suit is evidence against him *quantum valeat* in the subsequent suit. SHEO SURN SINGH *v.* RAM KHELAWAN SINGH **[14 W. R., 165**

7. ——— **Admissions made in former arbitration proceedings.**—Admissions, &c., made by the parties in a former arbitration proceeding may be used against them in evidence in a subsequent suit. HURONATH SIRCAR *v.* PREONATH SIRCAR . . . . . **7 W. R., 249**

8. ——— **Admissions in former suit.**—Also admissions made in a former suit. OBHOY GOBIND CHOWDHRY *v.* BEEJOY GOBIND CHOWDHRY **[9 W. R., 162**

9. ——— *Acceptance in evidence of map as correct in former suit.*—Where the defendants in a boundary suit accepted in a former suit a particular map as correct, their acceptance is legal, though not conclusive, evidence against them in the boundary suit, and is tantamount to an admission, and stands upon a very different footing from the decree in the first suit. GORDON STUART AND CO. *v.* BEEJOY GOBIND CHOWDHRY **[8 W. R., 291**

ADMISSION—*continued.*

1. ADMISSIONS IN STATEMENTS AND PLEADINGS—*continued.*

Admissions in former suit—*continued.*

10. ——— *Deposition.*—A copy of a defendant's deposition in a former suit having been put in by plaintiff at a late stage of the case, when defendant had no means of explaining away any supposed admission therein,—*Held,* that the first Court was wrong in accepting the same as an admission binding on defendant, and that the Lower Appellate Court was right in sending for the defendant and examining him on the subject. KOMUROODDEEN *v.* MONYE MUNDLE **[16 W. R., 220**

11. ——— *Suit of different nature.*—Admissions made by a defendant in other suits brought against him by third parties cannot be treated as estoppels in a suit to recover possession of a different property under different circumstances. WISE *v.* RUBAA KHATOON . **19 W. R., 299**

12. ——— Plaintiff sued in the Revenue Court for the recovery of rents fraudulently misappropriated by defendant, and upon defendant's allegation that plaintiff was etmamdar or gomashta and not izardar, the Deputy Collector dismissed plaintiff's suit for want of jurisdiction. Plaintiff then sued in the Civil Court, the defendant again raising the plea of non-jurisdiction. *Held,* that any admission or allegation of the defendant in the former suit, put in evidence by the plaintiff, was amply sufficient to support the plaintiff's allegation in this suit that he had been etmamdar. BHUGWAN CHUNDER DUTT *v.* MECHOO LALL CHUCKERBUTTY **[17 W. R., 372**

13. ——— *Suit for resumption of lands.—Previous suit to assess the lands.—Evidence.*—An admission by a jagirdar in a suit brought by Government to assess the lands, that the lands were comprised in a zemindari, is evidence of that fact in a suit by the zemindar to resume those lands. FORBES *v.* MIR MAHOMED TAKI **[5 B. L. R., 529**
14 W. R., P. C., 28
13 Moore's I. A., 438

14. ——— *Agreement to pay interest.*—In a former suit, plaintiff, mortgagor, under a usufructuary mortgage, claimed recovery of the mortgaged property, on the allegation that there had been a satisfaction of the principal sum by reason of the profits of the estate exceeding 12 per cent. interest, but having failed to prove that allegation, his suit was dismissed. He now sued for the recovery of the property under an ekrarnamah which did not stipulate for payment of interest. *Held,* that the case put forward by plaintiff in the former suit did not amount to an admission that there was an agreement to pay 12 per cent., and that he was entitled to restoration of the property on payment of the principal alone. PROSUNNO COOMAR MOOKERJEE *v.* BULDEO NARAIN SINGH . . . . **18 W. R., 62**

ADMISSION—*continued.*

1. ADMISSIONS IN STATEMENTS AND PLEADINGS—*continued.*

15. ——— **Admission by one of several joint tenants.**—*Suit for rent.*—A suit for rent having been brought against two persons as joint tenants, and a decree passed therein favour of the plaintiff, but for a less amount than that claimed by him, an appeal was preferred by the defendants; but subsequently, pending the hearing of the appeal, one of them filed a petition admitting the correctness of the amount claimed by the plaintiff, and stating his willingness to pay half of such amount. *Held*, that the admission of the one defendant did not bind the other; and that, notwithstanding such admission, the suit having been brought against the defendants as joint tenants, a separate decree for half the amount admitted could not be made against the defendant who made the admission. CHUNDERESHWUR NARAIN PERSHAD *v.* CHUNI AHIR . **9 C. L. R., 359**

16. ——— **Admission made by one Co-sharer.**—*Admissibility of, against the others.*—*Evidence Act (I of 1872), s. 18.*—In a suit between a zemindar and his ijaradars for rent, a person, who was one of several jotedars in the mehal, was called as a witness for the zemindar, and admitted the fact that an arrangement existed whereby he and his co-jotedars had agreed to pay rent to the zemindar direct; that suit was decided in favour of the zemindar. The ijaradars then brought a suit against the jotedars, amongst whom was the witness above mentioned, to recover the sum which the jotedars ought to have paid to the zemindar direct, and which the ijaradars had been decreed to pay. The jotedars disclaimed all liability to pay rent to the ijaradars; in this suit the evidence given by the jotedar in the zemindar's suit was received as evidence on behalf of the plaintiffs against all the defendants. *Held*, that the evidence was admissible. KOWSULLIAH SUNDARI DASI *v.* MUKTA SUNDARI DASI **[I. L. R., 11 Calc., 588**

17. ——— **Indivisibility of, as evidence.**—*Whole admission.*—Where a person uses the admission of another as evidence, the whole admission must be put in. He cannot put in half and exclude the other half. Those who have to decide upon the evidence are not bound to believe the whole of the statement. NILMONEY SINGH DEO *v.* RAMANOOGRAH ROY . . . . . **7 W. R., 29**

GOLOKE CHUNDER CHOWDHRY *v.* MAGISTRATE OF CHITTAGONG . . **25 W. R., Cr., 15**

18. ——— *Plaintiff relying on admission of defendant.*—A plaintiff abandoning his own case and falling back on the admission of the defendant is bound to take these admissions as they stand and in their entirety. TARINEE PERSHAD SEIN *v.* DWARKANAUTH RUKHEET **[15 W. R., 451**

19. ——— *Effect of as to co-defendants.*—A defendant's admission, if taken at all, must be taken as a whole; but it cannot bind co-defendants. NIAMUTOOLLAH KHADIM *v.* HIMMUT ALI KHADIM . . . . **22 W. R., 519**

ADMISSION—*continued.*

1. ADMISSIONS IN STATEMENTS AND PLEADINGS—*continued.*

Indivisibility of, as evidence—*continued.*

20. ——— *Pleadings.*—The rule that when an admission is relied upon by a party to a suit as against his opponent it must be taken in its entirety, does not apply to pleadings. BROJO RAJ KISHOREE *v.* BISHONATH DUTT **[W. R., 1864, 305**

21. ——— *Pleadings.* — A statement under Act VIII of 1859 is not in the nature of confession and avoidance as in English pleading where the confession is considered as an admission of the party, and the avoidance has to be proved. The statement of one party, if used as evidence against him by the other, must be taken altogether, and not in part. PROBHOO DOSS *v.* SHEONATH ROY **[W. R., 1864, Act X, 27**

SOOLTAN ALI *v.* CHAND BIBEE **[9 W. R., 130**

22. ——— **Qualified statement.**—*Written statement.*—*Per* MACPHERSON, *J.*—The opinion of the Full Bench in *Pulin Beharee Sen* v. *Watson* was that, if a party makes a qualified statement, that statement cannot be used against him apart from the qualification; not that if a man makes a series of independent unqualified statements, those statements cannot be used against him. That case goes no further than to lay down that an unfair use is not to be made of a man's written statement, by trying to convert into an admission by him that which he never intended to be an admission. BAIKANTANATH KOOMAR *v.* CHANDRAMOHAN CHOWDHRY **[1 B. L. R., A. C., 133: 10 W. R., 190**

See PULIN BEHAREE SEN *v.* WATSON. **[B. L. R., Sup. Vol., 904 9 W. R., 190**

SOOLTAN ALI *v.* CHAND BIBEE **[9 W. R., 130**

JUDOONATH ROY *v.* BURODA KANT ROY **[22 W. R., 220**

23. ——— **Admission in pleading.**—*Description of plaintiff.*—In an action of contract brought by the assignee of a bankrupt against a debtor, the defendant pleaded that he had not contracted "in the manner the plaintiff assignee as aforesaid stated." *Held*, that the form of plea was not an admission of the plaintiff's title as assignee, but was only used in reference to the description the plaintiff had given of himself in the declaration. CLARK *v.* ROUPLALL MULLICK AND CLARK *v.* DOORGAMONEY DOSSEE **[2 Moore's I. A., 263**

24. ——— **Admission in pleading.**—*Onus of proof.*—In a suit for confirmation of possession of, and declaration of title to, land alleged to have been purchased at a private sale from the wife (*S. S.*) of a judgment-debtor who had come into possession of the land by gift from her husband, defendants claimed to be *bonâ fide* purchasers from *S. S.*, to whom, they alleged, the property really belonged, and

ADMISSION—*continued.*

1. ADMISSIONS IN STATEMENTS AND PLEADINGS—*continued.*

Admission in pleading—*continued.*

who had been all along in possession. The substance of the defence was that, "even granting that any such papers" (as a hibbah and a deed of sale) "were written between the parties, this can avail the plaintiff nothing, as the deeds were fraudulent." *Held*, that there was no such admission on the part of the defendants as shifted the burden of proof upon themselves. HURISH CHUNDER PAUL *v.* RADHANATH SEIN . . . . . **11 W. R., 328**

25. ——— Agreement admitted in pleading.—Where, in a suit for specific performance of an agreement, the defendant admitted in his written statement the terms of the agreement and its execution,—*Held*, that the plaintiff was not called upon to prove the execution of the agreement or to put it in evidence. BURJORJI CURSETJI PANTHAKI *v.* MUNCHERJI KUVERJI . **I. L. R., 5 Bom., 143**

26. ——— Admission of title in pleading.—*Suit for possession of land.—Plea of limitation.*—The circumstance that the defendant has in his written answer set up a defence merely of the statute of limitations in a suit for the possession of land does not constitute an admission of the title of the plaintiff so as to dispense with the obligation on the plaintiff to prove his title. SOONATUN SAHA *v.* RAMJOY SAHA . . . **Marsh., 549**

27. ——— Admission in written statement of defendant.—When a defendant admits any one fact contained in the written statement of the plaintiff, and thereby excludes independent evidence thereof, he is not entitled to say that the plaintiff has relied on his statement as evidence, and that he (defendant) is in consequence in a position to claim that the whole of it may be read as evidence in his own favour. SHUFFURAZ MOLLAH *v.* DHUNOO **[16 W. R., 257**

28. ——— Admission in verified petition.—An admission made in a verified petition by an intervenor in an Act X suit, and repeated in a verified plaint filed by him in a regular suit, was held to be binding in a subsequent suit on the party who made it. GRISH CHUNDER LAHOREE *v.* SHAMA CHURN SANDYAL . . . **15 W. R., 437**

29. ——— Admission by not traversing allegations.—A defendant must be taken to admit all material allegations in the plaint which he does not traverse. YEKNATH BABAJI *v.* GULABCHAND KAHANGI . . . . **1 Bom., 85**

AHMEHDEE BEGUM *v.* DABEE PERSAUD **[18 W. R., 287**

30. ——— Not traversing allegations.—The mere fact that an allegation is not traversed does not relieve a plaintiff from the burden of proving his case. MULJI BECHAR *v.* ANUPRAM BECHAR **[7 Bom., A. C., 136**

HAMEEDOOLLAH *v.* GENDA LALL **[17 W. R., 171**

ADMISSION—*continued.*

1. ADMISSIONS IN STATEMENTS AND PLEADINGS—*continued.*

Not traversing allegations—*continued.*

31. ——— In a suit for enhancement of rent, a defendant is not bound to traverse a statement made by the plaintiff in the notice of enhancement as to the description of the land in question. The doctrine of admission by non-traverse was not applicable to written statements filed under Act X of 1859. SHADHOO SINGH *v.* RAMANOOGRAHA LALL . . . **9 W. R., 83**

32. ——— Written statement.—*Entire statement.*—Where defendant's written statement is referred to as evidence in plaintiff's favour, the whole of it becomes evidence in the suit, and the Court can, in its discretion, attach thereto, or to any portion thereof, so much value as seems to it fit. RADHA CHURN CHOWDHRY *v.* CHUNDER MONEE SHIKDAR **[9 W. R., 290**

33. ——— Disclaimer of title.—*Pleadings.—Admission by one of several defendants.—Relinquishment.—Disclaimer of title.*—*R.*, holding estates in Bengal jointly with his brothers as an undivided Hindu family, died leaving a widow S, and three unmarried daughters, *B.*, *M.*, and *N.* On her husband's death *S.* continued to reside with his brothers, and was supported out of the income of the joint estate. All the daughters married in the lifetime of *S.*, and *B.* became a widow without having had a child. After the death of *S.*, and in the lifetime of *M.*, *N.* also became a childless widow. *M.* died after her mother, leaving a son, *R. K. R. K.*, on attaining majority, sued to recover, with mesne profits, a 4-anna share of the ancestral estates to which he claimed to be entitled on his mother's death as heir of *R.*, and from which he alleged he had been dispossessed by the representatives of *R.'s* brothers whom he made defendants in the suit, joining *B.* and *N.* with them as co-defendants. Some time after the institution of the suit, a petition was filed purporting to proceed from *B.* and *N.*, by which they admitted that the plaintiff was the heir of *R.*, and that they had no defence to offer. *Held*, that *N.* being the heir of *R.*, *R. K.* had not, during her lifetime, any right to any part of the estate, and that his position was not altered by the petition purporting to proceed from *B.* and *N.*, such petition not amounting to a conveyance or disclaimer of title in his favour. In the English Common Law Courts, and, *a fortiori*, in the Courts of Law in India, where the pleadings are less technical, an admission of a fact on the pleadings by implication is not an admission for any other purpose than that of the particular issue, and is not tantamount to proof of the fact. An admission or even a confession of judgment by one of several defendants in a suit is no evidence against another defendant. AMIRTOLALL BOSE *v.* ROJONEEKANT MITTER . . . . . **15 B. L. R., 10**
[23 W. R., 214 : L. R., 2 I. A., 113

34. ——— *Inheritance.—Relinquishment.—Admission on pleadings.*—A plaintiff suing two defendants, *M* and *L.*, for the possession of certain property by right of inheritance, admitted

ADMISSION—*continued.*

1. ADMISSIONS IN STATEMENTS AND PLEADINGS—*continued.*

Disclaimer of title—*continued.*

in his plaint the right by inheritance of the defendant *M.* to a moiety of the property, and only made him a defendant because he would not join in bringing the suit. The claim, however, was for the entire property. The defendant *M.* filed a written statement setting forth that he had long ago willingly resigned all his rights in favour of the plaintiff, and that the suit had been instituted with his consent. *Held*, that this statement was only an admission by *M.* of the plaintiff's title, which could not be used against the other defendant *L.* so as to entitle the plaintiff to a decree for the entire estate; that since *L.* did not set up *M.'s* title to defeat the plaintiff, he could not be affected by by *M.'s* disclaimer; and that the plaintiff could not be allowed in this suit to obtain *M.'s* share as his representative, for that would be to decree him the share on a title he never set up. *Amirtolall Bose* v. *Rojoneekant Mitter*, 15 B. L. R., 10, referred to. LACHMAN SINGH *v.* TANSUKH [I. L. R., 6 All., 395

35. ——— **Untraversed allegations.**—*Suit to set aside sale.*—In a suit to set aside a sale in execution of decree on the ground of fraud,—*Held*, applying the principle that pleadings should not be construed too strictly, that the defendants could not be held, by reason of their not having denied it, to have admitted the truth of the plaintiff's allegation as to the date upon which knowledge of the fraud was acquired. NATHA SINGH *v.* JODHA SINGH [I. L. R., 6 All., 406

36. ——— **Admission by co-defendant, Effect of.**—*Suit for possession of land.*—In a suit for possession of immovable property brought by three Muhammadan brothers, their three sisters were impleaded as defendants under section 32 of the Civil Procedure Code, and two of the latter subsequently filed a written statement in which, after stating that they were on good terms with their brothers, the plaintiffs, and that the suit had been instituted with their knowledge and permission, they prayed that the suit might be decreed, subject to the condition that they would, on some future occasion, "settle with their own brothers as to their right and costs." The third sister did not appear to defend the suit. *Held*, that the lower Courts were wrong in treating this admission as sufficient to entitle the plaintiffs to a decree for possession, not only of their own share, but also of the shares of their three sisters, it being a fundamental proposition connected with the administration of justice that a plaintiff cannot sue for more than his own right, and that no defendant can, by an admission or consent of this kind, convey the right or delegate the authority to sue for more than his own share in property. *Lachman Singh v. Tansukh* referred to. AZIZULLAH KHAN *v.* AHMAD ALI KHAN . . . . I. L. R., 7 All., 353

37. ——— **Request to verify signature to petition.**—*Evidence of statements made in petition.*—Where a party asks others to verify his signature to a petition or to identify him as one of the

ADMISSION—*continued.*

1. ADMISSIONS IN STATEMENTS AND PLEADINGS—*concluded.*

Request to verify signature to petition—*continued.*

petitioners, it amounts to an allegation on his part that he made the statements which appear in the petition, and is as effective evidence against the party making the request as if the petition were in fact filed. MOHUN SAHOO *v.* CHUTOO MOWAR [21 W. R., 34

38. ——— **Petition, Statement in.**—*Suit to set aside deeds.*—Defendant claimed to hold a mokurari tenure under deeds executed by plaintiff, zemindar. The plaintiff denied the authenticity of the deeds, and sued to set them aside. The lower Courts dismissed his suit as barred by limitation, on the ground that plaintiff had, in a petition before the Collector, admitted that defendant was mokuraridar of the tenure, and that this being so, limitation run against him from the date of the deeds. *Held*, that the case should have been tried on the merits, as the petition was not a conclusive admission of the genuineness of the deeds, and it was not right to infer from it that plaintiff knew of their existence at the time of their professed date. PROHLAD SEN *v.* RUN BAHADUR SINGH . 2 B. L. R., P. C., 111 [12 W. R., 6 11 Moore's I. A., 289

2. ADMISSION BY OR AGAINST THIRD PARTIES.

39. ——— **Admission, Effect of, against person not party to suit.**—*Held*, that the fact of defendants being allowed to appear as co-plaintiffs in a redemption suit, to which plaintiff was no party, cannot be received in evidence as an admission adverse to plaintiff's interest; and the admission made by the plaintiff's brother, and "lumberdar," cannot, merely on account of his being such, be held as binding against the plaintiff, unless it be shown that he was invested by plaintiff with sufficient authority in that behalf. BUCHA *v.* LULEE . . 2 Agra, 20

40. ——— **Persons without title.**—*Suit for redemption.*—In a suit for redemption the admission of a person having no title to the estate in question in the suit is not admissible against the mortgagor. MUTHRA DASS *v.* MAGH SINGH [2 N. W., 207

41. ——— **Guardian, Admission by.**—*Previous transactions.*—Although a guardian of two minors may have power to manage or to make a partition of the estate, he has no authority to bind the estate of either of his wards by admission of previous transactions. SURUJ MOOKHI KONWAR *v.* BHAGWATI KONWAR . . . 10 C. L. R., 377

42. ——— **Admission by executors.**—The admissions of the executors of a donor are treated as the admissions of the donor. DWARKANATH BOSE *v.* CHUNDEE CHURN MOOKERJEE [1 W. R., 339

43. ——— The admission of one executor to a will would not bind another, nor

ADMISSION—*continued.*

2. ADMISSION BY OR AGAINST THIRD PARTIES—*continued.*

Admission by executors—*continued.*

would the admissions of parties other than the executor bind the estate. CHUNDER KANT MITTER *v.* RAMNARAIN DEY SIRKAR . 8 W. R., 63

44. ——— **Admission by agent.**—An agent's admission that he purchased as an agent is evidence against his heirs that the purchase was not made by him on his own account. GOREEBOOLLAH SIRKAR *v.* BOYD . . . . 2 W. R., 190

45. ——— **Admission by husband.**—*Admission of joint character of property.*—An admission by the widow's husband that the lease was the joint property of himself and the plaintiff, though not an estoppel, was held to be good evidence to be rebutted by the widow. SREENATH NAG MOZOOMDAR *v.* MONMOHINEE DOSSEE . . . 6 W. R., 35

46. ——— **Admissions of vakil.**—*Criminal case.*—Admissions made by a vakil cannot bind his client in a criminal case. QUEEN *v.* KAZIM MUNDLE . . . . . 17 W. R., Cr., 49

47. ——— **Admission by pleader on behalf of client.**—Admission made in a statement in a case by a pleader on behalf of his client after full consideration and consultation, is admissible as evidence against that client in another case in which he is a party. COMABUTTEE *v.* PAREESHNAUTH PANDAY . . . . . 15 W. R., 135

48. ——— **Admission of pleader recorded in judgment.**—The rule of law is that a judgment deliberately recording the admission of a pleader must be taken as correct, unless it is contradicted by an affidavit or the Judge's own admission that the record he made was wrong. HUR DYAL SINGH *v.* HEERA LALL . . 16 W. R., 107

49. ——— **Admission by owner after sale of property.**—An admission subsequently made by a debtor whose property has been sold is not evidence against the purchaser of the property. KHEMUNKUREE CHOWDHRAIN *v.* GHOORCHUNDER MOJOOMDAR . . . . . 5 W. R., 268

50. ——— **Admission by judgment-debtor.**—*Purchaser.*—A purchaser in execution of a decree of a Civil or Revenue Court is not bound by any admission made by his execution-debtor, nor ordinarily by a decree against such person. RUNGO MONEE DEBIA *v.* RAJ COOMAR BEBEE . . 6 W. R., 197
IMRIT KOOER *v.* LALLA DEBEE PERSHAD SINGH . . . 18 W. R., 200

51. ——— **Admission by mortgagor.**—*Suit by purchaser for cancellation of mokurari lease.*—Suit by a purchaser from a mortgagee against a durmokuraridar for the cancellation of his mokurari lease granted without authority by the mortgagor. In a former suit brought by the mortgagee for possession the mortgagor admitted the mortgage. *Held* that, although that admission was conclusive as between the mortgagor and the mortgagee, the colluding parties, yet that in the present case, brought to

ADMISSION—*continued.*

2. ADMISSION BY OR AGAINST THIRD PARTIES—*continued.*

Admission by mortagor—*continued.*

avoid the defendant's title on the strength of an alleged collusive mortgage, it was quite competent to him to contest its *bonâ fide* nature. DONUNJOY DEY *v.* DWARKANATH SINGH . 5 W. R., 280

52. ——— **Admission by lumberdar.**—*Signature in patwari's diary as lumberdar.*—*Held*, that the plaintiff being an immediate reversioner, might maintain his suit, and that his contributing his share of profit and putting his signature in the patwari's diary as lumberdar were not an admission of defendant's title as purchaser. NUND KISHORE *v.* NUTHOO RAM . . . . 1 Agra, 223

53. ——— **Admission by heirs.**—*Admission as to relinquishment of title.*—In a suit by the grandchildren of the deceased daughter of a member of a joint Hindu family, who, though not entitled to his property as his heirs, had been long in possession, the surviving daughter, in whom, according to Hindu law, her father's interest would now be legally vested, admitted by a petition filed in this suit that by her gift or relinquishment plaintiffs had a title to her father's share. The admission was held to be evidence that such title existed anterior to the commencement of the suit. GOUR LALL SINGH *v.* MOHESH NARAIN GHOSE . . 14 W. R., 484

54. ——— **Admission by zemindar of mokurari right.**—Where tenants sued for a declaration that their holding was mokurari at a given rent, and the surburakar of their zemindar admitted their right on behalf of the zemindar, who himself filed a petition corroborating his surburakar's statement, it was held that these admissions would bind any subsequent zemindar not being an auction-purchaser at a sale for arrears of Government revenue. WATSON AND CO. *v.* NOBIN MOHUN BABU [10 W. R., 72

55. ——— **Admission by auction-purchaser.**—*Admission of title indirectly.*—Where an auction-purchaser in a proceeding before the Collector for the purpose of charging an estate withstands a claim to a mokurari tenure advanced by a tenant, but does not otherwise subsequently legally question the tenant's title, the presumption arises that that title has been allowed by the auction-purchaser. CHOONEE MAHTOON *v.* CHATOO MAHTOON [25 W. R., 231

56. ——— **Admission of lessor.**—*Lessor and lessee.*—The admission of a lessor does not bind a lessee in certain cases in which a *bonâ fide* act might have bound. SUTROOGHUN DUTT *v.* BROJOGOPAL GHOSE . . . . 3 W. R., 143

57. ——— **Admission of tenancy.**—*Evidence of tenancy.*—A mere admission by the defendant of plaintiff having purchased a jote is insufficient to prove that he ever was defendant's tenant. BAKUR ALI CHOWDHRY *v.* ASHKUR ALI [5 W. R., 156

ADMISSION—*continued.*

2. ADMISSION BY OR AGAINST THIRD PARTIES—*continued.*

58. ——— Admission by ryot.—*Evidence of rate of rent.—Similar tenures.*—An admission by one ryot as to the rate of rent at which he holds is not evidence to prove the rate at which another holds. NURROHURRY MOHATO *v.* NARAINEE DOSSEE [1 Ind. Jur., O. S., 9: W. R., F. B., 23

59. ——— Admission of rate of rent.—In a suit for arrears of rent at enhanced rates, if plaintiff asks for rates admitted by defendant, he must abide by those intended to be admitted; and if he desire to take advantage of the finding of the lower Court, he must submit to the whole finding taken altogether. SOORENDRONATH ROY *v.* BHYRUB MUNDUL . . . . . 14 W. R., 462

60. ——— Return of amount of rent made to Collector.—*Rate of rent, Evidence of.*—A return made to a Collector by an occupant of land stating the amount of the rent, is an admission as to the amount of rent, binding upon the occupant and all who claim under him. AJUDH BEHAREE SINGH *v.* RAM ROY TEWARI . . . 18 W. R., 105

61. ——— Rate of rent, Evidence of.—*Presumption from conduct of defendant in not raising objection.*—In a suit for a kabuliat at enhanced rates after notice under section 13, Act X of 1859, where the defendants stood by, and though raising a good many objections on other points raised no question as to rates, their conduct and pleadings were held to afford a fair presumption of the admission of the plaintiff's claim as to the rates sued for. THAKOOR DUTT SINGH *v.* GOPAL SINGH . 14 W. R., 4

62. ——— Consideration for sale.—*Suit for presumption.*—The mere admission of the vendor that an old debt of R500 mentioned in the sale deed formed part of the consideration is not conclusive evidence of the allegation as against parties claiming a right of presumption. PEERA *v.* SHIMBHU [2 Agra, 348

3. MISCELLANEOUS CASES.

63. ———.Verbal admissions as to sum due by defendant.—It is a very dangerous thing for a Court to decree in favour of a plaintiff merely upon alleged verbal admissions by the defendant of a sum due without the most clear and cogent proof of such admissions, especially when the plaintiff shrinks from bringing his accounts into Court. LALLA SHEOPARSHAD *v.* JUGGERNATH . L. R., 10 I. A., 74

64. ——— Admission of receipt of purchase-money.—*Registration Act, 1866, s. 66, cl. 3.*—An admission before a Registrar of the receipt of purchase-money attested by his endorsement, as required by clause 3, section 66, Act XX of 1866, though evidence of the strongest and most reliable description, ought not to be treated as conclusive. In the face of such admission, however, the party seeking to get out of its effects must make out his case by very clear evidence. MAHOMED HANEEF MEAJEE *v.* MOZHUR ALI . . . . 15 W. R., 280

ADMISSION—*continued.*

3. MISCELLANEOUS CASES—*continued.*

65. ——— False statement as to share being separate.—*Joint family.—Misrepresentation.*—In a suit by a member of a joint family to recover possession of certain property alleged to belong to the joint estate, but which had been purchased by the defendant at a sale in execution of a decree passed against the estate of *R.*, one of the members of the family, for his separate debt, the defendant alleged, as showing the property was the separate property of *R.*, that, on one occasion, when *R. B.*, the *kurta*, and a third member of the family, entered into a security bond with the Collector, whereby *R.* pledged the property in suit, and the two others pledged other properties, each of them described the property pledged by him as being in his possession "without the right of any co-sharers." *Held*, that the misrepresentation as to his separate ownership made by *R.* in the security-bond given to the Collector could not be regarded in the present suit as more than an admission inconsistent with the title now asserted by the plaintiff, the defendant not having purchased on the faith of such misrepresentation. BOODH SINGH DHOODORIA *v.* GUNESH CHUNDER SEN [12 B. L. R., P. C., 317: 19 W. R., 356

66. ——— False statement by defendant.—A plaintiff cannot take advantage of a statement made by a defendant which at most amounts to a piece of evidence, and not to an admission, but which is found to be untrue, unless it be shown that the status of the plaintiff had been affected, or that he had been misled by such statement. GRISH CHUNDER GHOSE *v.* ISSAR CHUNDER MOOKERJEE [3 B. L. R., A. C., 337: 12 W. R., 226

67. ——— Mitigation of effect of admission.—*Showing nature of transaction when made.*—Where a defendant seeks to make use of statements which have been put in evidence and to treat them as admissions by the plaintiff who put them in, it is competent for the plaintiff to show the real nature of the transaction to which they relate and to get rid of the effect of the apparent admissions. LUTEEFOONISSA *v.* GOOR SURUN DASS. PHOOL BIBEE *v.* GOOR SURUN DASS 18 W. R., 485

68. ——— *Showing real nature of transaction.*—A party claiming under another who has made admissions as to a transaction to which that other was a party, is at liberty to allege and prove that the admissions were made with a fraudulent purpose and were not true, and to show the real nature of the transaction. SEEENATH ROY *v.* BINDOO BASHINEE DEBIA . . 20 W. R., 112

69. ——— Effect of admissions not acted on.—*Admissions by person who afterwards adopts another.*—A party is not concluded by his own representations unless they have been acted upon by the opposite party. If treated merely as admissions not acted upon, it may be shown by the party who made them that they were not true. *Quære,*—What is the effect of admissions made by a person who subsequently adopts another in binding the per-

ADMISSION—*continued.*

3. MISCELLANEOUS CASES—*continued.*

Effect of admissions not acted on—*continued.*

son adopted? BROJENDRO COOMAR ROY CHOWDHRY *v.* CHAIRMAN OF THE DACCA MUNICIPALITY [20 W. R., 223

*74 ——— **Admission not acted on.**—*Decision opposed to admission.*—A mere admission is not conclusive. It is so only in certain cases,—*e.g.*, where it has been acted upon by the party to whom it was made. Thus a statement made in a former suit in which the Court, so far from acting upon it, passed a decree opposed to it, cannot be treated as conclusive. An admission made by defendants' ancestor may be evidence of some weight that may be used against them; but it is only evidence upon which the Court which is trying the suit may act or not according as it considers it ought to have effect given to it. JANAN CHOWDHRY *v.* DOOLAR CHOWDHRY [18 W. R., 347

ADMISSION BY DEFENDANT OF PORTION OF CLAIM.

See RELIEF . I. L. R., 1 All., 191

See CASES UNDER VARIANCE BETWEEN PLEADING AND PROOF—ADMISSION OF PART OF CLAIM.

ADOPTION.

See CASES UNDER HINDU LAW—ADOPTION.

ADOPTION, DOUBLE—

See HINDU LAW—WILL—CONSTRUCTION. [6 B. L. R., 623

ADOPTION MADE ON PROMISE OF SETTLEMENT BY ADOPTIVE FATHER.

See HINDU LAW—WIDOW—POWER OF WIDOW—ALIENATION. [I. L. R., 2 Bom., 67

ADOPTION, NON-RECOGNITION OF—

See BOMBAY ACT II OF 1863. [I. L. R., 2 Bom., 529

ADOPTION, SUIT TO SET ASIDE—

See CASES UNDER DECLARATORY DECREE, SUIT FOR—ADOPTIONS.

See ESTOPPEL—ESTOPPEL BY JUDGMENT. [I. L. R., 1 Calc., 289

See HINDU LAW—REVERSIONERS—POWER OF REVERSIONERS. [I. L. R., 6 Calc., 764 11 C. L. R., 198

See CASES UNDER LIMITATION ACT, 1877, ARTS. 118, 119 (1871, ART. 129: 1859, S. 1, CL. 16).

ADOPTIVE PARENTS.

See HINDU LAW—GUARDIAN—RIGHT OF GUARDIANSHIP. [I. L. R., 3 Bom., 1

ADULTERY.

See ABATEMENT OF PROSECUTION. [4 Mad., Ap. 55

See CASES UNDER DIVORCE ACT.

——— **Of partner with wife of co-partner.**

See PARTNERSHIP . 5 B. L. R., 109

1. ——— **Institution of proceeding by husband.**—*Criminal Procedure Code, 1872, s. 478.*—*Quære,*—Is the formal assent of a husband to a charge of adultery, added at the end of his deposition, a proper compliance with section 478, Act X of 1872? QUEEN *v.* LUCKY NARAIN NAGORY [24 W. R., Cr., 18

2. ——— *Appearing as witness for prosecution in case of rape.*—*K.* was accused by *D.* and *P.*, alleged to be *D.'s* wife, of raping *P.*, and was committed for trial charged in the alternative with rape or adultery. *Held*, that as no complaint had ever been actually instituted by *D.* against *K.* for the offence of adultery, as contemplated by section 478 of Act X of 1872 (Criminal Procedure Code), (the circumstance of *D.'s* appearing as a witness for the prosecution for the offence of rape not amounting to the institution of a complaint within the meaning of that section), *K.'s* conviction for adultery must be quashed. EMPRESS *v.* KALLEE [I. L. R., 5 All., 233

3. ——— **Proof of marriage.**—*Charge of adultery.*—Before a person charged with adultery can be convicted, strict proof of the marriage is necessary. QUEEN *v.* SMITH [I Ind. Jur., N. S., 8: 4 W. R., Cr., 31

4. ——— *Evidence Act, s. 50.*—The provisions of section 50 of the Evidence Act show that where marriage is an ingredient in an offence, as in bigamy, adultery, and the enticing of married women, the fact of the marriage must be strictly proved. *Queen* v. *Wazira, 8 B. L. R., Ap., 63*, overruled. EMPRESS *v.* PITAMBUR SINGH [I. L. R., 5 Calc., 566: 5 C. L. R., 597

EMPRESS *v.* ARSHED ALI [13 C. L. R., 125

5. ——— *Evidence Act, s. 50.*—*K.* was accused by *D.* and *P.*, alleged to be *D.'s* wife, of raping *P.*, and was committed for trial charged in the alternative with rape or adultery. The evidence of marriage between *D.* and *P.* consisted of their statements that they were married to each other, and of a statement by *K.* that *P.* was *D.'s* wife. *K.* was convicted on the charge of adultery.—*Held* that such evidence, having regard not only to section 50 of the Evidence Act, 1872, but to the principle that strict proof should be required in all criminal cases, was not sufficient to establish the vital incident to the charge of adultery, namely, the marital relation of *D.* and *P.* *Empress* v. *Pitambur Singh* concurred in. EMPRESS *v.* KALLEE [I. L. R., 5 All., 233

6. ——— *Marriage illegal by Hindu law.*—*Custom of caste.*—*Penal Code, section 49.*—*Dissolution of marriage at will and*

ADULTERY—Proof of marriage—*continued.*

marriage (natra) with another man.—Custom.—A custom of the Talapada Holi caste that a woman should be permitted to leave the husband to whom she has been first married, and to contract a second marriage (natra) with another man in the lifetime of her first husband and without his consent, is invalid as being entirely opposed to the spirit of the Hindu law; and the man with whom the woman so married, having had sexual intercourse with her, and it being found that he did not honestly believe that she had become his wife, was guilty of adultery under section 497 of the Penal Code. REG. *v.* KURSAN GOJA. REG. *v.* BAI RUPA **[2 Bom., 124, 2nd Ed., 117**

7. ——————— *Marriage contrary to Hindu Law.—Custom of caste.—Penal Code, s. 497.*—Where a prisoner accused of adultery sets up in defence a natra contracted with the woman with whom he is alleged to have committed adultery, in accordance with the custom of his caste, the question the Court has to determine is whether or not the accused honestly believed at the time of contracting the natra that the woman was the wife of another man. REG. *v.* MANOHAR RAIJI . **5 Bom., Cr., 17**

8. ——————— *Sagai marriages.—Custom of caste.*—Sagai wives, *i.e.*, widows married in accordance with the custom of Sagai prevailing amongst the Koiries and other low castes of Behar, are so far the legal wives of their husbands as to justify the punishment of persons committing adultery with them. BISSURAM KOIREE *v.* EMPRESS **[3 C. L. R., 410**

9. ——————**Proof of adultery.**—*Sexual intercourse.—Presumption of knowledge that woman is married.*—In a case of adultery sexual intercourse must be proved; the sexual intercourse required for adultery being the same identical thing as the sexual intercourse required for rape. The difference lies in the mode of proof: in rape, no presumption of sexual intercourse can be made; in adultery, it can be from evidence pointing strongly to an inference of guilt. It is not necessary, therefore, that there should be direct evidence of an act of adultery, nor that the adulterer should know whose wife the woman is, provided he knew she was a married woman. QUEEN *v.* MADHUB CHUNDER GIRI . **21 W. R., Cr., 13**

10. ——————**Condonation of adultery.**—*Penal Code, s. 497.*—The Appellate Court will not uphold a conviction for adultery when the husband has shown that he has condoned the offence. QUEEN *v.* SMITH **[1 Ind. Jur., N. S., 8: 4 W. R., Cr., 31**

11. ——————**Enticing away woman.**—*Penal Code, ss. 497, 498.—Form of conviction.*—A prisoner need not be convicted both of adultery and enticing away the woman; the former (if there were any enticing away) would include it. QUEEN *v.* POCHUN CHUNG . . . **2 W. R., Cr., 35**

ADVANCEMENT.

See ENGLISH LAW . . **2. W. R., 141**

See PARSIS . **[I. L. R., 2 Bom., 75**

ADVERSE POSSESSION.

See CASES UNDER LIMITATION ACT, 1877, ART. 144 (1871, ART. 145: 1859, S. 1, CL. 12)—ADVERSE POSSESSION.

See CASES UNDER POSSESSION—ADVERSE POSSESSION.

See CASES UNDER TITLE—TITLE BY LONG POSSESSION.

See TRUSTEE AND CESTUI QUE TRUST. **[3 B. L. R., A. C., 409 12 W. R., 319**

ADVOCATE.

See CASES UNDER BARRISTER.

See CASES UNDER COUNSEL.

See WITNESS—PERSON COMPETENT TO BE WITNESS . . **5 B. L. R., Ap. 28**

——————**Entry as an—**

See STAMP ACT, 1879, SCH. II, ART. 11. **[I. L. R., 8 Mad., 14**

1. ——————**Right to appear.**—*Criminal Courts. — Prosecution. — Pleader.* — A counsel or pleader is entitled to appear and act on behalf of the prosecution in the Criminal Courts. CHANDI CHARAN CHATTERJEE *v.* CHANDRA KUMAR GHOSE **[5 B. L. R., Ap. 70 14 W. R., Cr., 23**

2. ——————— *Appeal from mofussil.—Non-intervention of vakeel or attorney.*—An advocate of the High Court may appear at the hearing of an appeal from the mofussil on the direct instruction of a client, and without the intervention of vakeel or attorney. GOBIND CHUNDER DUTT *v.* HENDRY . **14 B. L. R., Ap. 12: 24 W. R., 15**

3. ——————— *Filing appeal in Registrar's Office.*—An advocate of the High Court is entitled to appear and plead on the Appellate Side, but not to file an appeal in the Registrar's Office. RAM TARUK BARICK *v.* SIDESSOREE DASSER **[13 W. R., 60**

4. ——————**Privilege of speech.**—Question of the extent of the privilege of speech accorded to advocates and counsel considered. REG. *v.* KASHI NATH DINKAR . . . **8 Bom., Cr., 126**

5. ——————**Vakalutnama, Necessity for.**—*Criminal Procedure Code, 1872, s. 186.*—An advocate appearing in defence of an accused person under section 186 of the Criminal Procedure Code, 1872, should not be required to file a vakalutnama. ANONYMOUS . . . . . **7 Mad., Ap. 41**

6. ——————**Right to appear for prosecution in Sessions Court.**—An advocate of the High Court may appear on behalf of the prosecution in the Court of Sessions and conduct the prosecution without being specially empowered by the Magistrate of the district for that purpose. IN THE MATTER OF THE PETITION OF GUNGADHUR SIRCAR **[23 W. R., Cr., 14**

ADVOCATE—*continued.*

7. ——— Right to sue on promissory note given for fees.—*Recorder's Act XXI of 1863, s. 18.*—With reference to section 18, Act XXI of 1863, an advocate cannot sue upon a promissory note given by anticipation for fees not taxed; nor can the Court in such suit award to the plaintiff a *quantum meruit* for his services. MACLEOD *v.* MAH MAH YET [7 W. R., 390

8. ——— Suspension of Advocate.—*Burma Courts Act VII of 1872, s. 58.—Entering into contract contrary to public policy.*—In a case in which an advocate of the Recorder's Court at Rangoon was suspended by the Recorder under Act VII of 1872, section 58, for having entered into a contract which was contrary to public policy, the High Court, though reprobating such a practice as improper and mischievous, yet considered that a serious warning was all that was called for under the circumstances, inasmuch as it appeared that the advocate in this instance did that which was done by other advocates, even by persons to whom he might fairly look for an example. IN THE MATTER OF MOUNG HTOON OUNG . . . . . 21 W. R., 297

ADVOCATE GENERAL.

See PARTIES—PARTIES TO SUITS—ADVOCATE GENERAL. . . . Cor., 68
[1 Bom., Ap. 9

——— Right to appeal.—*Suit relating to charitable fund.—Statute 53 Geo. III., c. 155, s. 111.*—By the 53 Geo. III., cap. 155, section 111, the Advocate General is entitled to appear and represent the Crown in informations for the administration of charitable funds. ATTORNEY GENERAL *v.* BRODIE [4 Moore's I. A., 190

——— Officiating Advocate General.—*Right to pre-audience.*—The Officiating Advocate General having claimed pre-audience, the claim was questioned by a senior member of the Bar, but was allowed.—*Held* that, down to the transfer of the Government of India to Her Majesty, the Advocate General of the East India Company was not entitled as such to pre-audience in the Courts without a patent of precedence: that the Attorney General and Solicitor General in England enjoy precedence as representing the Sovereign, and not by patent: and that the Advocate General and Officiating Advocate General for the time being are entitled to similar pre-audience as the Attorney General in England. ADVOCATE GENERAL (OFFICIATING), IN THE MATTER OF THE CLAIM OF
[Bourke, O. C., 224: A. O. C., 110

ADVOCATE GENERAL, CASE CERTIFIED BY—

See CONFESSION—CONFESSION TO POLICE OFFICER . I. L. R., 1 Calc., 207
[I. L. R., 2 Bom., 61

See CASES UNDER LETTERS PATENT, HIGH COURTS, CL. 26.

AFFIDAVIT.

See PRACTICE—CIVIL CASES—AFFIDAVITS.
[8 B. L. R., 438
17 W. R. 364
1 Ind. Jur., N. S., 283
I. L. R., 5 Calc., 605: 6 C. L. R., 382
I. L. R., 6 Calc., 485: 8 C. L. R., 43
8 B. L. R., Ap. 65
9 B. L. R., Ap. 10
10 B. L. R., 57
9 W. R., 357

See PRACTICE—CIVIL CASES—COMMISSION FOR TAKING ACCOUNTS.
[I. L. R., 1 Bom., 158

See PRACTICE—CRIMINAL CASES.
[8 Bom., Cr., 126
10 Bom., 102

AFFIDAVIT, RIGHT TO USE—

See CERTIORARI, WRIT OF.
[10 Bom., 102, 109, note

AFFIDAVIT, SUFFICIENCY OF—

See RULE TO SHOW CAUSE.
[3 B. L. R., Ap. 153

AFFIDAVITS, CONTRADICTORY—

See INJUNCTION—INJUNCTION UNDER CIVIL PROCEDURE CODE.
[14 B. L. R., 352

AGENCY.

See HUSBAND AND WIFE.
[I. L. R., 4 Calc., 140

AGENCY, POWER TO REVOKE—

See MALABAR LAW—JOINT FAMILY.
[I. L. R., 1 Mad., 351

AGENT.

See CASES UNDER BENGAL RENT ACT (1869), s. 30.

See CASES UNDER CIVIL PROCEDURE CODE, 1882, ss. 37, 38, 417, 432 (1859, s. 17).

See CRIMINAL PROCEDURE CODE, 1882, s. 45 (1872, s. 90).
[I. L. R., 4 Calc., 603

——— JOINT FAMILY.

See MAHOMEDAN LAW—PRE-EMPTION—PERFORMANCE OF CEREMONIES.
[I. L. R., 5 Mad., 201
I. L. R., 1 All., 521
I. L. R., 7 All., 41

See MALABAR LAW—JOINT FAMILY.
[I. L. R., 1 Mad., 351

See CASES UNDER PRINCIPAL AND AGENT.

See SERVICE OF SUMMONS—SUBSTITUTED SERVICE . I. L. R., 4 Bom., 416
[I. L. R., 6 Bom., 100
8 Bom., O. C., 159
7 Bom., O. C. 97
17 W. R., 33

AGENT—*continued.*

See TENDER . I. L. R., 4 Calc., 572

AGENT, ACKNOWLEDGMENT OF DEBT BY—

See LIMITATION ACT, 1877, s. 19 (1871, s. 20: 1859, s. 4).
[I. L. R., 1 All., 683
3 W. R., S. C. C. Ref., 6
6 Bom., O. C., 67
8 W. R., 1.
10 W. R., 175
I. L. R., 6 Calc., 340
7 C. L. R., 121
L. R., 7 I. A., 8
I. L. R., 8 Bom., 99
I. L. R., 7 Bom., 515
I. L. R., 1 Mad., 385
I. L. R., 5 Mad., 169
14 B. L. R., 21
I. L. R., 3 All., 247

AGENT, ACKNOWLEDGMENT OF TITLE BY—

See LIMITATION ACT, 1877, s. 19 (1871, s. 20: 1859, s. 1, CL. 15).
[I. L. R., 8 Bom., 99
I. L. R., 1 All., 642

AGENT, APPLICATION FOR EXECUTION BY—

See LIMITATION ACT, 1877, ART. 179 (1871, ART. 167)—IRREGULAR OR DEFECTIVE PROCEEDINGS.
[I. L. R., 1 All., 510

AGENT, AUTHORITY OF—

See COMPANY—POWERS, DUTIES, AND LIABILITIES OF DIRECTORS.
[B. L. R., 195

See CASES UNDER PRINCIPAL AND AGENT —AUTHORITY OF AGENT.

AGENT OF FOREIGN SOVEREIGN.

——— Court of Agent, Jurisdiction of.—*Act XV of 1840.—Bom. Regs. XXIX of 1827 and XIII of 1830.*—A sanad issued to an agent of H. H. Holkar, under Act XV of 1840 and Regulation XIII of 1830, was held not to be invalidated by the omission to enter the agent's name in any list of exempted or empowered persons under Regulations XXIX of 1827 and XIII of 1830. The omission to secure the agent any specific jurisdiction under Regulation XIII of 1830 was held to disentitle him from exercising any but the most ordinary jurisdiction which could be exercised under that law. SABHARAM BIN VITHAJI *v.* SADASHIV BIN SAYAJI
[1 Bom., 96

AGREEMENT, ILLEGAL—

See CHAMPERTY AND MAINTENANCE.
[I. L. R., 2 Calc., 233

See CASES UNDER CONTRACT ACT, s. 23.

See INJUNCTION — SPECIAL CASES — BREACH OF AGREEMENT.
[I. L. R., 1 Bom., 550

AGREEMENT EXECUTED BOTH IN ENGLAND AND INDIA.

See STAMP . I. L. R., 1 Mad., 134

AGREEMENT NOT TO APPEAL.

See APPEAL TO PRIVY COUNCIL—PRACTICE AND PROCEDURE—MISCELLANEOUS CASES . . . 9 B. L. R., 460

See CONTRACT ACT, s. 28.
[I. L. R., 1 All., 267
3 C. L. R., 574
I. L. R., 10 Calc., 455: 10 C. L. R., 443
I. L. R., 6 Mad., 368

See COUNSEL . . 9 B. L. R., 460

AGREEMENT NOT TO PARTITION.

See CASES UNDER HINDU LAW—PARTITION—AGREEMENT NOT TO PARTITION.

AGREEMENT NOT TO EXECUTE DECREE.

See ESTOPPEL—ESTOPPEL BY DEEDS.
[I. L. R., 1 All., 403
I. L. R., 5. Calc., 127

See LIMITATION ACT, 1877, ART. 144 (1871, ART. 145)—INTEREST IN IMMOVEABLE PROPERTY . I. L. R., 1 All., 403

AGREEMENT VOID FOR WANT OF CONSIDERATION.

See CASES UNDER CONSIDERATION.

See CASES UNDER CONTRACT ACT, s. 25.

AJMERE COURTS REGULATION, 1877, ss. 17, 18, 21, 36, 37.

——— *Reference to the High Court by the Chief Commissioner of Ajmere and Mairwara.—Reference to Chief Commissioner by Commissioner of Ajmere.—Appeal from Commissioner's decree made in accordance with Chief Commissioner's judgment.*—On an appeal from a decision in a civil suit of the Assistant Commissioner of Ajmere to the Commissioner of Ajmere, the latter, feeling doubtful on a question of the nature specified in section 17 of the Ajmere Courts Regulation I of 1877, referred such question, under section 36 of that Regulation, to the Chief Commissioner of Ajmere and Mairwara. The Chief Commissioner dealt with the case as prescribed in section 37 of that Regulation, and returned it to the Commissioner, who dismissed the suit in accordance with the Chief Commissioner's judgment. The plaintiff preferred an appeal to the Chief Commissioner from the Commissioner's decision. The Chief Commissioner did not make any order on the memorandum of appeal admitting it, or directing that it should be registered, or that the respondent should be summoned, or that the appellant should appear on a certain day under section 551 of Act X of 1877; but issued a notice to the appellant's counsel to appear on a certain day. The appellant's counsel appeared on that day, and the Chief Commissioner intimated, that he was acting

AJMERE COURTS REGULATION, 1877, ss. 17, 18, 21, 36, 37—*continued.*

under section 551 of Act X of 1877. The appellant's counsel then proceeded to address the Chief Commissioner, and was heard for some time, and then stopped in consequence of the Chief Commissioner resolving to refer to the High Court the question whether the appeal from the Commissioner's decision lay to him or to Her Majesty in Council. The Chief Commissioner subsequently referred such question to the High Court. *Held* by the Full Bench (SPANKIE, *J.*, dissenting), on a reference by the Division Bench before which the Chief Commissioner's reference came, that such question arose "in the trial of an appeal" within the meaning of section 21 of the Ajmere Courts Regulation I of 1877, and was properly referred to the High Court. *Held* by the Division Bench (SPANKIE, *J.*, and STRAIGHT, *J.*), that the appeal from the Commissioner's decision lay, in this particular case, not to the Chief Commissioner, but to Her Majesty in Council. THAKUR OF MASUDA *v.* THE WIDOWS OF THE THAKUR OF NANDWARA [I. L. R., 2 All., 819

AGRICULTURAL YEAR, EXPIRATION OF—

See NORTH-WESTERN PROVINCES RENT ACTS (1873 AND 1881), s. 94. [I. L. R., 1 All., 512

ALIENATION.

See CASES UNDER ATTACHMENT—ALIENATION DURING ATTACHMENT.

See CASES UNDER HINDU LAW—ALIENATION.

See CASES UNDER HINDU LAW—JOINT FAMILY.

See MAHOMEDAN LAW—GUARDIAN. [I. L. R., 1 All., 523

See CASES UNDER MALABAR LAW—ENDOWMENT.

See CASES UNDER MALABAR LAW—JOINT FAMILY.

ALIENATION, CONDITION AGAINST—

See CASES UNDER MORTGAGE—FORM OF MORTGAGE.

ALIENATION, PROHIBITION AGAINST—

See SANAD—CONSTRUCTION. [9 Moore's I. A., 55

See WILL—CONSTRUCTION. [14 B. L. R., 442

ALIENATION BY GUARDIAN.

See CASES UNDER ACT XL OF 1858, s. 18.

See CASES UNDER LIMITATION ACT, 1877, s. 7 (1871, s. 7).

ALIENATION OF ANCESTRAL PROPERTY, SUIT TO SET ASIDE—

See PARTIES—PARTIES TO SUITS—JOINT FAMILY . 4 B. L. R., A. C., 118

ALIENS, LAW RELATING TO—

See ENGLISH LAW. [1 Moore's I. A., 175

ALIMONY.

See CASES UNDER DIVORCE ACT, ss. 36 AND 37.

ALLONGE.

See GOVERNMENT PROMISSORY NOTE. [13 B. L. R., 359

ALTERATION OF CONTRACT OR DOCUMENT.

See CASES UNDER CONTRACT—ALTERATION OF CONTRACT.

ALTERNATIVE CHARGE.

See FALSE EVIDENCE—CONTRADICTORY STATEMENTS. [B. L. R., Sup. Vol., 521
13 B. L. R., 324, 325, note

AMEEN.

See CASES UNDER LOCAL INVESTIGATION.

See POSSESSION—NATURE OF POSSESSION. [I. L. R., 4 Calc., 378

——— Report of—

See CASES UNDER EVIDENCE—CIVIL CASES—REPORT OF AMEEN.

1. **——— Functions of Ameen.**—*Deputation of Ameen to ascertain liabilities of judgment-debtors.*—The deputation of an Ameen to ascertain the respective liability of several judgment-creditors is not an improper course for a Court to pursue, and at all events is not a ground for interfering in special appeal with the concurrent judgment of two Courts. KRISTO CHUNDER GUPTO *v.* BROJO MOHUN DEY CHOWDHRY . . . 22 W. R., 183

2. ——— *Local investigation.—Act VIII of 1859, s. 180.*—Functions of an Ameen appointed to hold a local investigation, under section 180, Act VIII of 1859, discussed. ISWARCHANDRA DAS *v.* JUGAL KISHOR CHUCKERBUTTY [4 B. L. R., Ap. 33
S. C. 17 W. R., 473, note: 21 W. R., 281, note

3. ——— *Local investigation.*—There were no limits to the powers conferred by Act VIII of 1859 on a Civil Ameen for the purpose of making an investigation. MOHUN LALL ROY *v.* URNOPOORNA DASSEE . 9 W. R., 566

4. ——— A Civil Court is not warranted in deputing its functions to an

AMEEN.—Functions of Ameen—*continued.*

Ameen, and an Ameen is bound not to go beyond the points referred to him for enquiry RAM DHUN DEY *v.* RAM MONEE DEY . . **21 W. R., 280**

ISWAR CHANDRA DAS *v.* JAGAL KISHOR CHUCKURBETTY . **4 B. L. R., Ap. 33 [S. C., 17 W. R., 473, note: 21 W. R., 281, note**

See BUHODA CHURN BOSE *v.* AJOODHYA RAM KHAN . . **23 W. R., 286**

5. ——— **Power of Mufti Sudder Ameen to set aside attachment issued by himself.**—A Mufti Suddder Ameen may set aside an attachment in a suit issued from his Court, and no longer properly in force in the suit, although no express statutory power to do so exists. But on a petition to set aside such an attachment, he cannot also make a declaration as to the right to the property attached and claimed to have been acquired subsequently, and direct that possession should be transferred to the petitioner. EX PARTE CHELLAPPERUMAL PILLAI . . . **1 Mad., 135**

6. ——— **Evidence taken by Ameen.**—*Irregular order.*—Where a Principal Sudder Ameen had deputed a Civil Ameen to enquire into the fact of possession, instead of hearing the evidence on the point himself,—*Held* that, even if the Principal Sudder Ameen's order was improper, the deputation of the Ameen was legal, and the evidence taken by the Ameen was legal evidence, to be considered on its own merits. RAM CHURN MAHTOON *v.* SURUBJIT MAHTOON . . . . . **9 W. R., 494**

7. ——— **Power to examine witnesses.**—*Duties and functions of Ameen.*—An Ameen should be appointed to hold a local investigation only when it is necessary to inspect the land which is the subject of dispute, to take maps of localities, to obtain information with regard to the physical features of the place, to identify the land in maps with parcels which are the subject of the suit, and to identify the maps with one another with the aid of objects to be found in the land; and for these and similar purposes an Ameen may examine witnesses when the evidence which they have to give is of such a nature that it ought to be taken by him on the spot. Where, however, any fact can be proved by evidence taken otherwise than on the spot, that evidence ought to be taken by the Court itself in a regular manner, and not by an Ameen. *Quære,*—Whether, where an Ameen has in fact been, though improperly, deputed, and has examined witnesses, that evidence ought to be totally rejected. BINDABUN CHUNDER SIRCAR CHOWDRY *v.* NOBIN CHUNDER BISWAS . . . **17 W. R., 282**

8. ——— *Evidence taken by Ameen.*—It is not admissible. CHAND RAM *v.* BROJO GOBIND DOSS . . . . **19 W. R., 14**

9. ——— It was not the intention of the Legislature to allow witnesses to be examined out of Court by Ameens, except with reference to points for the determination of which local inspection is required. SHADHOO SINGH *v.* RAMANOOGRAHA LALL . . . **9 W. R., 83**

AMEEN.—Power to examine witnesses—*continued.*

10. ——— The report of an Ameen as to a local enquiry upon a matter which no personal inspection on his part could decide, and in regard to which the depositions of parties acquainted with the place could afford proper information, was held to be in no way irregular, simply by reason of his having examined witnesses on the spot. SHEO NARAIN BHUGGUT *v.* BUDH SINGH . **11 W. R., 423**

11. ——— *Local investigation.—Suits for enhancement of rent.—Act VIII of 1859, s. 180.*—In suits for enhancement of rent it is a proper course of procedure to appoint an Ameen to make a local investigation in order to enquire as to the description of the land and as to the rates paid in the neighbourhood for similar land, and the Ameen has power, under section 180, Act VIII of 1859, to examine witnesses in the matter. GAUR CHANDRA ROY *v.* RASHBEHARI DUTT **[1 B. L. R., S. N., 1, 10 W. R., 43**

12. ——— An Ameen appointed to hold a local investigation has power to examine witnesses relative to the matter he has to enquire into; but the Munsif has no power to direct the Ameen to try the whole case: when this course was adopted, the High Court expressed their disapproval of such a practice, and remanded the case to the Munsif for re-trial. RAGHUNATH SHAW *v.* RAJKRISHNA DEB . . **1 B. L. R., S. N., 2**

13. ——— **Direction to enquire into mesne profits.**—An Ameen, when directed to make an enquiry as to mesne profits, ought not, in the execution stage of a suit, to enter into enquiries as to dates of dispossession, which must be taken to have been determined by the decree. BIJOY GOBIND NAIK *v.* KALI PROSSONO NAIK . **16 W. R., 294**

14. ——— **Enquiry by Ameen as to existence and value of moveable property.**—*Time for making enquiry.*—In a suit in which the Court considers it necessary to order an enquiry by a Civil Ameen into the existence and value of moveable property, such enquiry cannot be left to be made after decree, but must be made before the final decree is drawn up. ROHINI DEBIA *v.* DIGAMBUR CHATTERJEE . . . . . **23 W. R., 422**

15. ——— **Deputation of second Ameen to make enquiry before first Ameen's proceedings are annulled.**—When an enquiry has been made by a Commissioner under the Code of Civil Procedure, the Court to which it is reported ought not, unless it annuls the proceedings of the first enquiry, to order another on the same matter. AZIM ALI KHAN BAHADOOR *v.* SURUSSUTTY DEBIA . . . . . **23 W. R., 93**

AMEEN—*continued.*

16. ——— **Objections to Ameen's report.**—Where clear instructions as to a local enquiry ordered by the Court are given to an Ameen in the presence of both parties, and no objection is made to them by either party then and there, they have no ground of complaint, after the Ameen has carried out his instructions, if the Court acts upon his report. BISSESSUR ROY *v.* KANCHUN ROY [11 W. R., 155

17. ——— Objections to the Ameen's report should be enquired into if taken within a reasonable time from the return of the report, even where the case has been struck off the file. ISSUR CHUNDER AHIREE *v.* SYAM KHAN CHOWDHRY . . . . . 11 W. R., 95

18. ——— *Notice of time fixed for.*—Reasonable notice must be given of the time fixed for hearing objections to the report. RAM NARAIN SING *v.* GOBERDHUN LALL CHOWDHRY . . . . . 21 W. R., 2

19. ——— *Party not appearing at local investigation.*—A party who refuses to appear before an Ameen at the time he holds his local investigation, is not at liberty afterwards to take any objection to the Ameen's report. BAMUN DOSS MOOKERJEE *v.* BROJO KISHORE MITTER MOJOOMDAR . . . . . 6 W. R., 130

20. ——— **Misconduct of Ameen.**—The Court is bound to enquire into charges against a Civil Court Ameen (such as can be readily enquired into, and their truth either disproved or proved). ABDOOL KUREEM BISWAS *v.* CAMPBELL [8 W. R., 172

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See HUSBAND AND WIFE. [I. L. R., 10 Calc., 951

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1. ——— Decree.—*Judgment.*—An appeal lies from the decree and not from the judgment of a Court of original jurisdiction. In a suit to recover possession of certain lands by setting aside a zur-i-peshgee lease of them, a decree was made dismissing the suit, but in the judgment of the Court there was a finding against the defendant as to some items of the consideration for the lease. *Held*, he could not appeal against that finding. PAN KOOER *v.* BHUGWUNT KOOER [6 N. W., 19: Agra, F. B., 1874, 298

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1. RIGHT OF APPEAL, EFFECT OF REPEAL ON—

2. ——— *Civil Procedure Code, X of 1877.*—*Civil Procedure Code, 1859.*—In all suits instituted before Act X of 1877 came into force, in which an appeal lay to the High Court under Act VIII of 1859, an appeal still lies notwithstanding the repeal of that Act by Act X of 1877. RUNJIT SINGH *v.* MEHERBAN KOER . . I. L. R., 3 Calc., 662

3. ——— Civil Procedure Code, 1859.—*Repeal by Civil Procedure Code, 1877.*—A decree was obtained *ex parte* before October 1st, 1877, and an application was made by the defendant for the first time in May, 1878, to have the case re-opened. This application was refused, and an appeal was thereupon preferred against the order of refusal. *Held*, that no appeal would lie under Act X of 1877, and that, as there was at the time of that Act coming into operation, no proceeding on foot on the part of the appellant which could be saved by the operation of section 6 of Act I of 1868, there was no remedy by way of appeal from the order under Act VIII of 1859. *Runjit Singh* v. *Meherban Koer, I. L. R., 3 Calc., 662; 2 C. L. R., 391*, distinguished. IN THE MATTER OF APACH OJHA *v.* RAM DULARI KOER . . . . . 4 C. L. R., 18

4. ——— *General Clauses Consolidation Act I of 1868.—Order refusing attachment in execution of decree.—Repeal by Civil Procedure Code, X of 1877.*—The holder of a decree for money applied for the attachment

APPEAL—*continued.*

1. RIGHT OF APPEAL, EFFECT OF REPEAL ON—*continued.*

Civil Procedure Code, 1859—*continued.*

in the execution of the decree of certain moneys deposited in Court to the credit of the judgment-debtor. On the 4th June 1877, the Court of first instance refused the attachment, on the ground that the decree directed the sale of certain immoveable property for its satisfaction and awarded no other relief. The order of the Court of first instance was affirmed by the lower Appellate Court on the 4th August 1877. Act X of 1877, repealing Act VIII of 1859 and Act XXIII of 1861, came into force on the 1st October 1877. On the 13th November 1877, the decree-holder applied to the High Court for the admission of a second appeal from the order of the lower appellate Court, on the ground that the decree had been misconstrued. *Held*, that an appeal was admissible under the repealed Act VIII of 1859, under the provisions of section 6 of Act I of 1868.—*Held* also, that the order of the lower Appellate Court was also appealable under Act X of 1877. THAKUR PRASAD *v.* AHSAN ALI . I. L. R., 1 All., 668

5. ——— *Change of Procedure.—Right of appeal.—Order under Civil Procedure Code, 1877, setting aside sale under Act VIII of 1859.*—Where a decree for sale of certain property was obtained under Act VIII of 1859, and the property was sold, but an order was passed after the new Code of Procedure, Act X of 1877, had come into force, setting aside such sale,—*Held*, that an appeal would lie from such an order under Act X of 1877. HARBUNS SAHAI *v.* BHAIRO PERSHAD SINGH I. L. R., 5 Calc., 259 [4 C. L. R., 23

6. ——— Civil Procedure Code, 1877.—*Act XII of 1879, s. 102.—General Clauses Consolidation Act (I of 1868), s. 6.*—On the 25th June 1879, a Subordinate Judge made an order setting aside the sale of immoveable property in the execution of a decree from which an appeal was preferred, under Act X of 1877, to the District Court on the 25th July 1879, before Act XII of 1879 came into force. *Held* that, as the appeal would not have lain at all had Act XII of 1879 been in force on the date of its institution, section 102 of that Act did not apply; but as the appeal lay to the District Court under the law in force on that date, it was competent to dispose of it under the provisions of section 6 of Act I of 1868. DURGA PRASAD *v.* RAM CHARAN [I. L. R., 2 All., 785

7. ——— Registration Act, 1871.—*General Clauses Consolidation Act I of 1868.—Repeal by Registration Act III of 1877.*—An order refusing registration of a deed was passed on 23rd August 1872; and when Act VIII of 1871 was in force, an application for review was presented, and finally rejected on 20th December 1877, after the repeal of Act VIII of 1871 by Act III of 1877. *Held* that, under the provisions of section 6 of Act I of 1868 (the General Clauses Act), the proceedings must be governed by the Act in force at the time when they were instituted,—namely, by Act VIII of 1871,—and there-

APPEAL—*continued.*

1. RIGHT OF APPEAL, EFFECT OF REPEAL ON—*continued.*

Registration Act, 1871—*continued.*

fore no appeal would lie. MAHOMET HOSSEIN *v.* HADZI ABDULLAH . . I. L. R., 3 Calc., 727

2. ACTS.

8. ——— **Act XL of 1858, ss. 21 and 28.**—*Order rejecting application for removal of guardian.*—The order of a Judge, rejecting an application for the removal of a guardian under Act XL of 1858, is appealable. IN THE MATTER OF THE PETITION OF MOHENDRO NATH MOOKERJEE [7 B. L. R., Ap. 9

S. C. MOHENDRO NATH MOOKERJEE *v.* BAMA SOONDUREE DABEA . 15 W. R., 493

9. ——— *Cancelling of order appointing Collector manager.*—Where a Judge cancels his own order under Act XL of 1858 appointing the Collector to take charge of a minor's estate, a friend of the minor on behalf of the minor as the party interested is at liberty to appeal under the provisions of section 28. SHEO PERSHUN CHOBEY *v.* THE COLLECTOR OF SARUN . . 13 W. R., 256

10. ——— *Party to proceedings.—Right of appeal.*—Any person who, being a party to proceedings taken under Act XL of 1858, is injuriously affected by an order passed thereon, is, under section 28 of that Act, entitled to an appeal. IN THE MATTER OF THE PETITION OF NAZIRUN. MUHAMDEE *v.* NAZIRUN . . I. L. R., 6 Calc., 19 [6 C. L. R., 210

11. ——— *Order refusing to recall certificate under Act XL of 1858.*—Where a Civil Court, in the exercise of its discretionary power, refuses to recall a certificate granted under Act XL of 1858, there is no appeal from such refusal. CHUMUTKAR MOHINEE DOSSEE *v.* RAJ RAKHAL MITTER [22 W. R., 479

12. ——— **Act XXIII of 1861, s. 6.**—*Talabana, Failure to deposit.—Application for review of judgment.—A.* filed a memorandum of appeal, but failed to deposit the sum required to defray the cost of issuing the usual notice on the respondent. When the case came on for hearing, it was found that, in consequence of *A.'s* failure to deposit, no notice had been served on the respondent; and the Judge dismissed the appeal under section 6 of Act XXIII of 1861. Within 30 days after this, *A.* presented a petition, explaining the reasons of his default, and praying that, on payment of the talabana, the appeal might be restored to its place; but the Judge, without considering the reasons which *A.* had given in his petition, disallowed his prayer. *Held,* that no appeal lay from the order of the Judge rejecting *A.'s* petition, which was of the nature of an application for a review of judgment. KALIKRISHNA CHANDRA *v.* HARIHAR CHUCKERBUTTY [1 B. L. R., A. C., 155 10 W. R., 160

APPEAL—*continued.*

2. ACTS—*continued.*

Act XXIII of 1861, s. 6—*continued.*

13. ——— *Order dismissing appeal for want of prosecution.*—There was no provision in section 6, Act XXIII of 1861, for the readmission of appeals once dismissed under the provisions of that section. No appeal lay from the order dismissing them. RAMESSUR DUTT *v.* LOOTFUNNISSA . . . . 6 W. R., Mis., 130

14. ——— **Act XIV of 1863.**—*Proceedings of Settlement Officer under Act XIV of 1863.*—The proceedings of a Settlement Officer under section 3, Act XIV of 1863, were not judgments or orders appealable to the Judge, or especially to the High Court under Act X of 1859. AHMED ALI KHAN *v.* NUBEEA . . . . . 2 Agra, 239

15. ——— **Act XIX of 1863.**—*Suit for partition under Act XIX of 1863, s. 8.*—An appeal lay to the Judge, in cases of partition under Act XIX of 1863, where the objection raised by the party opposing partition is severalty of holding by virtue of a former partition. KUNCHUN SINGH *v.* CHOONNA . . . . [1 Agra, Rev., 44

16. ——— **Act XX of 1863, Order passed under.**—An appeal does not lie from an order passed under the Religious Endowments Act (XX of 1863), but the party dissatisfied with the order may seek to setit aside by a regular suit. KHUDIRAM SINGH *v.* SHAM SINGH POOJOORY [W. R., 1864, Mis., 25

KALUB HOSSEIN *v.* ALI HOSSEIN [4 N. W., 3

17. ——— **s. 5.**—*Civil Procedure Code, 1877, s. 647.*—An appeal lies under section 647 of the Code of Civil Procedure against an order of a District Court under section 5, Act XX of 1863. SULTAN ACKENI SAHIB *v.* BAVA MALIMIYAR [I. L. R., 4 Mad., 295

18. ——— **s. 18.**—No appeal lies from an order passed under Act XX of 1863, s. 18. DELRUS BANOO BEGAM *v.* ABDOOR RÁHMAN [21 W. R., 368

19. ——— *Order made without jurisdiction.*—Where a Civil Judge, upon a petition, applying under section 18 of Act XX of 1863 for leave to institute a suit, made an order disposing at once of the matter in dispute, and his successor, reversing the former order, decided by an order upon the rights of the parties,—*Held,* that though both orders were made without jurisdiction, that fact did not give the High Court an appellate jurisdiction in the matter. KAVIRAJA SUNDARA MURTEYA PILLAI *v.* NALLA NAIKAN PILLAI [3 Mad., 93

20. ——— **Act XXI of 1863, s. 27.**—*Interlocutory order of Recorder of Rangoon.—Civil Procedure Code, 1859, s. 83.*—No appeal lay to the High Court, under section 27, Act XXI of 1863, from an

APPEAL—*continued.*

2. ACTS—*continued.*

Act XXI of 1863, s. 27—*continued.*

interlocutory order of the Recorder of Rangoon passed before judgment in the suit,—*e.g.*, one passed under section 83, Act VIII of 1859, directing a defendant to furnish security. *Quære*,—Whether, under Act VIII of 1859, there was any appeal from an order to furnish security under section 83. AHMED ALLY MAHOMED *v.* GLADSTONE, WYLLIE [7 W. R., 508

21. ——— **Cattle Trespass Act (I of 1871).**—*Award of compensation under Cattle Trespass Act I of 1871, s. 22.*—No appeal lies from an award of compensation passed under section 22, Act I of 1871. IN RE GUNESH PERSHAD [3 N. W., 200

22. ——— **Cattle Trespass Act, s. 22.**—*Appeal from an order awarding compensation for illegal seizure of cattle—The Code of Criminal Procedure (Act X of 1882), ss. 404, 407.*—No appeal lies from an order passed under section 22 of the Cattle Trespass Act (I of 1871), awarding compensation for illegal seizure of cattle. QUEEN-EMPRESS *v.* RÁYÁ LAKHMÁ . . I. L. R., 10 Bom., 230

23. ——— **Companies Act, 1857.**—*Order placing name on list of contributories of company.*—No appeal lay from an order of a District Court placing the name of an alleged allottee on the list of contributories of a company wound up under Act XIX of 1857. JAMIYATRAM HIMATRAM *v.* THE GUJARAT TRADING COMPANY 6 Bom., A. C., 185

24. ——— **Court Fees Act, 1870, s. 12, para. 1.**—*Order fixing amount of court fee chargeable on a plaint.—Suit by mortgagor to set aside mortgage.—Valuation of suit.*—There is no appeal against the order of a District Judge fixing the amount of the court fee chargeable on a plaint. The right of appeal to which the plaintiff might have been entitled under sections 31 to 36 of Act VIII of 1859, has been taken away by section 12, clause 1 of the Court Fees Act (VII of 1870). NARAYAN MADHAVRAO NAIK *v.* THE COLLECTOR OF THANA [I. L. R., 2 Bom., 145

25. ——— *Order rejecting plaint for insufficiency of valuation.—Held*, following *Narayan Madhavrao* v. *The Collector of Thana* (I. L. R., 2 Bom., 145), that the decision of the Court of the first instance, rejecting a plaint for insufficiency of the valuation and stamp for the purposes of the Court Fees Act (VII of 1870) not being to the detriment of the revenue, is final, and no appeal lies from it. MONOHAR GONESH *v.* BAWA RAMCHARANDAR . . . I. L. R., 2 Bom., 219

26. ——— *Order rejecting plaint.—Plaint insufficiently Stamped.—Civil Procedure Code (Act X of 1877), s. 1, tit. "Decree."*—An appeal lies against an order rejecting a plaint on the ground of its being insufficiently stamped. AJOODHYA PERSHAD *v.* GUNGA PERSHAD [I. L. R., 6 Calc., 249 6 C. L. R., 567

APPEAL—*continued.*

2. ACTS—*continued.*

Court Fees Act 1870, s. 12—*continued.*

RAJKRISTO BANERJI *v.* BAMA SOONDUREE DASSEE . . . . 23 W. R., 296

27. ——— *Civil Procedure Code, 1859, s. 36.*—Section 12 of the Court Fees Act does not prevent a party from appealing to the High Court under section 36 of the Civil Procedure Code, and urging that the Court of first instance was wrong as to the particular article of the schedule of fees by which the case was governed. GUNGAMONEE CHOWDRAIN *v.* GOPAL CHUNDER ROY . 19 W. R., 214

28. ——— **Military Courts of Request Act XI of 1841.**—An appeal lay under Act XI of 1841. GUNTHAM DOSS *v.* MOOLTAN MULL [2 N. W., 229

29. ——— An appeal lay to the High Court of Judicature for the North-Western Provinces from the decree of a Military Court of Request held at Morar, Gwalior. MOOLTAN MULL *v.* GUNSAM DOSS . . . 3 N. W., 75

30. ——— **Registration Act, 1866.**—No appeal lies to the High Court from an order passed under the Registration Act. RAMESSUR MAHATAH *v.* KULLYANESSUREE DEBIA . 9 W. R., 283

31. ——— **ss. 32, 83, and 84.**—No appeal lay from an order by a Registrar refusing to exercise his discretion under section 32, Act XX of 1866. Such an order came neither within section 83 nor section 84 of the Act. SARKIES *v.* SANGRAM SINGH [6 B. L. R., 578, note: 14 W. R., 194

32. ——— **Order refusing to allow amount of decree to be levied by instalments.**—There is no appeal from an order refusing to allow the amount due under a decree passed upon an obligation specially registered under section 52, Act XX of 1866, to be levied by instalments, and directing immediate enforcement of the decree. IN THE MATTER OF THE PETITION OF RASH BEHARY BABU . . . . . 7 W. R., 130

33. ——— **Order in execution of decree.**—*Bond specially registered.—Registration Act XX of 1886, ss. 52, 53.—Held* (STUART, *C. J.*, dissenting), that an appeal lay from an order passed in the execution of a decree obtained under the provisions of section 53 of Act XX of 1866 upon a bond specially registered under the provisions of section 52 of that Act *Ramanand* v. *The Bank of Bengal* (I. L. R., 1 All., 377) over-ruled. *Petition of Rash Behary* (7 W. R. 130), and *Har Nath Chatterjee* v. *Futtick Chunder* (18 W. R. 572), dissented from. WILAYAT-UN-NISSA *v.* NAJIB-UN-NISSA [I. L. R., 1 All., 583

34. ——— *Registration Act, 1866, s. 53.*—An appeal lay from an order in execution of a decree made under section 53 of Act XX of 1866. BHIKAMBHAT *v.* FERNANDEZ [I. L. R., 5 Bom., 673

APPEAL—*continued.*

2. ACTS—*continued.*

Order in execution of decree—*continued.*

35. ——————— *Registration Act (XX of 1866), s. 53.*—There was no appeal from a decree, nor from orders passed in execution of a decree made under section 53 of Act XX of 1866. BHYRUB CHUNDER *v.* GOLAP COOMARY [I. L. R., 3 Calc., 517

PURUS RAM *v.* DEO KOER . 4 N. W., 29

36. ——————— *Registration Act, 1866 s. 53.*—No appeal lying against a decree made under section 53, Act XX of 1866, the petition was directed to be returned, with a view to its being presented to the Court, if desired, by way of motion. RASH BEHARY BABU *v.* GURUDASS BABU [7 W. R., 115

37. ——————— *Specially registered bond under s. 53, Act XX of 1866.*—No second appeal lay to the High Court against an order passed on an application for execution of a decree made in a suit on a bond specially registered under section 53, Act XX of 1866. *Quære,*—Whether an appeal lies at all against such an order passed in proceedings taken in execution of such a decree. SRIBULLAV BHATTACHARJI *v.* BABURAM CHATTOPADHYA . . I. L. R., 11 Calc., 169

38. ——————— *Registration Act, 1866, ss. 53, 54, 55.—Repeal, Effect of.*—No appeal lies against orders passed in execution of decrees under Act XX of 1866, the procedure under that Act having been expressly saved by Act VIII of 1871, which repealed Act XX of 1866. RAMANAND *v.* THE BANK OF BENGAL . . [I. L. R., 1 All., 377

39. ——————— *Registration Act (XX of 1866), ss. 53, 55.*—An appeal from an order or decree passed in proceedings had in execution of a decree made under section 53 of Act XX of 1866 is not barred by anything in section 55 of that Act. SRIBULLAV BHATTACHARJI *v.* BABURAM CHATTOPADHYA . . . I. L. R., 12 Calc., 511

40. ——————— *Registration Act, 1866, s. 55.*—In cases in which section 55 of Act XX of 1866 bars an appeal, it does so equally in matters of execution as in respect of the decree passed. HURNATH CHATTERJI *v.* FUTTICK CHUNDER SAMADDAR . . . 18 W. R., 512

RADHA KRISTO DUTT *v.* GUNGA NARAIN CHATTERJEE . . 23 W. R., 328

HURO SUNDURI DEBIA *v.* PUNCHURAM MONDUL . . . . 24 W. R., 225

41. ——— **Decree under s. 77, Registration Act, 1877.**—*Suit to compel registration.—Appeal.*—An appeal lies from a decree in a suit under section 77 of the Registration Act, 1877, to obtain registration of a document. WISHWAMBHAR PANDIT *v.* PRABHAKAR BHAT. I. L. R., 8 Bom., 269

42. ——— **Order refusing to register document.**—*Registration Act, 1866, s. 84.—Held,*

APPEAL—*continued.*

2. ACTS—*continued.*

Order refusing to register document—*continued.*

that there was no appeal to the High Court from the decision of a District Court on a petition, under section 84 of Act XX of 1866, to establish the right to have a document registered; nor would the Court interfere with such a decision under Regulation XI of 1827, section 5, clause 2. EX PARTE DHARAMDAS BHAVANIDAS . 3 Bom., A. C., 104

43. ——— **Order of Deputy Commissioner.**—*Registration Act, 1866, s. 84.—District of Chota Nagpore.*—An appeal, under Section 84, Act XX of 1866, from the order of a Deputy Commissioner in Chota Nagpore, must be made to the Judicial Commissioner, who exercises the powers of a Zillah Judge in all the districts of that division. IN THE MATTER OF THE PETITION OF BUDHU MAHATOON . . . . 8 W. R., 266

44. ——— **Order of District Court.**—An order of a District Court under Section 84 of Act XX of 1866 was not appealable to the High Court. SALGRAM MISSER *v.* JANKI KOER 9 W. R., 122

45. ——— **Stamp Act, 1862, s. 17.**—*Order rejecting document tendered in evidence.—Finality of order.—Held,* that an appeal lies to the High Court from the decision of a Judge in a Division Court rejecting a document tendered in evidence under section 17, clause 1 of Act X of 1862, on the ground that there had been an intention to evade the payment of stamp duty. The point upon which the decision of the Court is to be final, under section 17 of the Stamp Act, is as to what is the proper amount of stamp duty which the document ought to bear, and not as to whether the Court ought or ought not to receive the document in evidence. ROYAL BANK OF INDIA *v.* HORMASJI KHOZEDJI . 3 Bom., O. C., 153

46. ——— **Act XXVI of 1867.**—*Order as to valuation of suit.*—Under Act XXVI of 1867, the decision of a Court of first instance as to the valuation of the subject-matter of a suit is final. ISHAN CHANDRA MOOKERJEE *v.* LOKENATH ROY [6 B. L. R., Ap. 12 S. C. 14 W. R., 451

MAFIZUDDIN *v.* KARIMUNNISSA BIBEE [6 B. L. R., Ap. 11 S. C., 14 W. R., 381

47. ——— **Act XXVI of 1867, sch. B, art. 11, note.**—*Order rejecting plaint for undervaluation.—Act VIII of 1859, ss. 30 and 36.*—Where a plaint is rejected under section 30 of Act VIII of 1859 by the first Court, on the ground that it is undervalued, an appeal lies from such order under section 36 of Act VIII of 1859, and this appeal was not taken away by the note to article, 11 schedule B, to Act XXVI of 1867, the object of which was to prevent appeals only where the question merely related to the amount of stamp to be impressed upon the plaint. COLLECTOR OF SYLHET *v.* KALI KUMAR DUTT . . . . . 7 B. L. R., 663 [16 W. R., F. B., 10

APPEAL—*continued.*

2. ACTS—*continued.*

Contra MUDHUSUDAN CHUCKERBUTTY *v.* RYMANI DASI 7 B. L. R., 664, note [13 W. R., 415

3. ARBITRATION.

48. ——— **Judgment on award.**—*Civil Procedure Code, 1859, ss. 325, 327.—Finality of decree.*—On the application of one party to a reference to arbitration, without the intervention of a Court, to have the award filed and for judgment thereon, an objection of the other party that the award had been come to after the arbitrators' authority had been repudiated, was overruled, and judgment was passed by the Munsif in accordance with the award. *Held* (PAUL, *J.*, dissenting), an appeal lay from the decision of the Munsif. In another case the question was referred to a Full Bench, whether, when an award has been ordered to be filed, and judgment has been given in accordance with it, under section 327 of Act VIII of 1859, is such judgment open to appeal? The answer given (PAUL, *J.*, dissenting) was: It is open to an appellant to show that the paper which has been filed is not an award. If it is an award, and judgment is given in accordance with such award, such judgment is final. *Per* PAUL, *J.*—The judgment is final. SASHTI CHARAN CHATTERJEE *v.* TARAK CHADDRA CHATTERJEE, and LALA ISWARI PRASAD *v.* BIR BHANJAN TEWARI . . . . . 8 B. L. R., 315 [15 W. R., F. B., 9

BABUR MEAH *v.* JUMUN MEAH 2 C. L. R., 362

49. ——— *Finality of decree.—Civil Procedure Code, 1859, ss. 324 and 325.*—A suit in the Munsif's Court was, after issues had been settled and evidence on such issues adduced by both parties, referred by consent of parties to arbitration. The arbitrator made his award, and on the next day an order was recorded by the Munsif that the parties were to file their objections to the award in one day, notwithstanding that section 324, Act VIII of 1859, allows the parties ten days for such purpose. The plaintiffs, in accordance with that order, filed a petition of objection to the award, and an order was endorsed by the Munsif on this petition, that it should be laid before the Court with the papers of the arbitrator. The Munsif then gave his judgment, in which he went into the evidence, and, overruling the objection of the plaintiffs, gave a decision on the merits, which decision was in accordance with the award. *Held*, that such judgment, though in accordance with the award, was not final under section 325 of Act VIII of 1859, but was open to appeal. In order to make it final, it should appear that all the proceedings have been regular, and the directions of Act VIII of 1859 complied with. GUNGA NARAIN GHOSE *v.* RAM CHAND BOSE . 12 B. L. R., 48: 20 W. R., 311

50. ——— *Civil Procedure Code, 1859, s. 325.*—Judgment under section 325, Act VIII of 1859, if given according to the award, is final; but such judgment to be final must be one in accordance with the provisions of section 325, and where the Judge gave judgment without allowing

APPEAL—*continued.*

3. ARBITRATION—*continued.*

Judgment on award—*continued.*

sufficient time for objections to be made to the award or for the award to be set aside, the judgment was held to be not one within section 325, and, therefore, subject to appeal. JAYMANGAL SINGH *v.* MOHANRAM MARWARI [8 B. L. R., 319, note: 12 W. R., 397

Affirmed by Privy Council. JOYMUNGAL SINGH *v.* MOHUNRAM MARWARI . . 23 W. R., 429

51. ——— In a suit in the Munsif's Court seven issues were fixed for determination, and the suit was then referred by agreement to three arbitrators. In coming to an award the arbitrators took up specifically some of the issues framed in the Munsif's Court, and declined to enter into others. They determined the matter in issue between the parties, and the award was signed by the three arbitrators. Two of the arbitrators subjoined to the award a suggestion which, if acted on, would prevent the necessity of carrying out the award. The Munsif dealt with this suggestion as surplusage, and gave the plaintiff a decree in accordance with the award signed by the three arbitrators. In appeal it was contended that the award was not a legal one, and it was sought to set the decree of the Munsif aside; but the Judge found that the decree was in accordance with the award, and that he was precluded by section 325 from disturbing the decision of the Munsif. On special appeal it was contended that the award was incomplete as all the issues were not decided, and that the decree was not in accordance with the award as it did not embody the suggestion of the two of the three arbitrators. *Held*, that the decree was in accordance with the award, and was, therefore, final under section 325. SARBOREE KANTO BHUTTACHARJEE *v.* ANADYA KANTO BHUTTACHARJEE [12 B. L. R., Ap. 10: 20 W. R., 226

MADHUSUDAN DAS *v.* ADOITO CHARAN DAS [8 B. L. R., 316, note: 12 W. R., 85

52. ——— *Civil Procedure Code, 1859, s. 325.*—A suit was referred by the Munsif to arbitration under section 315, Act VIII of 1859. The arbitrators were of opinion that the case of the plaintiff was fictitious, but nevertheless gave an award in his favour. The Munsif refused to uphold the award, on the ground that the arbitrators had been guilty of misconduct in giving an award contrary to the evidence. The Judge reversed their decision, on the ground that the Munsif had no jurisdiction to refer to the evidence taken before the arbitrators in order to determine whether they were guilty of misconduct or not: he gave judgment in accordance with the award. *Held*, that his decision was not final under section 325, Act VIII of 1859: the provisions of that section refer only to the Court by which the case is referred to arbitration. The Munsif was entitled to refer to the evidence before the arbitrators in order to determine whether they had misconducted themselves or not. PARESHNATH DEY *v.* NABIN CHANDRA DUTT [5 B. L. R., Ap. 77, note: 12 W. R., 93

APPEAL—*continued.*

3. ARBITRATION—*continued.*

Judgment on award—*continued.*

See BYKUNT NATH MOOKERJEE *v.* PRIONATH GHOSE . . 22 W. R., 447

53. ——— *Civil Procedure Code, 1859, s. 327.*—In an arbitration case between a mahajun and his gomasta, an award was made, to the effect that R725 were outstanding and due to the kuti, of which R483 were due to the mahajun and R241 to the gomasta; and that the gomasta should point out the parties owing the R483, or in default make good the amount. The mahajun applied to the Subordinate Judge of Bhaugulpore, under Act VIII of 1859, section 327, to file the award. The Subordinate Judge held that it was not proved that the gomasta had done as required by the award, and ordered him to pay the deficit. The gomasta appealed to the Judge, who held that no appeal lay from the judgment of the Subordinate Judge enforcing the award. *Held*, on special appeal, that the Subordinate Judge's judgment decided a question of fact not determined by the award, and that an appeal would lie. RAMBHANJAN BHUKUT *v.* SRIKISHEN BHAKAT [2 B. L. R., A. C. 260: 11 W. R., 140

54. ——— *Civil Procedure Code, 1859, s. 325.*—Where a suit is referred to arbitration by an order of Court, and the Court afterwards gives judgment according to the award made upon such reference, such judgment is final, by virtue of Act VIII of 1859, section 325, and no appeal lies therefrom. BROJOLALL BAJ PYE *v.* UMRITOLALL BAJ PYE . . . . . Marsh., 163

GOUR CHUNDER BHUTTACHARJEE *v.* SODOY CHUNDER NUNDEE . . 17 W. R., 30

SURBOREE KANT BHUTTACHARJEE *v.* ANADYA KANT BHUTTACHARJEE [12 B. L. R., Ap., 10: 20 W. R., 226

55. ——— *Irregular procedure in arbitration.—Consent to award.—Civil Procedure Code, 1859, s. 325.*—A judgment in accordance with an arbitation award is, under the express terms of section 325, Act VIII of 1859, final, if the reference to arbitration has been conducted pursuant to the provisions of the Code. And where the matter in dispute in a suit was referred to arbitration, and the provisions of Act VIII were not strictly complied with,—*Held* nevertheless that, as the appellants had consented to the arbitration and to the appointment of arbitrators, and took part in the proceedings, and after having made objections to the award (which objections were considered by the arbitrators), they assented to the award, the Principal Sudder Ameen was justified in passing a judgment in accordance with the award, and that the High Court would not interfere with that judgment. MISSER DEO KISHUN *v.* MISSER BHUGWAN DOSS . . . . . 3 Agra, 199

56. ——— *Decree in accordance with award.*—No appeal lies against a decree made in accordance with an award upon a submission to arbitration in the suit. RAMIREDDY NARSAREDDY *v.* MUMAREDDY PAPIREDDY [5 Mad., 404

APPEAL—*continued.*

3. ARBITRATION—*continued.*

Judgment on award—*continued.*

57. ——— *Civil Procedure Code, 1877, ss. 520, 521.*—Where, in a suit for the filing of an award made on a private reference to arbitration, the Court of first instance, holding that there was no reason to remit such award to the reconsideration of the arbitrator under the provisions of section 520 of Act X of 1877, or to set it aside under section 521 of that Act, did not proceed to give judgment according to such award followed by a decree, but merely directed that such award should be filed,—*Held*, that its order was not appealable as a decree, or as an order. RAMADHIN *v.* MAHESH . . . . I. L. R., 2 All., 471

58. ——— *Decree confirming award.*—Where an award—*i.e.*, a legal award—has been made, and judgment is passed in accordance therewith, the judgment is final; but where a question arises whether the award is a legal award or not, an appeal lies from a judgment of a Court passed in accordance with such award. DEBENDRA NATH SHAW *v.* AUBHOY CHURN BAGCHI [I. L. R., 9 Calc., 905: 12 C. L. R., 525

59. ——— *Civil Procedure Code, 1877, s. 522.*—Section 522 of the Code of Civil Procedure, 1877, which provides that no appeal shall lie from a decree upon an award, except in so far as the decree is in excess of, or not in accordance with, the award, assumes that the award has been regularly and properly passed by arbitrators duly appointed. PUGARDIN RAVUTAN *v.* MOIDINSA RAVUTAN . . . I. L. R., 6 Mad., 414

60. ——— *Order confirming award.—Civil Procedure Code, 1877, ss. 521, 522.*—On appeal from a decree setting aside an award, the District Judge reversed the decree of the first Court and made a decree in accordance with the award. *Held*, that section 522 of the Civil Procedure Code did not take away the right of second appeal against the latter decree. RUGHOOBUR DYAL *v.* MAINA KOER . . . 12 C. L. R., 564

61. ——— *N.-W. P. Rent Act, Reference to arbitration under.*—Where the Court trying a suit under the North-Western Provinces Rent Act, the matters in dispute in which have been referred to arbitration, has refused an application to set aside the award, and has decided the case in accordance with the award of the majority of the arbitrators, no appeal lies from its decision. FAHIM-UN-NISSA *v.* AJUDHIA PRASAD [I. L. R., 6 All., 170

62. ——— *Misconduct of arbitrators.*—A judgment of a Court given in accordance with an award of arbitration is final, even if there has been corruption and misconduct on the part of the arbitrators. RAMANOOGRA CHOBEY *v.* PUTMOORTA CHOBAYAN. . 7 W. R., 205

SREENATH GHOSE *v.* RAJ CHUNDER PAUL [8 W. R., 171

ELAHEE BUKSH *v.* HAJOO . 14 W. R., 33

S. C. IN RE ILAHEE BUKSH [5 B. L. R., Ap. 75

APPEAL—*continued.*

3. ARBITRATION—*continued.*

Judgment on award—*continued.*

63. ——————— *Judgment not in accordance with award.*—An appeal lies from a judgment given on an arbitration award, on the ground that the judgment is contrary to the award. DEB NARAIN SINGH *v.* RAJMONEE KOONWAR [3 W. R., 168

64. ——————— *Addition to award.*—The addition, in a judgment according to an award of a trifling direction upon a matter not referred to the arbitrators, which was quite separable from the other parts of the award, and did not affect the decision on the matter referred, was held to come within the concluding part of Act VIII of 1859, section 325, and not to affect the finality of the judgment. HURO SOONDUREE DABEE *v.* SREEDHUR BHUTTACHARJEE . . 17 W. R., 352

65. ——————— *Order varying award as to payment under decree.*—An appeal will lie from a decree which varies an award by containing a direction for payment by instalments which is not contained in the award. PHIRAN *v.* BAHORAN. [7 N. W., 367

66. ——————— *Doubt as to validity of award.*—An appeal lies where the reality of an arbitration award is questioned on the ground of there having been no valid submission to arbitration. IN THE MATTER OF THE PETITION OF JUNGLI RAM. JUNGLI RAM *v.* RAM HEET SAHOY [19 W. R., 47

67. ——————— *Judgment in accordance with award.—Civil Procedure Code, s. 522.—Held,* that an appeal lies from a decree passed in accordance with an award, when such decree is impugned on the ground that there is no award in law or in fact, upon which judgment and decree could follow under section 522, Civil Procedure Code. *Joymungul Singh* v. *Mohun Ram, 23 W. R., 429,* and *Bhagirath* v. *Ram Ghulam, I. L. R., 4 All., 283,* observed on. LACHMAN DAS *v.* BRIJPAL [I. L. R., 6 All., 174

68. ——————— *Civil Procedure Code, 1859, s. 325.—Finality of decree.*—Matters in dispute were referred to the arbitration of five persons, of whom four made their award on 27th August 1875. On 3rd September, the same arbitrators granted an application for re-hearing. Before the matter was re-heard, one of the four died, and an order striking off the application was made by two of the surviving arbitrators. On 21st February 1876, an application was made to the Court to have the award filed, which was opposed. The Court overruled the objection, and ordering the award to be filed under section 325, Act VIII of 1859, gave a decree to the plaintiffs. *Held,* that the award was not a valid and final award; that the decree passed thereon was not final; and that an appeal would lie. BOONJAD MATHOOR *v.* NATHOO SHAHOO [I. L. R., 3 Calc., 375: 1 C. L. R., 455

69. ——————— *Finality of decree.—Civil Procedure Code (Act VIII of 1859), s. 325.*—A case was referred by consent to arbitration, and after having been recalled into Court was again referred. An award was made by the arbitrator and filed in Court. The defendants then objected, on the ground that they had no notice after the second reference, and that they were not heard, and that the arbitrator had otherwise misconducted himself. These objections were disallowed by the Subordinate Judge, who gave a decree in the terms of the award. This decree was upheld by the Judge on appeal, who, however, found that the arbitrator had been guilty of misconduct. *Held,* that if the decree of the first Court was not final under section 325, Act VIII of 1859, all that the lower Appellate Court could do, was to remand the case to be dealt with on its merits; but inasmuch as there had been an award and a decree thereon, which was final within the terms of that section, the lower Appellate Court had no jurisdiction to hear the appeal or to express any opinion on what had passed in the first Court. WAZIR MAHTON *v.* LULIT SINGH [I. L. R., 7 Calc., 166: 8 C. L. R., 505

70. ——————— *Judgment in accordance with award.—Appeal.—Defendants not all joining in reference to arbitration.*—The question whether, under section 522 of the Code of Civil Procedure, an appeal will lie against a decree given in accordance with an award, depends upon whether the award upon which the decree is based is a valid and legal award. A plaintiff and some of the defendants to a suit applied to refer the suit to arbitration (certain other of the defendants not having joined in the application); an award was passed and a decree made in accordance with such award. The plaintiffs objected to the validity of the award, on the ground that all the parties to the suit had not joined in referring the suit to arbitration; the objection was dismissed, and judgment given in accordance with the award. *Held,* that an appeal would lie from a decree dismissing the objection and confirming the award. JOY PRAKASH LALL *v.* SHEO GOLAM SINGH . . I. L. R., 11 Calc., 37

71. ——————— *Order setting aside decree upon award.—Civil Procedure Code (Act XIV of 1882), s. 521.*—All matters in dispute in a suit were referred to arbitration. An award was duly made and filed, and a decree passed in accordance with the terms thereof. Subsequently, on the application of the plaintiff in the suit, the Court passed an order setting aside the decree and the award, and ordering the case to be set down for hearing upon the ground that the proceedings in connection with the arbitration had been taken, and the award had been filed, without notice to the plaintiff, and that although the award was alleged to have been made with the consent of the par ies, the plaintiff had not consented to it. *Held,* that no appeal lay from such order. *Howard* v. *Wilson, I. L. R., 4 Calc., 231,* dissented from; *Mothooranauth Tewaree* v. *Brindabun Tewaree, 14 W. R., 327,* followed. AMBICA DASI *v.* NADYAR CHAND PAL [I. L. R., 11 Calc., 172

APPEAL—*continued.*

3. ARBITRATION—*continued.*

Judgment on award—*continued.*

72. ——————— *Civil Procedure Code, 1859, ss. 327 and 325.—Finality of judgment on award.*—Section 327, Civil Procedure Code, incorporates the provision in section 325 as to the finality of the judgment given according to the award, and puts the award filed under section 327 in the same position as the award filed under section 325. Where a Court files an arbitration award and passes a decree, that decree is final. *Semble,*—The word "date" in section 327 does not mean the day written in the award as when it was made, but the time when it is handed over to the parties, so that they may be able to give effect to it. SREENATH CHATTERJEE *v.* KYLASH CHUNDER CHATTERJEE . . . . . **21 W. R., 248**

73. ——————— *Agreement to refer not providing for disagreement of arbitrators.—Appointment of umpire by Court.—Award by umpire and one arbitrator.—Decree in accordance with award.—Civil Procedure Code, ss. 509, 523.*—In an agreement to refer certain matters to arbitration, which was filed in Court under section 523 of the Civil Procedure Code, and on which an order of reference was made by the Court, no provision was made for difference of opinion between the arbitrators, by appointing an umpire or otherwise. The arbitrators being unable to agree upon the matters referred, the Court, on the application of one of them, appointed an umpire and directed that the award should be submitted on a particular date. An award was made by the umpire and one arbitrator, without the concurrence of the other arbitrator, and submitted to the Court, which passed a decree in accordance with its terms. On appeal by the defendants in the case, the District Judge reversed the decree. *Held,* that an appeal would lie to the Judge from the decree of the first Court, where there had been no legal award such as the law contemplated. *Lachman Das* v. *Brijpal, I. L. R., 6 All., 174,* referred to. *Held* that, in the present case, there had been no legal award such as the law contemplated, inasmuch as the agreement to refer gave the Court no power to appoint an umpire, and required that the award should be made by the arbitrators named by the parties. MUHAMMAD ABID *v.* MUHAMMAD ASGHAR **[I. L. R., 8 All., 64**

74. ——————— *Powers of arbitrators.—Payment by instalments.—Civil Procedure Code, ss. 518, 522.*—The arbitrators to whom the matters in difference in two suits for money were referred to arbitration, made an award for payment to the plaintiff of certain sums by the defendant, and further directed that these sums should be paid by certain instalments. The plaintiff preferred objections to the award in so far as it directed payment by instalments, and the Court, holding that the arbitrators had no power to make such a direction, modified the award to that extent, under section 518 of the Civil Procedure Code. On appeal, the District Judge, while allowing the power of the arbitrators to direct payment by instalments, reduced the number of instalments which had been fixed. *Held,* that the decree of the first Court not being in accordance with the award, an appeal lay to the Judge, with reference to section 522 of the Code. *Per* MAHMOOD, *J.*—The word "award" used in the last sentence of section 522 of the Code must be understood to mean an award as given by the arbitrators, and not as amended by the Court under section 518. The words "in excess of, or not in accordance with, the award," used in section 522, were intended to enable the Court of appeal to check the improper use of the power conferred by section 518. JAWAHAR SINGH *v.* MUL RAJ . . . **I. L. R., 8 All., 449**

75. ——————— *Evidence given by party on oath proposed by opposite party.—Award in accordance with such evidence.—Judgment in accordance with award.—Validity of award.—Act X of 1877 (Civil Procedure Code), ss, 520, 521, 522.—Act X of 1873 (Oaths Act.)*—The plaintiff in a suit, which had been referred to arbitration, offered before the arbitrator to be bound by the evidence of the defendant given on a certain oath. With the arbitrator's consent the defendant accepted such offer, and gave evidence on such oath. The arbitrator made an award in accordance with the evidence so given. The plaintiff objected to the award, not on any of the grounds mentioned in sections 520 and 521 of the Civil Procedure Code, but on the ground that the procedure of the arbitrator had been illegal. The Court disallowed this objection, and gave a judgment and decree in accordance with the award. *Held* by STRAIGHT, *J.*, that such decree being in accordance with the award, was not appealable. *Held* by STUART, *C. J.*, that the award not being open to objection on any of the grounds mentioned in sections 520 and 521 of the Civil Procedure Code, and the decree being in accordance with the award, the decree was not appealable. *Held* by OLDFIELD, *J.*, that the procedure adopted by the arbitrator being illegal, not being warranted by the Oaths Act, and there being in reality no award within the meaning of the Civil Procedure Code, the decree therefore was appealable. *Per* STUART, *C. J.*, that the procedure of the arbitrator did not require to be warranted by the Oaths Act, as he was entitled by virtue of his office to proceed as he did. BHAGIRATH *v.* RAM GHULAM **[I. L. R., 4 All., 283**

76. ——— **Application to file award.**—*Civil Procedure Code (Act XIV of 1882), ss. 525, 520, and 521.*—When an application is made to a Court to file an award under section 525 of the Code of Civil Procedure, and an objection is made to the filing of it upon any of the grounds mentioned in section 520 or 521, the proper course for the Court to pursue is to dismiss the application, and to leave the applicant to bring a regular suit to enforce the award in which all the objections to its validity may be properly tried and determined. Where no such ground of objection is made to the filing of the award, and the Court consequently orders it to be filled, no appeal lies against that order. HURRONATH CHOWDHRY *v.* NISTARINI CHOWDRANI **[I. L. R., 10 Calc., 74**

APPEAL—*continued.*

3. ARBITRATION—*continued.*

Application to file award—*continued.*

77. ——————— *Order rejecting appeal.—Civil Procedure Code, s. 525.—Matters to be decided upon application to file an award.—Court fee on such application.*—No appeal lines from an order upon an application to file an award under section 525 of the Civil Procedure Code. Upon an application to file an award under section 525 of the Civil Procedure Code, the Court to which the application is made has no jurisdiction to enquire whether the defendant has agreed to the terms of the instrument referring the matter to arbitration, or whether the terms were obtained by fraud. When such objections are made, it is the duty of the Court to reject the application under section 525, and refer the parties to a regular suit. BIJADHUR BHAGUT *v.* MONOHUR BHUGUT . I. L. R., 10 Calc., 11

S. C. PALUT BHAGUT *v.* MONOHUR BHAGUT [13 C. L. R., 171

78. ——————— *Civil Procedure Code, s. 2 and s. 525.—Arbitration.—Refusal to file award in Court.—"Decree."—Held* (OLDFIELD, *J.*, dissenting), that an appeal does not lie from an order disallowing an application to file an award under section 525 of the Civil Procedure Code. *Janki Tewari* v. *Gayan Tewari, I. L. R., 3 All., 427,* distinguished by STUART, *C. J.* The same case followed by OLDFIELD, *J.* BHOLA *v.* GOBIND DAYAL [I. L. R., 6 All., 186

79. ——————— *Act VIII of 1859, ss. 325 and 327.*—An application was made under section 327 of Act VIII of 1859 to file an arbitration award, and the Court, after calling on the opposite party to show cause why it should not be filed, rejected the application. *Held,* that the case did not come within the meaning of section 325, and that the order, being simply one "rejecting an application to file an award," was final. RAJKUMAR SING *v.* KALI CHARAN SING [1 B. L. R., Ap. 20: 11 W. R., 57

80. ——————— *Order rejecting application to file.—Act VIII of 1859, s. 327.*—No appeal lies from an order rejecting an application to file an award (MITTER, *J.*, *dubitante*). ROY PRIYANATH CHOWDHRY *v.* PROSONNO CHUNDER ROY CHOWDHRY . . 2 B. L. R., A. C., 249

S. C. PREONATH CHOWDHRY *v.* RAMDHUN [11 W. R., 104

CHINTAMAN SING *v.* UMA KUNWAR [B. L. R., Sup. Vol., 505: 2 Ind. Jur., N. S., L: 6 W. R., Mis., 83

81. ——————— *Order granting or refusing.—Held* by the majority of the Court (PEARSON, *J.*, *dissentiente*), that no appeal lies from an order passed under section 327, Act VIII of 1859, whether granting or refusing the application. JOKHAN RAI *v.* BUCHO RAI . 3 Agra, 353 [S. C. Agra., F. R. Ed., 1874, 156

APPEAL—*continued.*

3. ARBITRATION—*continued.*

Application to file award—*continued.*

82. ——————— *Want of consent of parties.—Private award.*—An appeal, on the allegation of want of consent of parties, lies from the order of a Lower Court, under section 327, Code of Civil Procedure, directing a private award of arbitration to be filed and enforced. HULODHUR SANTAL *v.* GONESH SANTAL . . . 6 W. R., 60

83. ——————— *Order refusing application.—Civil Procedure Code, 1859, s. 327.*—No appeal lies against an order disallowing an application under section 327 of Act VIII of 1859 to file an award. VYANKATESH RAMCHANDRA JOGEKAR *v.* BALAJERAV BIN ANANDRAV . 1 Bom., 184

84. ——————— *Order refusing application.—Civil Procedure Code, 1859, s. 327.*—Application to file an award under section 327 of Act VIII of 1859 should be made to the Court of the lowest grade competent to receive it, and no appeal lies to High Court from an order by a District Court confirming on appeal an order of a Subordinate Court declining to file such an award. EX PARTE BALKRISHNA BHASAKAR GUPTE [2 Bom., 96: 2nd Ed., 91

85. ——————— *Order refusing application.—Civil Procedure Code, 1859, s. 327.—Quære,*—Does an appeal lie from the refusal of a Civil Court under Act VIII of 1859, section 327, to order an award to be filed? RAJ CHUNDER ROY CHOWDHRY *v.* BROJENDRO COOMAR ROY CHOWDHRY . . . . . 21 W. R., 182

86. ——————— *Civil Procedure Code, s. 327.*—The plaintiff sought to file and to enforce a private award, under the provisions of section 327, Act VIII of 1859. The defendant objected that he was no party to the award. The Court to which the plaintiff's application was made, after enquiry into the matter, overruled the objection, and directed that the award should be filed, but made no decree enforcing the award under the provisions of Chapter VI, Act VIII of 1859. *Held,* that the order was not open to appeal as it did not operate as a decree. HUSSAINI BIBI *v.* MOHSIN KHAN [I. L. R., 1 All., 156

87. ——————— *Order refusing to file award.—Civil Procedure Code (Act X of 1877), ss. 525, 588.*—Matters in dispute were referred to arbitration without the intervention of the Court. An award was made, and upon an application under section 525 of the Civil Procedure Code to file the award, one of the parties showed cause why the award should not be filed, and the Subordinate Judge held the objection to be good. *Held,* that no appeal lay. SEEE RAM CHOWDHRY *v.* DENOBUNDHOO CHOWDHRY [I. L. R., 7 Calc., 490: 9 C. L. R., 147

88. ——— Order to enforce award.—*Civil Procedure Code, 1859, s. 327.*—An appeal lies

APPEAL—*continued.*

3. ARBITRATION—*continued.*

Order to enforce award—*continued.*

from an order made in execution of an arbitration award filed under the provisions of section 327 of the Civil Procedure Code. VASUDEB VISHNU *v.* NARAYAN JUGANNATH DIKSHIT . **5 Bom., A. C., 129**

HUMUTOOLLAH CHOWDHRY *v.* HEERUN **[13 W. R., 62**

89. ——— Order refusing to enforce illegal award.—*Civil Procedure Code, 1859, s. 327.*—An order refusing to enforce an obviously illegal award of arbitrators under section 327, Act VIII of 1859, is not a decree, and therefore not appealable. DIGAMBUREE DOSSEE *v.* POORNANAND DEY . . . . . **7 W. R., 401**

90. ——— Order enforcing award.—*Private award.*—An appeal lies from the order of a Court directing the enforcement of an award of arbitrators, when the matter was referred to arbitration without the intervention of a Court. ANUND CHUNDER SINGH *v.* GOPAL CHUNDER DASS **[3 W. R., 154**

LAKSHMAN SHIVAJI *v.* RAMA ESU **[8 Bom., A. C., 17**

91. ——— *Private award.*—*Civil Procedure Code, 1859, ss. 325, 327.*—A decree passed by a Civil Court in accordance with an award of arbitrators made without the intervention of a Court of Justice under section 327 of the Civil Procedure Code (Act VIII of 1859) is not subject to appeal. VISHNU BHAU JOSHI *v.* RAVJI BHAU JOSHI . . . . **I. L. R., 3 Bom., 18**

92. ——— *Civil Procedure Code, s. 525.—Filing private award in Court.—Amendment of plaint, Ch. 37 of Civil Procedure Code, 1877.*—By the amendment of the plaint, a case under section 525 of Act X of 1877 was taken out of the scope of Chapter XXXVII of that Act. *Held* that, this being so, the decree of the Court of first instance was appealable. JUALA SINGH *v.* NARAIN DAS . . . . **I. L. R., 3 All., 541**

93. ——— Order refusing to enforce award.—*Civil Procedure Code, 1877, ss. 2, 540.—Filing private award in Court.—Order rejecting application.—Per* SPANKIE, *J.*—An order refusing an application to file a private award in Court is appealable as a decree. *Jokhan Rai* v. *Bucho Rai, 3 Agra, 353,* and *Hussaini Bibi* v. *Moshin Khan I. L. R., 1 All., 156,* impugned and distinguished: *Vishnu Bhau Joshi* v. *Ravji Bhau Joshi, I. L. R., 3 Bom., 18,* distinguished. *Per* STUART, *C. J.*—An order refusing an application to file a private award in Court, on grounds not mentioned in sections 520 and 521, is a decree and appealable as such. JANKI TEWARI *v.* GAYAN TEWARI. **I. L. R., 3 All., 427**

94. ——— Order enforcing award.—*Civil Procedure Code, 1859, s. 327.*—Plaintiff sued for confirmation of an award delivered by arbitrators appointed by agreement of parties to decide upon his claim to a share of ancestral property. Defendant objected that the award was illegal, principally upon the ground that he had cancelled his submission some time before the award was passed. The District Judge ordered the award to be filed, on the authority of *Pestonjee* v. *Maneckjee* (*3 Mad., 183;* affirmed, *12 Moore's I. A., 112*). The defendant appealed. *Held,* that no appeal lay. SANTANJA *v.* RAMARAYA . . . . . **7 Mad., 257**

95. ——— *Arbitration award.*—*Act VIII of 1859, s. 325.*—An appeal lies from an order enforcing execution of an arbitration award, or from a decree under section 325 of Act VIII of 1859. WALI ALAM *v.* BIBI NASRAN **[3 B. L. R., Ap. 104: 12 W. R., 50**

96. ——— Order refusing to enforce award.—*Civil Procedure Code, 1877, s. 622.*—When a Court has refused to file an award upon an application under section 525, Civil Procedure Code, no appeal lies against such decision, which is an order and not a decree; but the High Court can interfere under section 622. MANA VIKRAMA *v.* MALICHERRY KRISPEAN NAMBUDRI, MAHARAJA OF CALICUT . . . . **I. L. R., 3 Mad., 68**

97. ——— Order enforcing award.—*Final order.—Civil Procedure Code, 1877, ss. 522, 526.*—The power to file an award includes the power to enquire if there was a submission to arbitration, and this question is concluded by the decree, which is final under sections 526 and 522 of the Code of Civil Procedure. MICHARAYA GÚRUVU *v.* SADASIVA PARAMA GÚRUVU . . **I. L. R., 4 Mad., 319**

98. ——— Curtailment of time for taking objection to award.—*Review.*—When a party has been prejudiced by having the time allowed for taking objections to an award curtailed by the Court, no appeal lies, but a review should be granted by the Court of first instance. MONJI PREMJI SET *v.* MALIYAKEL KOYASSAN KOYA HAJI **[I. L. R., 3 Mad., 59**

99. ——— Order setting aside award.—*Misconduct of arbitrators.*—An order of a Civil Court setting aside an arbitration award, being an interlocutory order, is not open to an appeal immediately; but when the Court sets aside the award on the ground of misconduct on the part of the arbitrator, and, after hearing the case on its merits, makes its decree in favour of the plaintiff, it is competent to the defendant to appeal against that decree. MOTHOORANATH TEWAREE *v.* BRINDABUN TEWAREE . . . **14 W. R., 327**

100. ——— Setting aside award.—*Civil Procedure Code, 1859, s. 313.*—A regular and not a summary appeal lies to set aside an award of arbitrators passed under section 313, Act VIII of 1859. RAM COOMAR CHOWDHRY *v.* NOBIN CHUNDER CHOWDHRY . . . **W. R., 1864, Mis., 33**

APPEAL—*continued.*

3. ARBITRATION—*continued.*

101. ——— Order directing submission to be filed.—*Civil Procedure Code, 1859, s. 326.*—No appeal lies from an order directing that an agreement to submit matters in dispute to arbitration should be filed under the provisions of section 326 of the Procedure Code. PESTONJEE NUSSERWANJEE *v.* MANECKJEE & Co. . . **3 Mad., 183**

AFFIRMED ON APPEAL BY PRIVY COUNCIL **[12 Moore's I. A., 112**

102. ——— Order refusing to file submission.—*Civil Procedure Code, 1859, s. 326.*—An order disallowing an application under section 326 of the Code of Civil Procedure, 1859, is unappealable. BHUGWAN *v.* PURMESHREE . . **5 N. W., 179**

103. ——— Application to file compromise.—*Agreement of parties—Decree on compromise.—Withdrawal from compromise.—Code of Civil Procedure, Act XIV of 1882, s. 375.*—After suit filed by the plaintiff against several defendants, one of whom was an infant, a petition of compromise entered into between the adult parties was filed in Court. The petition stated the terms of arrangement, and also that an application would be made by the guardian of the minor praying the Court to allow the compromise to be carried out on his behalf. Ten days after the petition of compromise was filed, the first defendant and the plaintiff presented petitions to the Court withdrawing from the compromise, and praying that the suit should proceed. The second defendant presented a petition praying that the compromise should be recorded, and a decree passed according to its terms. The Court made a decree in accordance with the prayer of the second defendant's petition. The first defendant appealed. *Held*, that an appeal lay, section 375 of the Code of Civil Procedure merely covering cases in which all parties consent to have the terms entered into, carried out, and judgment entered up. *Ruttonsey Lalji* v. *Poorbai, I. L. R., 7 Bom., 340*, questioned. HARA SUNDARI DEBI *v.* KUMAR DUKHINESSUR MALIA **[I. L. R., 11 Calc., 250**

4. BOMBAY ACTS.

104. ——— Bombay Civil Courts Act, XIV of 1869, s. 36.—*Valuation of suit.—Jurisdiction.*—Where a suit, wherein the subject-matter exceeded R5,000, was instituted in the Court of a Principal Sadr Amin, but decided by a Subordinate Judge, 1st Class, appointed under the Bombay Civil Courts Act XIV of 1869,—It was held that an appeal lay direct to the High Court under section 26 of the Act. RAYASANGJI SHIVSANGJI *v.* GULAM RASUL . . . . . **9 Bom., 286**

105. ——— *Application by creditor for less than R5,000 in suit for above that amount.*—Although the applicant to have a sale set aside was creditor for a sum less than R5,000, still, as the sale took place in a suit for a sum above R5,000, an appeal lay to the High Court. KRISHNARAV VENKATESH *v.* VASUDEV ANANT **[11 Bom., 15**

APPEAL—*continued.*

4. BOMBAY ACTS—*continued.*

Bombay Civil Courts Act, XIV of 1869, s. 36—*continued.*

106. ——— *Suit for declaration of right to property under attachment.*—In a suit for a declaration that the plaintiff had a right of property and possession in a certain house under attachment, being in effect a suit for the removal of the attachment,—*Held* that the judgment-debt in respect of which the house was attached being less than R5,000, no appeal lay to the High Court. MOTICHAND JAICHAND *v.* DADABHAI PESTONJI **[11 Bom., 186**

5. CERTIFICATE OF ADMINISTRATION (ACT XXVII OF 1860).

107. ——— Order granting certificate of possession.—*Act XXVII of 1860 and Act XIX of 1841.*—The order granting a certificate under Act XXVII of 1860 and directing possession to be given to the certificate-holder under Act XIX of 1841, held not to be open to appeal or review. JUSODA KOONWAR *v.* GOUREE BYJNATH PERSHAD **[1 Ind. Jur., N. S., 365**

108. ——— Order refusing to grant certificate.—*Act XXVII of 1860.*—No appeal lies from an order of a District Judge refusing to grant a certificate under Act XXVII of 1860. IN THE MATTER OF THE PETITION OF VISHVANATH HARI **[7 Bom., A. C., 71**

109. ——— Order refusing to recall certificate.—*Act XXVII of 1860.*—No appeal lies from an order of a District Judge refusing an application to recall a certificate granted by him under Act XXVII of 1860. IN THE MATTER OF THE PETITION OF NANUK PERSHAD. NANUK PERSHAD *v.* LALLA NITYA LALL . **I. L. R., 6 Calc., 40 [6 C. L. R., 388**

110. ——— Order as to form of certificate.—*Act XXVII of 1860.*—There are no general words in any part of Act XXVII of 1860 declaring that orders made by the Zillah Court under that Act as to the form of the certificate shall be subject to appeal to a High Court. BANEEMADHUB MOOKERJEE *v.* NILAMBUR BANERJEE . . **8 W. R., 376**

111. ——— Case transferred under Act XVI of 1868, s. 19.—*Act XXVII of 1860.*—Where an application for a certificate under Act XXVII of 1860 has been transferred by the High Court, in the exercise of the power vested in it by section 19, Act XVI of 1868, from the file of a Judge to that of a Subordinate Judge, the order of the latter is appealable to the Court of the Zillah Judge, and only specially appealable to the High Court. FUZL HASSEIN *v.* TUSSUDUCK ALI KHAN **[13 W. R., 395**

112. ——— Enquiry or omission to make enquiry.—*Act XXVII of 1860.*—An appeal lies from the result of an enquiry or omission to make an enquiry under Act XXVII of 1860 TARINEE CHURN BROHMO *v.* ROMA SOONDUREE DOSSEE . . . . . **20 W. R., 312**

APPEAL—*continued.*

5. CERTIFICATE OF ADMINISTRATION (ACT XXVII OF 1860)—*continued.*

113. ——— **Order for security.**—*Act XXVII of 1860, s. 6.*—An appeal will lie under section 6 of Act XXVII of 1860, merely for the purpose of varying the Judge's order by reducing the amount of security required by him from the party declared entitled to have the certificate. When an appeal has been properly instituted under section 6, it has been ruled that the Court may alter or vary the Judge's order with respect to security. SOONRA *v.* RAM SUHA . . . . . **2 N. W., 146**

114. ——— *Deposit of security by person entitled to a certificate.—Act XXVII of 1860.*—No appeal lies under Act XXVII of 1860 on a question of the deposit of security by a person who has been declared entitled to a certificate under the Act. MONMOHINEE DASSEE *v.* KHETTER GOPAUL DEY . . . **I. L. R., 1 Calc., 127 [24 W. R., 362**

IN THE MATTER OF RUKMIN **[I. L. R., 1 All., 287**

115. ——— *Act XVXII of 1860, ss. 5, 6.—Certificate for collection of debts.*—No appeal impugning the order of a District Court requiring security from the person to whom it has granted a certificate under Act XXVII of 1860, lies under that Act to the High Court. *In the matter of the petition of Rukmin* followed. IN THE MATTER OF THE PETITION OF PADDO SUNDARI DASI. . . . . **I. L. R., 3 All., 304**

RAJ MOHINEE CHOWDHRANI *v.* DINO BUNDHOO CHOWDHRY . **17 W. R., 566**

6. COSTS.

116. ——— **Discretion, Exercise of.**—*Act VIII of 1859, ss. 187, 189, 193, 196.—Held* (MACPHERSON, *J.*, doubting), an appeal will lie on a mere question of costs. GRIDHARI LAL ROY *v.* SUNDAR BIBI **[B. L. R., Sup. Vol., 496: 6 W. R., 187**
See DOWCETT *v.* WISE . **1 W. R., 522**

117. ——— *Decree enforcing award.—Held* (by LOCH, *J.*), with reference to the Full Bench Ruling *Girdhari Lal Roy* v. *Sundar Bibi* (B. L. R., Sup. Vol., 496: 6 W. R., 187), that an appeal lies, on the point of costs, from a decree enforcing an arbitration award. KHODA BUKSH *v.* MOWLA BUKSH . . . **14 W. R., 255**

Contra. COLLECTOR OF DACCA *v.* KAMALA KANT MOOKERJEE **[2 W. R., 33**

CHOONI LAL MISSER *v.* PATROO DEO **[6 W. R., 19**

KEEMEE BAEE *v.* LUCHMUN DOSS NARAIN DOSS **[5 W. R., P. C., 59: 1 Moore's I. A., 470**

ACHUMBIT SINGH *v.* KUNHYA LAL MOHAJUN . **7 W. R., 208**

APPEAL—*continued.*

6. COSTS—*continued.*

Discretion, Exercise of—*continued.*

118. ——— *Semble.*—A regular appeal in respect of costs will not lie where *bonâ fide* care and discretion have been exercised on the part of the Court below. DESAJI LAKHMAJI *v.* BHAVANIDAS NAROTAMDAS **[8 Bom., A. C., 100**

LUCHMUN RAM UNOOJ *v.* WATSON **[W. R., 1864, 146**

119. ——— As a general rule, an appeal in respect of costs will only be entertained in cases in which no discretion has been fairly exercised upon the question, and the decision of the Court below has proceeded upon mistake or misapprehension. Where *bonâ fide* care and discretion have been exercised, no appeal in respect of costs should be allowed, and the question whether such discretion has been well or ill exercised should not be entertained. KESHAVRAM KRISHNA JOSHI *v.* BHAVANJI BIN BABAJI . . . **8 Bom., A. C., 142**

120. ——— Where no appeal is made against the judgment passed on the subject-matter of the suit, the discretionary power of assessing costs given by section 187 of Act VIII of 1859 should not, unless in a very exceptional case, be interfered with by the Appellate Court. KUPPUSVAMIAYYAN *v.* NANNUVAYYAN . . **1 Mad., 74**

121. ——— **Order involving matter of principle.**—Though the distribution of costs is, under the Civil Procedure Code, a matter within the discretion of the Court, yet there may be circumstances which will justify an appeal upon a mere question of costs. CHITHRAYIL *alias* KUNATH AHMED KOYA *v.* IRUMANOM VITTIL KANHAMATH HAJI . . . . . **3 Mad. Rep., 279**

DANTULURI NARYANA GAJAPATI RAZU GARU *v.* SARUPPA RAZU **[3 Mad., 113**

122. ——— An appeal will lie on a question of costs where a matter of principle is involved. SECRETARY OF STATE FOR INDIA IN COUNCIL *v.* MARJUM HOSEIN KHAN **[I. L. R., 11 Calc., 359**

123. ——— *Order in discretion of Court.—Special appeal.*—When a question of costs is purely in the discretion of the lower Court no appeal will lie, but when a matter of principle is involved an appeal will lie. Where *A.* was sued upon the allegation that he had instigated his co-defendant *B.* to refuse to deliver up a document, for the recovery of which the suit was brought, and where no relief was prayed as against *A.*, but the lower Courts awarded a decree in favour of the plaintiff directing *A.* to pay half the costs of suit,—*Held*, that the question was one of principle, and that a second appeal lay to the High Court against the decree directing *A.* to pay such costs. BUNWARI LALL *v.* CHOWDHRY DRUP NATH SINGH **[I. L. R., 12 Calc., 179**

APPEAL—*continued.*

6. COSTS—*continued.*

124. ——— Appealable order.—If an order is itself appealable as affecting the jurisdiction of the Court or the merits of the case, an appeal will lie from that part of the order which relates to costs; but, as in the case of decrees, in those cases, and those cases only, where the order is appealable, will an appeal lie against the direction as to costs, which is ancillary to the order. BALKISSEN DASS *v.* LUCHMIPUT SINGH . . . **I. L. R., 8 Calc., 91**

125. ——— *Return of plaint.—Jurisdiction.—Code of Civil Procedure, ss. 15 and 57.*—On the hearing of a suit in the Court of first instance, the Court came to the conclusion that the value of the property in dispute placed the claim beyond the jurisdiction of the Court; the suit was therefore dismissed with costs. On appeal this decision was reversed with costs, on the ground that the plaint ought to have been returned to the plaintiff for presentation in the proper Court. The defendant appealed to the High Court. *Held*, that the defendant ought to have been allowed his costs in both Courts, and that he was entitled to an appeal on that ground. MOSHINGAN *v.* MOZARI SAJAD **[I. L. R., 12 Calc., 271**

7. DECREES.

126. ——— Order returning plaint.—*Civil Procedure Code, 1877, s. 540.—Decree, Form of.*—The plaintiffs, the widow and son, respectively, of *N.* deceased, claimed immoveable property inherited from his father by *N.* and also immoveable property which had devolved upon *N.* from his brother, who had predeceased him, and mesne profits of such properties. The Court of first instance, finding that the claim to the former property was admitted and that to the latter was not denied, but resisted as barred by section 13 of Act X of 1877, and holding it not to be so barred, made a decree returning the plaint to the plaintiffs that they might after correcting it file it either in the Revenue Court in regard to the profits of the former property, or in the Civil Court for possession of the latter property. *Held* that, although the claim of the plaintiffs was not either decreed or dismissed, yet as the right and title asserted by them to such properties was implicitly recognised by such decree, the defendants were entitled to appeal from it. BEHARI BHAGAT *v.* BEGAM BIBI . . . **I. L. R., 3 All., 75**

127. ——— Order dismissing suit as not properly brought.—*Right of appeal.*—The plaintiffs in this suit claimed, as the heirs of *G.* possession from the defendants of certain lands which *G.* had mortgaged to the defendants, alleging that the mortgage-debt had been satisfied from the usufruct. The defendants denied the title of the plaintiffs to redeem, asserting also that the mortgage-debt had not been satisfied. The Court of first instance held that the plaintiffs were entitled to redeem, but dismissed the suit on the ground that the mortgage-debt had not been satisfied. *Held*, that the defendants were entitled to appeal, the case of *Pan*

APPEAL—*continued.*

7. DECREES—*continued.*

Order dismissing suit as not properly brought—*continued.*

Kooer v. *Bhugwunt Kooer, 6 N. W., 19*, not being applicable to this case. RAM GHOLAM *v.* SHEO TAHAL **[I. L. R., 1 All., 266**

128. ——— *Right of appeal.*—*M.* sued *K.* and *J.* to enforce a right of pre-emption in respect of property which he alleged *K.* had sold to *J.* *K.* denied that she had sold such property to *J.* *J.* set up as a defence that *M.* had waived his right of pre-emption. The Court of first instance dismissed the suit, on the ground that the alleged sale had not taken place. *J.* then appealed to the High Court, making *K.* the respondent. *Held*, that neither the appeal from the original decree in the suit nor the appeal from the appellate decree therein was admissible. JUMNA SINGH *v.* KAMARUNNISSA . . . **I. L. R., 3 All., 152**

129. ——— Order on death of party.—*Death of sole defendant.—Survival of cause of action.—Legal representative.—Civil Procedure Code, Act X of 1877, ss. 368, 372.—Limitation Act (XV of 1877), sched. ii, art. 171b.*—In a suit for the recovery of land against a sole defendant, the latter died before the hearing. Sixty-three days after the death of the defendant, the plaintiff applied to the Court to enter on the record the legal representative of the deceased defendant. On the 22nd of November 1880, the Court rejected the application under the provisions of Act XV of 1877, sched. ii, art. 171*b*, and ordered the suit to abate. On the same day the plaintiff applied to the Court to set aside the order directing the suit to abate, but this application was also rejected on the 20th of September 1881. On appeal to the High Court,—*Held*, that no appeal lay against the order of the 20th of September 1881. BENODE MOHINI CHOWDHRANI *v.* SHARAT CHUNDER DEY CHOWDHRY **[I. L. R., 8 Calc., 837 10 C. L. R., 449**

130. ——— *Order treating as a nullity order made without jurisdiction.—Civil Procedure Code, 1859, ss. 102, 703.*—There is no appeal from the order of a Principal Sudder Ameen setting aside as a nullity the order of a Judge who, acting for him in his absence, had admitted an appellant as legal representative of the original plaintiff, who had died *pendente lite*, the Judge having no jurisdiction to make such substitution. BIPRO CHUNDER JOOBRAJ *v.* RAMLOCHUN DEB . . . . . **W. R., 1864, 121**

131. ——— *Order made under s. 210 of Act VIII of 1859.—Order made under s. 208, Act VIII of 1859.*—Section 364 of Act VIII of 1859 prohibits an appeal from an order made on proceedings taken under section 210 of the same Act; the rule applicable in such cases being analogous to that laid down by the Privy Council in *Abidunnissa Khatoon* v. *Amirunnissa Khatoon, I. L. R., 2 Calc., 327; I. L. R., 3 Calc., 709.* RAYGO *v.* POGOSE. POGOSE *v.* CATCHICK **[I. L. R., 3 Calc., 708 2 C. L. R., 278**

APPEAL—*continued.*

7. DECREES—*continued.*

Order on death of party—*continued.*

132. ——————— *Order under s. 210, Civil Procedure Code, 1859.*—No appeal lies from an order passed under section 210, Act VIII of 1859, refusing application of decree-holder to execute decrees gainst the legal representatives of the person against whom the decree was passed. LOOTFUR ALI KHAN *v.* SADDA BRUT PERSHAD [W. R., 1864, Mis., 35

133. ——————— *Order refusing to issue notice to representatives.*—*Civil Procedure Code, 1859, s. 217.*—No appeal lies from an order passed under section 217, Act VIII of 1859, declining to issue notice as against certain alleged legal representatives of an original party. SOHUDRA *v.* ROY KALIHA SAHOY . . W. R., 1864, Mis., 23

134. ——————— **ss. 2, 366, 588 (18).**—*Death of plaintiff-appellant—Order directing suit to abate.*—An Appellate Court rejected the application of the legal representative of a deceased sole plaintiff-appellant to enter his name in the place of such appellant on the record, on the ground that such application had not been made within the time limited by law, and passed an order that the suit should abate. *Held*, that the order of the Appellate Court, passed under the first paragraph of section 366 of Act X of 1877, not being appealable under clause 18, section 588 of that Act, nor being a decree within the terms of section 2 from which a second appeal would lie, was not appealable. AHMAD ATA *v.* MATA BADAL LAL . I. L. R., 3 All., 844

135. ——————— *Abatement, Order of.*—*Civil Procedure Code, s. 366.*—*Legal representative of a deceased, Omission to apply by, within sixty days.*—*Procedure.*—*Limitation.*—An order made under section 366 of the Civil Procedure Code (Act XIV of 1882) that a suit do abate, being virtually a decree within the meaning of section 2, is appealable. BHIKAJI RAMCHANDRA *v.* PURSHOTAM [I. L. R., 10 Bom., 220

136. ——————— **Order refusing execution of decree simultaneously against person and property.**—*Code of Civil Procedure (Act X of 1877), ss. 2 and 230.*—An order under section 230 of Act X of 1877 by a Court executing a decree refusing an application to execute it at the same time against the person and property of the judgment-debtor, being a "decree" under section 2 of the Act, an appeal lies against such order, and the Appellate Court is bound to consider whether the lower Court has properly exercised the discretion vested in it by section 230 of that Act. CHENA PEMAJI *v.* GHELABHAI NARANDAS . . . . [I. L. R., 7 Bom., 301

137. ——————— **Security for costs, Order rejecting appeal in default of.**—*Civil Procedure Code, ss. 2, 549.*—An order under section 549 of the Civil Procedure Code rejecting an appeal because security has not been furnished as directed under that section, is a "decree" within the meaning of section 2, from which an appeal will lie. SIRAJ-UL-HUQ *v.* KHADIM HUSAIN . I. L. R., 5 All., 380

APPEAL—*continued.*

7. DECREES—*continued.*

138. ——————— **Order disallowing objection to execution.**—*Civil Procedure Code, 1877, ss. 2, 246.*—*Order in execution of decree.*—An order made in the execution of a decree disallowing the objections taken by the judgment-debtor to execution of the decree being taken out by a transferee by assignment of the decree, being the final order in a judicial proceeding, and therefore a "decree" within the meaning of section 2 of Act X of 1877, is appealable under that Act. *Thakur Prasad* v. *Ahsan Ali, I. L. R., 1 All., 668,* followed. MURLI DHAR *v.* PURSOTAM DAS . . . I. L. R., 2 All., 91

139. ——————— **Order dismissing suit in its present form.**—*Civil Procedure Code, 1877, ss. 2, 13, 540.*—*Judgment.*—The plaintiff in this suit sued for the possession of certain land, on the ground that he was the owner thereof in virtue of a purchase from *N.* The defendants claimed such land as owners, on the ground that it was included in a certain garden which they had previously purchased at a sale in the execution of a decree against *N.* and they also claimed it on the ground that they were lessees thereof under a lease from *N.* the term whereof had not expired. They also set up as a defence to the suit that it had been finally determined in a former suit between themselves and *N.* whom the plaintiff represented, that such land was included in such garden and that consequently their title to such land as owners could not be questioned in the present suit. The Court of first instance held that such land was not included in the defendants' garden, and they were not the owners of it, but that they could not be ejected from it as they were in possession under the lease which had not expired, and that the question whether such land was included in the defendants' garden, and they were the owners of it was not *res judicata.* It made a decree dismissing the suit in these terms: "Ordered, that the plaintiff's claim as it stands at present be dismissed." *Held* (STRAIGHT, *J.*, dissenting), that the defendants were entitled, under section 540 of Act X of 1877, to appeal from such decree. LACHMAN SINGH *v.* MOHAN [I. L. R., 2 All., 497

140. ——————— **Order in execution of decree.**—*Civil Procedure Code, 1877, ss. 2, 3, 244, 584, 588 (j).*—*Execution of decree.*—*Appeal from order.*—*Act VIII of 1859.*—*Repeal.*—*Pending proceedings.*—*Act I of 1868, s. 6.*—The Court executing a decree for the removal of certain buildings made an order in the execution of such decree directing that a portion of a certain building should be removed as being included in the decree. On appeal by the judgment-debtor the Lower Appellate Court, on the 22nd September 1877, reversed such order. *Held, per* PEARSON, *J.*, on appeal by the decree-holder from the order of the Lower Appellate Court, that the Lower Appellate Court's order, being within the scope of the definition of "decree" in section 2 of Act X of 1877, was appealable under section 584 of that Act, as well as under Act VIII of 1859, notwithstanding its repeal, in reference to section 6 of Act I of 1868. The Full Bench ruling in *Thakur Prasad* v. *Ahsan Ali, I. L. R., 1 All., 668,* followed. *Held, per* STUART,

APPEAL—*continued.*

7. DECREES—*continued.*

Order in execution of decree—*continued.*

C. J., dissenting from the Full Bench ruling in *Thakur Prasad* v. *Ahsan Ali*, that a second appeal in the case would not lie. UDA BEGUM *v.* IMAM-UD-DIN [I. L. R., 2 All., 74

141. ——— Order refusing to file in Court agreement to refer to arbitration.—*Civil Procedure Code, 1877, ss. 28, 623.—"Decree."—Held* by the Full Bench (OLDFIELD, *J.*, dissenting), that an order refusing to file in Court an agreement to refer to arbitration is not appealable. *Per* OLDFIELD, *J.*, that such an order is appealable. *Janki Tewari* v. *Gayan Tewari, I. L. R., 3 All., 427*, distinguished by STUART, *C. J.*, and followed by OLDFIELD, *J.* DAYA NAND *v.* BAKHTAWAR SINGH [I. L. R., 5 All., 333

142. ——— Order rejecting memorandum of appeal.—*Civil Procedure Code, ss. 2, 54(c), 582, 622, "Decree."*—An order rejecting a memorandum of appeal as barred by limitation is a "decree" within the meaning of section 2 of the Civil Procedure Code. *Gajraj Singh* v. *Bhagwant Singh, Weekly Notes, All., 1883, p. 255*; and *Dianatullah Beg* v. *Wajid Ali Shah, I. L. R., 6 All., 438*, distinguished. GULAB RAI *v.* MANGLI LAL [I. L. R., 7 All., 42

143. ——— Order directing accounts to be taken.—*Civil Procedure Code, 1882, s. 2.—Interlocutory order.*—In a suit for a share of the cost of a party wall built by the plaintiffs, who, and also the defendant, were adjoining owners of plots of land under the Government for building; portion of the agreement being that all disputes as to the cost and maintenance of party walls were to be settled by the Government Surveyor, whose decision was to be final—the Judge, SCOTT, *J.*, on 11th December, 1882, decreed that the defendant was liable to pay half whatever sum the Government Surveyor might certify to be due for the cost, and that the defendant was entitled to set-off in the calculation of what was due from him, the cost of any work or materials which the Government Surveyor might find had been contributed by him: and the case was thereupon adjourned for the certificate of the Government Surveyor. The Government Surveyor subsequently gave his certificate as to the cost of the unused portion of the said wall, but stated that on the evidence before him he was unable to decide as to the ownership of the foundations, &c., of the wall. The case came on again before SCOTT, *J.*, who decided to take evidence on the points left undetermined by the Government Surveyor. Witnesses were accordingly examined, and on 11th December 1883 the Court disallowed the defendant's claim of set-off, and gave judgment for the plaintiff for half the sum certified by the Government Surveyor as the cost of the disputed part of the wall. The defendants appealed. *Held*, that the decree of the 11th December 1882 was not a decree or an "order directing accounts to be taken" within the meaning of section 2 of the Civil Procedure Code (XIV of 1882), and that the defendants, although they had not filed an appeal against it within the period allowed by the Limitation Act, were

APPEAL—*continued.*

7. DECREES—*continued.*

Order directing accounts to be taken—*continued.*

entitled to appeal against it when appealing against the decree of 11th December 1883. COVERJI LUDDHA *v.* MORARJI PUNJA . [I. L. R., 9 Bom., 183

144. ——— Order rejecting appeal as barred.—*Civil Procedure Code, ss. 2 and 540.—Presentation of appeal beyond time.*—The plaintiff's claim to redeem certain lands was rejected by a Subordinate Judge on 21st December 1882. On the 1st February 1883, the plaintiff, who was an agriculturist, presented an application for review to the Special Judge appointed under the Dekkhan Agriculturists' Relief Act. His application was rejected by that Judge, who was of opinion that the plaintiff's remedy lay in an appeal to the District Judge. The plaintiff was not informed of the result of his application to the Special Judge until the following May, at which time the Court of the District Judge was closed for vacation. On the 3rd June 1883 he presented an appeal on the opening of the District Court. The District Judge dismissed the appeal as barred by limitation. On appeal to the High Court, a preliminary objection being taken that a second appeal would not lie,—*Held*, that the order of the District Judge, having the force of a decree within the meaning of section 2 of the Civil Procedure Code, Act XIV of 1882, was appealable under section 540 of the Code. RAGHUNATH GOPAL *v.* NILU NATHAJI [I. L. R., 9 Bom., 452

145. ———Order allowing purchaser of decree to execute it.—*Civil Procedure Code, 1882, ss. 2, 232, 244.*—On an application under section 232 of the Civil Procedure Code by the purchaser of a decree to be allowed to execute it, two of the judgment-debtors objected that the purchase was *benami* for the other judgment-debtor, and that they had paid off the decree to the original decree-holder. The Munsif found both objections against them, and allowed the purchaser to execute the decree. *Held*, that the question was one between the parties to the suit or their representatives relating to the execution, discharge, or satisfaction of the decree, and that the decision of that question was a decree under sections 2 and 244 of the Code and therefore appealable, and a second appeal lay therefrom to the High Court. AFZAL *v.* RAM KUMAR BHUDRA [I. L. R., 12 Calc., 610

146. ——— Order rejecting plaint.—*Civil Procedure Code, ss. 2, 53, 54, 442.—Decree; what it includes.*—Section 442 of the Civil Procedure Code refers to a case where the plaint on the face of it appears to have been filed by a person who was a minor. Where, in a suit the plaintiffs described themselves as adults, and on the objection of the defendants an issue was raised and enquired into on the question of age,—*Held*, that the order passed under the circumstances, although it professed to have been made under section 442 of the Procedure Code, must be treated as one rejecting the plaint or dismissing the suit, on the ground that the suit was instituted by persons who were established on the evidence to be

APPEAL—*continued.*

7. DECREES—*continued.*

Order rejecting plaint—*continued.*

minors, and was appealable as a decree within the meaning of section 2 of the Code. The words, "rejecting the plaint," in section 2, are not limited to the cases provided for in sections 53, 54. BENI RAM BHUTT *v.* RAM LAL DHUKRI

[I. L. R., 13 Calc., 189

147. ——— Order allowing withdrawal of suit, with leave to bring fresh one.—*Civil Procedure Code, ss. 373, 582.*—Where, on appeal from a decree dismissing a suit, the Appellate Court, being of opinion that the plaint was informally drawn and its allegations regarding the cause of action not sufficiently specific, gave the plaintiff permission, under section 373 of the Civil Procedure Code, to withdraw the suit, with leave to institute a fresh one,—*Held,* that the order of the Appellate Court was a "decree" within the meaning of the Civil Procedure Code, and afforded a proper ground of second appeal to the High Court. GANGA RAM *v.* DATA RAM . . . I. L. R. 8, All., 82

148. ——— Order rejecting application under Civil Procedure Code, s. 44, Rule (a), and returning plaint.—*Civil Procedure Code, s. 44, Rule (a), and s. 2.*— "*Decree.*"—No appeal lies under any of the provisions of section 588 of the Civil Procedure Code, from an order under section 44, Rule *a,* rejecting an application for leave to join another cause of action with a suit for the recovery of immoveable property. In a plaint filed in the Court of a Subordinate Judge the plaintiff claimed to recover possession of a house, together with some grain which was stored in it. The plaintiff applied to the Subordinate Judge for leave, under section 44, Rule *a,* of the Civil Procedure Code, to join the claim for grain with the claim for possession of the house. The Subordinate Judge refused leave, and returned the plaint, with directions that the plaintiff should institute two suits for recovery of the house and the grain, respectively, in the Court of the Munsif. *Held,* that the Subordinate Judge's order was substantially an order rejecting the plaint, on the ground that the plaintiff had joined a cause of action with a suit for recovery of immoveable property; that, although this might have been a misapplication of section 44, Rule *a,* of the Code, its effect was to reject the plaint; that such an order was a decree, with reference to the definition in section 2, and was appealable as such to the District Judge; and that therefore a second appeal lay in the case to the High Court, and that Court was not competent to interfere in revision under section 622. BANDHAN SINGH *v.* SOLHU

[I. L. R. 8. All., 191

149. ——— Order directing commission of partition.—*Civil Procedure Code, 1882, ss. 2, 396.—Decree for partition.—Appealable order.*—Where an Appeal Court made a decree or order directing a commission to issue directed to an Amin to make a partition of certain property into certain specified shares and to allot the shares to the parties to the suit,—*Held,* that such order amounted to a decree within the meaning of section 2 of the Code of

APPEAL—*continued.*

7. DECREES—*continued.*

Order directing commission of partition—*continued.*

Civil Procedure, and that, though called a decree, it was in fact an order in the terms of section 396 of the Code, and was a proper order to make. BEPIN BEHARI MODUCK *v.* LAL MOHUN CHATTOPADHAYA

[I. L. R., 12 Calc., 209

150. ——— Order in partition suit leaving proceedings to be taken in execution of decree.—*Civil Procedure Code (Act XIV of 1882), ss. 2 and 396.—Order for partition in execution of decree.*—An order under section 396 of the Code of Civil Procedure declaring the rights of the parties in a partition suit, but leaving their shares to be determined in execution of the decree, is a "decree" within the meaning of section 2 of the Code, and an appeal therefore lies from such order. IN THE MATTER OF THE PETITION OF BHOLA NATH DASS. BHOLA NATH DASS *v.* SONAMONI DASI

[I. L. R., 12 Calc., 273

151. ——— *Civil Procedure Code (Act XIV of 1882), ss. 2 and 396.*—The proceedings contemplated by section 396 of Act XIV of 1882 are proceedings in a suit before decree, and in order to enable the Court in that suit to determine exactly the terms of that decree. Where those proceedings however, were left to be taken in execution of the decree, the High Court, treating it as an error in point of form, and without deciding whether or not an objection, if it had been taken, would have been fatal to the proceedings, dealt with the case in the same way as was done in *Gyan Chunder Sen* v. *Doorga Churn Sen, I. L. R., 7 Calc., 318,* regarding the further proceedings taken after decree declaring the rights of the several parties as proceedings to obtain a decree on further consideration. Where in a partition suit an order was made in the course of such proceedings by which the position of some of the parties to the suit was determined, but no declaration was made of the exact rights of each of the parties,—*Held,* it was a mere interlocutory order and no appeal would lie from it. *Semble,*—Such an order is not a decree within the terms of section 2, Act XIV of 1882. *Bhola Nath Dass* v. *Sonamoni Dasi, I. L. R., 12 Calc., 273,* distinguished. BHOOBUN MOYI DABEA *v.* SHURUT SUNDERY DABEA

[I. L. R., 12 Calc., 275

152. ——— Order by Appellate Court remitting case to Original Court to pass decree upon award.—*Civil Procedure Code (Act XIV of 1882), s. 2.*—An appeal was preferred against a decree of an Original Court dismissing a suit, and the Appellate Court sent the case back for the purpose of certain evidence being taken, and certified to it. Pending that being done the parties applied to the Appellate Court to refer the case to arbitration, and that Court referred that application to the Original Court for disposal, although the case was still pending on its own file for disposal. Subsequently another application was made to the orginal Court to refer the case to arbitration, and on the 10th May the record was sent to the arbitrator with

APPEAL—*continued.*

7. DECREES—*continued.*

Order by Appellate Court remitting case to Original Court to pass decree upon award—*continued.*

directions to submit his award within seven days. On the 12th September, as the award had not been sent in, the Original Court passed an order recalling the record, and subsequently the award of the arbitrator, dated the 12th September, was filed. The Original Court thereupon forwarded the record to the Appellate Court for its decision. Objections were taken to the award, but overruled, and the Appellate Court passed an order directing the case to be sent back to the Original Court, with orders to pass a formal decree in accordance with the award of the arbitrator. *Held*, that a second appeal lay against the last-mentioned order, inasmuch as it amounted to a decree under the provisions of section 2 of the Civil Procedure Code. BHUGWAN DAS MARWARI *v.* NUND LALL SEIN . . . **I. L. R., 12 Calc., 173**

8. DEFAULT IN APPEARANCE.

153. ——— Order refusing to issue fresh summons after dismissal.—*Civil Procedure Code, 1859, s. 110.—Order refusing to issue fresh summons on plaint.*—Where a suit is dismissed under section 110, Act VIII of 1859, upon default in appearing made by both parties, no appeal lies from a refusal by the Court to issue a fresh summons upon the plaint already filed. LOKENATH SAHOO *v.* TUKEER SINGH . . . . **Marsh., 630**

154. ———Order rejecting application to sue as a pauper.—*Civil Procedure Code, 1859, s. 310.*—There is no appeal open to a pauper when his application to sue as pauper is rejected for default. Where there has been no refusal under section 310, Act VIII of 1859, the applicant may revive his application for leave to sue as a pauper. BHOJ SINGH *v.* MAHA KOONWER . . . **3 Agra, Mis., 1**

155. ——— Order dismissing suit for non-appearance after adjournment.—*Civil Procedure Code, 1877, s. 540, and ss. 102 and 103.*—Nothing remained to be done in a suit except to hear arguments, for which a time had been appointed. Neither the plaintiff nor his pleader appeared at the appointed time. The Court consequently dismissed the suit. *Held*, that its decree was appealable under section 540 of Act X of 1877, and the lower Appellate Court should have entertained the appeal, and disposed of it with reference to the provisions of section 565, and sections 102 and 103 were not applicable to the circumstances. RAI CHAND *v.* MATHURA PRASAD **[I. L. R., 3 All., 292**

156. ——— Order dismissing appeal for default.—An appeal does not lie from the order of a Judge dismissing an appeal before him for default of prosecution.—MAHOMED JAN v. AMEERUN . . . . . **17 W. R., 180**

157. ——— Order rejecting application for re-admission of appeal.—*Civil Procedure Code (Act VIII of 1859), s. 347.*—No appeal

APPEAL—*continued.*

8. DEFAULT IN APPEARANCE—*continued.*

Order rejecting application for re-admission of appeal—*continued.*

lies against an order rejecting an application for the re-admission of an appeal under section 347, Act VIII of 1859. AMIRUDDIN *v.* JIBAN BIBEE **[1 B. L. R., F. B., 101: 10 W. R., F. B., 39**

158. ——— Order dismissing appeal for default.—*Civil Procedure Code, 1859, s. 347.*—A special appeal lies from an order passed under section 347 of Act VIII of 1859, rejecting an application for the re-hearing of an appeal dismissed for default of prosecution. The reasons for rejecting such an application should be stated. HURO CHUNDER DOSS CHOWDHRY *v.* RAM COOMAR CHOWDHRY **[2 W. R., 254**

RAM YAD *v.* BISSESSUR BHUTTACHARJEE **[2 W. R., Mis., 23**

GHOLAM MAHOMED AKBUR *v.* KOONJ BEHAREE LAL . . . . **5 W. R., Mis., 27**

KISHEN CHUNDER PUTRONOVIS *v.* TARA MONEE CHOWDHRAIN . . . . **3 W. R., 4**

DINOBUNDHOO CHUTTERAJ *v.* BEHAREE LALL MOOKERJEE . . . **3 W. R., Mis., 23**

MITTOO KHAN *v.* RAHMAN KHAN **[8 W. R., 36**

159. ——— *Civil Procedure Code, 1859, s. 347.*—When a lower Appellate Court, after eleven months' delay, and without fixing any time for disposing of the appeal, made an order dismissing the case for default, the High Court set aside the order as erroneous, holding that it was the subject of an appeal, notwithstanding section 347, Act VIII of 1859, which only applies to cases of involuntary failure to comply with a Court's order. SOODHAMONEE DOSSEE *v.* GOOROOPERSAUD DUTT **[W. R., 1864, 176**

160. ——— *Civil Procedure Code, 1877, s. 556.*—Where an appeal is dismissed, under section 556 of Act X of 1877, for the appellant's default, the order dismissing it is not appealable. NAND RAM *v.* MUHAMMAD BAKHSH **[I. L. R., 2 All., 616**

161. ——— *Civil Procedure Code, 1877, ss. 556, 558.*—An Appellate Court, the appellant not attending in person or by his pleader, instead of dismissing the appeal for default, as provided by section 556 of Act X of 1877, proceeded, in contravention of the provisions of that law, to dispose of the appeal on the merits, and dismissed it. The appellant preferred a second appeal to the High Court, contending that the Appellate Court had acted contrary to law. *Held*, that the Appellate Court had so acted, and its decision could only be treated as a dismissal for default, and that, so treating it, the proper and only course open to the appellant was to have applied under section 558 for the re-admission of his appeal, and under these circumstances the second appeal would not lie. *Nand Ram* v. *Muhammad Bakhsh* followed. KANAHI LAL *v.* NAUBAT RAI **[I. L. R., 3 All., 519**

APPEAL—*continued.*

8. DEFAULT IN APPEARANCE—*continued.*

Order dismissing appeal for default—*continued.*

162. ——————— *Civil Procedure Code, 1877, ss. 2, 540, 556.*—An order under section 556 of Act X of 1877, dismissing an appeal for the appellant's default, is not a "decree" within the meaning of section 2, and is not appealable. MUKHI *v.* FAKIR . . . **I. L. R., 3 All., 382**

163. ——— **Order dismissing suit for non-appearance of plaintiff specially ordered to appear.**—*Civil Procedure Code, ss. 66, 103, 107, 540, 588 (8).—Rejection of application to set aside dismissal.*—A plaintiff who had been ordered, under section 66 of the Civil Procedure Code, to appear in person in Court upon a day specified, failed to appear, and under section 107, read with section 102, his suit was dismissed. He then applied to the Court, under section 103, for an order to set the dismissal aside, but his application was rejected. He thereupon preferred an appeal from the decree dismissing the suit under the provisions of section 540. *Held,* that the plaintiff was not entitled to appeal from the decree dismissing the suit, and that his only remedy was by way of an appeal under section 588 (8) of the Code from the order rejecting the application to set the dismissal aside. *Lal Singh* v. *Kunjan, I. L. R., 4 All., 387,* referred to. KRISHNA RAM *v.* GOBIND PRASAD . **I. L. R., 8 All., 20**

164. ——— **Order dismissing appeal for default.**—*Pleader present but unprepared to go on with case.—Civil Procedure Code, 1882, ss. 556, 558.*—Where, when an appeal is called on, the pleader is not absent, but is unprepared to go on with the case, the dismissal is a dismissal for default within section 556 of Act XIV of 1882, and the appeal can therefore be re-admitted under section 558. *Buldeo Misser* v. *Ahmed Hossen, 15 W. R., 143,* followed. SHIBENDRA NARAIN CHOWDHURI *v.* KINOO RAM DASS . . . **I. L. R., 12 Calc., 605**

165. ——— **Order rejecting application for re-trial.**—*Civil Procedure Code, 1859, ss. 119, 347.—Appeal heard ex parte.*—A special and not a regular appeal will lie from an order rejecting a respondent's application for the re-trial of an appeal heard in his absence. SREEDHURCHURN NUNDEE *v.* JUGGOBUNDOO PAUL . **W. R., 1864, Mis., 37**

166. ——— **Order dismissing appeal for default.**—*Suit struck off for default.—Civil Procedure Code, 1859, ss. 119, 347.—Order striking off.*—In regular suits, where a Court of first instance refuses to re-admit a suit, there is an appeal under section 119, Act VIII of 1859; but there is no provision under section 347 for an appeal where an Appellate Court has refused to re-admit an appeal struck off for default. ANONYMOUS.

[1 Ind. Jur., O. S., 49

FUZZOO KHAN *v.* ISSUR CHUNDER SIRCAR.

[Marsh., 30

167. ——————— *Decree against defendant.—Order to attend as witness.—Civil Procedure Code, 1859, s. 170.*—A defendant who has been ordered to attend and give evidence under Act VIII of 1859, section 170, and has failed to do so, is not precluded from appealing against a decree in favour of the plaintiff. KHOMKAR ABDOOL GUFFOOR *v.* KHODA NEWAZ . . **Marsh., 568**

KEDARNATH BHUTTACHARJEE *v.* KRIPA RAM BHUTTACHARJEE . . . **5 W. R., 270**

168. ——————— *Decree on default of party summoned as witness.—Civil Procedure Code, 1859. s. 170.*—A regular appeal lies from the judgment of a first Court passed on the default of a party summoned to attend as a witness under section 170, Act VIII of 1859. CHUNDER MOHUN MOJOOMDAR *v.* TEETOORAM BOSE.

[4 W. R., Act X, 18

169. ——————— *Decree on default of plaintiff summoned as witness.*—The right of appeal is not lost to a plaintiff whose suit is dismissed for default by reason of non-appearance as a witness, or when the appellant wants to prove that he should not have been summoned at all. LEKHRAJ ROY *v.* BUCKLAND . . . **5 W. R., Act X, 65**

9. EX PARTE CASES.

170. ——— **Order admitting application to set aside ex parte decree.**—Where a Court of first instance had admitted an application, made after the time allowed by law, to set aside an *ex parte* decree,—*Held,* that the Appellate Court was authorized to try in appeal whether under the law the Court of first instance had power to receive the application, and if its order was made without jurisdiction to set it aside. RADHA BINODE CHOWDHRY *v.* JUGGUT SURNOKAR . . . . . **6 W. R., 300**

171. ——— **Order on application to set aside ex parte decree.**—*Civil Procedure Code, 1859, s. 119.*—Though an order passed for setting aside a judgment is, on the merits of the application, final, yet where a Civil Court makes an order setting aside an *ex parte* judgment on an application presented after the period allowed by law has elapsed, an appeal against that order will lie, on the ground that it has been made without jurisdiction. KESHAVRAM VALAD HIRACHAND *v.* RAM CHANDRA TRIMBAK .

[8 Bom., A. C., 44

TOOLSEE DOSSEE *v.* DOORGA CHURN PAUL

[15 W. R., 175

172. ——— **Appeal from ex parte decree wrongly admitted.**—Where a decree is passed *ex parte* in an original suit the defendant has no right to a special appeal even though his appeal have been entertained by the Civil Court. CHIDAMBARA PILLAI *v.* KAMAN . . . . **1 Mad., 189**

173. ——— **Order setting aside ex parte decree.**—*Civil Procedure Code, 1859, s.*

APPEAL—*continued.*

9. EX PARTE CASES—*continued.*

Order setting aside ex parte decree—*continued.*

119.—An *ex parte* decree of June 1865, kept alive by successive applications for execution, was subsequently set aside on an application of 14th August 1871 (within 30 days after attachment in execution) made under Act VIII of 1859, section 119, and a judgment was passed on the merits. The lower Appellate Court reversed the order setting aside the *ex parte* decree. *Held* that, in so far as the Munsif had decided that the application was in time, he did not come under section 119, and therefore his order was not final, and the lower Appellate Court had jurisdiction to enquire into his proceedings. BIMOLA SOONDUREE DASSEE *v.* KALEE KISHEN MOJOOMDAR [22 W. R., 5

174. ——— **Order refusing to set aside ex parte decree.**—*Act VIII of 1859, s. 119.—Delay in appealing until Act X of 1877, which gave no appeal.*—An application under section 119, Act VIII of 1859, for the re-hearing of a case decreed *ex parte*, was rejected. Under that law this order was appealable. No appeal was, however, filed until October 1st, 1877, on which date Act X of 1877 came in force. *Held*, that the appeal was inadmissible, there being no provision in Act X of 1877 for such an appeal. IN THE MATTER OF JAN KOER . . 1 C. L. R., 402

175. ——— **Order setting aside ex parte decree.**—*Civil Procedure Code, 1859, s. 119.*—A District Judge is not competent to entertain a summary or miscellaneous appeal from an order setting aside an *ex parte* judgment. But where an *ex parte* judgment has been set aside and a judgment afterwards come to on trial, and where a regular appeal is preferred, the Appellate Court may, amongst the matters urged in appeal, take into consideration the regularity of the proceedings of the Court below in making an order under Act VIII of 1859, section 119. LUCKHEE MONEE DOSSEE *v.* BHOOBUN MOHUN BOSE . . . . . 23 W. R., 147

176. ——— **Order refusing to set aside ex parte decree.**—*Civil Procedure Code, 1877, s. 588.*—No appeal lies under Act X of 1877 from an order made under that Act rejecting an application for an order setting aside a decree made *ex parte* against a defendant. GULAB SINGH *v.* LACHMAN DAS . . . . I. L. R., 1 All., 748

177. ——— *Civil Procedure Code, s. 534.*—An appeal lies from an order made under section 534 of the Civil Procedure Code of 1877, refusing to set aside an *ex parte* decree. LUCKMIDAS VITHALDAS *v.* EBRAHIM OOSMAN [I. L. R., 2 Bom., 644

178. ——— *Civil Procedure Code, 1877, ss. 560, 584, 588.—Hearing of appeal* ex parte.—*Refusal to re-hear appeal.*—An appeal was heard *ex parte* in the absence of the respondent (defendant), and judgment was given against him. He applied to the Appellate Court to re-hear the appeal, and the Appellate Court

APPEAL—*continued.*

9. EX PARTE CASES—*continued.*

Order refusing to set aside ex parte decree—*continued.*

refused to re-hear it. He then appealed, not from the order refusing to re-hear the appeal, but from the decree of the Appellate Court. *Held*, that he was not debarred, by reason that he had not appealed from the order refusing to re-hear the appeal, from appealing from the decree of the Appellate Court. RAMJAS *v.* BAIJ NATH [I. L. R., 2 All., 567

179. ——— **Order ex parte directing attachment in execution of decree.**—An appeal lies from an *ex parte* order directing attachment in execution of a decree. ZAMINDAR OF SÍVAGIRI *v.* ALWAR AYYANGÁR. SANGLI VIRAPANDIA CHINNATHAMBIAR *v.* ALWAR AYYANGÁR [I. L. R., 3 Mad., 42

180. ——— **Order against defendant not appearing.**—*Civil Procedure Code, 1877, s. 540.*—Under section 540 of the Civil Procedure Code an appeal lies from decrees passed *ex parte*. If a defendant appears at the first hearing and files a written statement, he should not be placed *ex parte*. ANANTHARÁMA PATTER *v.* MADHAVA PANIKER [I. L. R., 3 Mad., 264

See LUCKMIDAS VITHALDAS *v.* EBRAHIM OOSMAN . I. L. R., 2 Bom. 644

AND EX PARTE MODALATHA [I. L. R., 2 Mad., 75

181. ——— *Civil Procedure Code, 1877, ss. 108, 540.—Held* by STUART, *C. J.*, and STRAIGHT and TYRRELL, *J.J.* (OLDFIELD and BRODHURST, *J.J.*, dissenting) that a defendant against whom a decree has been passed *ex parte*, and who has not adopted the remedy provided by section 108 of the Civil Procedure Code, cannot appeal from such decree under the general provisions of section 540. LAL SINGH *v.* KUNJAN [I. L. R., 4 All., 387

182. ——— *Application to defend refused.—Ex parte decree against defendants.—Right of defendants to appeal without taking steps to set aside the decree.—Civil Procedure Code (Act X of 1877), ss. 101, 108.*—Defendants who put in no appearance at the original hearing, and who have subsequently been refused leave to appear and defend, are at liberty, where an "*ex parte*" decree has been passed against them, to appeal to a higher Court without previously taking any steps to have the *ex parte* decree set aside under section 108 of Act X of 1877. ASHRUFFUNNISSA *v.* LEHAREAUX [I. L. R., 8 Calc., 272 10 C. L. R., 502

183. ——— *Civil Procedure Code, s. 108.—Decree against defendant under s. 136.—"Ex parte" decree.*—A defendant failing to comply with an order to answer interrogatories, the Court, under section 136 of the Civil Procedure Code, struck out his defence, and proceeding *ex parte*, passed a decree against him. *Held*, that the decree

APPEAL—*continued.*

9. EX PARTE CASES—*continued.*

Order against defendant not appearing— *continued.*

could not be treated, in respect of the remedy by appeal, as an *ex parte* decree, and therefore, under the ruling in *Lal Singh* v. *Kunjan*, not appealable, but that an appeal would lie from the decree. CHUNNI LAL *v.* CHAMMAN LAL . **I. L. R., 7 All., 159**

184. ——— *"Appearance" of defendant under Civil Procedure Code, s. 101.—Civil Procedure Code, ss. 64, 100, 108, 157.*—The first hearing of a suit was fixed for the 12th December 1883, on which day the defendant did not appear, and the case was adjourned to the 18th December, and, as the defendant did not then appear, a decree was passed in favour of the plaintiff. A *vakalatnama* had been previously filed on the defendant's part, and he had also objected to an application filed by the plaintiff for attachment of the defendant's property before judgment. *Held*, that these acts on the defendant's part did not constitute an "appearance" by him within the meaning of section 100 of the Civil Procedure Code, which referred to an appearance in answer to a summons to appear and answer the claim on a day specified, issued under section 64; that the decree was therefore *ex parte* within the meaning of sections 100 and 108, and an appeal consequently lay to the High Court under section 588, clause (9), from an order rejecting an application to set the decree aside. *Zain-ul-abdin Khan* v. *Ahmad Raza Khan, I. L. R., 2 All., 67; L. R., 5 I. A., 233*, distinguished. *The Administrator-General of Bengal* v. *Dyaram Das, 6 B. L. R., 688; Bhimacharya* v. *Fakirappa, 4 Bom., 206*; and *Bibee Haloo* v. *Atwaro, 7 W. R., 81*, referred to. *Per* MAHMOOD, *J.*—That the Court on the 18th December seemed to have acted under section 157 of the Civil Procedure Code, and, choosing the first of the alternative courses allowed by that section, acted under Chapter VII of the Code, and passed an *ex parte* decree under the provisions of section 100 of that Chapter. HIRA DAI *v.* HIRA LAL **[I. L. R., 7 All., 538**

185. ——— *Civil Procedure Code, ss. 100, 101, 108, 540.—Appeal from* ex parte *decree.*—A defendant against whom a decree has been passed *ex parte*, and who has not adopted the procedure provided by section 108 of the Code of Civil Procedure, can appeal from such decree under the general provisions of section 540. *Lal Singh* v. *Kunjan, I. L. R., 4 All., 387*, dissented from. KARUPPAN *v.* AYYATHORAI . . **I. L. R., 9 Mad., 445**

186. ——— **Order against respondent not appearing.**—*Civil Procedure Code, ss. 103, 108, 540, 560, 584.—Construction of Statute.—General words.—Held* by the Full Bench (STRAIGHT, *Offg. C. J.*, and TYRRELL, *J.*, expressing no opinion), that a respondent in whose absence the appeal has been heard *ex parte*, and against whom judgment has been given, may prefer a second appeal from the decree, under the provisions of section 584 of the Civil Procedure Code, and his remedy is not limited to an application under section 560 to the Court which passed the decree to re-hear the appeal. *Ramjas* v. *Baijnath, I. L. R., 2 All., 567*, approved. *Per* OLDFIELD, *J.*—There is a distinction between the case of a defendant in a Court of first instance and that of a respondent in an Appellate Court not appearing, with reference to sections 108 and 560 of the Code. *Lal Singh* v. *Kunjan, I. L. R., 4 All., 387*; and *Ramshet Bachaset* v. *Balkishna; Ababhat, 6 Bom., A. C., 161*, referred to. *Per* MAHMOOD, *J.*—The distinction is one of detail merely and not of principle. *Lal Singh* v. *Kunjan* dissented from. *Zain-ul-abdin Khan* v. *Ahmad Raja Khan, I. L. R., 2 All., 67; L. R., 5 I. A., 233; Jamaitunnissa* v. *Lutfunnissa, I. L. R., 7 All., 606; Ashruffunnissa* v. *Lehareaux, I. L. R., 8 Calc., 272; Luckmidas Vitholdas* v. *Ebrahim Oosman, I. L. R., 2 Bom., 644; Anantharama* v. *Madhava Panikar, I. L. R., 2 Mad., 264*; and *Modalatha's case, I. L. R., 2 Mad., 75*, referred to. Also *per* MAHMOOD, *J.*—Where two procedures or two remedies are provided by statute, one of them must not be taken as operating in derogation of the other. AJUDHIA PRASAD *v.* BALMUKAND . . . . **I. L. R., 8 All., 354**

187. ——— **Order admitting appeal.**—Ex parte *order.*—An *ex parte* order admitting an appeal is subject to reconsideration on the hearing of the appeal. MOSHAULLAH *v.* AHMEDULLAH **[I. L. R., 13 Calc., 78**

10. EXECUTION OF DECREE.

(*a.*) QUESTION IN EXECUTION.

188. ——— **Order refusing application to execute joint-decree.**—*Civil Procedure Code, 1859, s. 207.*—No appeal lay from an order of a lower Court refusing an application by one decree-holder under section 207, Act VIII of 1859, to execute the whole of a joint-decree to the execution of his co-decree-holder. GOOROO DASS ROY *v.* RAM RUNGINEE DOSSIA . . . . **17 W. R., 136**

ODHOYA PERSHAD *v.* MOHADEO DUTT BHANDAREE . . **17 W. R., 415**

189. ——— **Order in matter specially provided for.**—*Act XXIII of 1861, s. 11.—Civil Procedure Code, 1859, ss. 243, 364.*—Section 11 of Act XXIII of 1861 did not allow an appeal in matters already specifically provided for in the different sections of the Procedure Code (*e.g.*, sections 243 and 364). GREEJANUND OOPADHYA *v.* RUTTEE RAMAN OOPADHYA . . . . **8 W. R., 136**

190. ——— **Order confirming report of Commissioner of Accounts.**—*Act XXIII of 1861, s. 11.*—Section 11 of Act XXIII of 1861 must be read as an amendment to the Civil Procedure Code (Act VIII) of 1859. That section is, in terms, confined to questions arising in the execution of decrees, which expression, as used in the said Code, means the enforcement of the decree on the application of one or other of the parties to it. *Held*, that an order of a Judge confirming the report of the

APPEAL—*continued.*

10. EXECUTION OF DECREE—*continued.*

(*a*) QUESTION IN EXECUTION—*continued.*

Order confirming report of Commissioner of Accounts—*continued.*

Commissioner for taking accounts, by which he refused to require the defendants to give inspection of certain books, was not an order within the contemplation of that section, and was, therefore, not appealable. RUSTOMJI BURJORJI *v.* KESSOWJI NÁIK [I. L. R., 8 Bom., 287

191. ——— **Dispute among heirs of deceased decree-holder.**—*Act XXIII of 1861, s. 11.*—According to section 11, Act XXIII of 1861, no appeal lay in a case of private dispute among the heirs of a deceased decree-holder as to their respective rights. RAJCHUNDER ROY CHOWDHRY *v.* GRISHCHUNDER ROY . . 5 W. R., Mis., 45

———192. **Order under s. 246, Civil Procedure Code, 1859.**—*Act XXIII of 1861, s. 11.*—Section 11, Act XXIII of 1861, did not alter or modify the effect of section 246, Act VIII of 1859, so as to give an appeal from orders passed under the latter section. DHEERAJ MAHATAB CHAND *v.* PEAREE DOSSEE . . 6 W. R., Mis., 61

193. ——— **Order rejecting appeal in execution case.**—*Act XXIII of 1861, s. 11.*—Under section 11 of Act XXIII of 1861 an appeal lay from the order of a lower Appellate Court rejecting an appeal in an execution case as presented out of time. GOPEENATH ROY *v.* GOPEENATH CHATTERJI [6 W. R., Mis., 106

194. ——— *Act XXIII of 1861, s. 11.*—The Munsif, on the application of a judgment-debtor, set aside a sale held in execution of a decree passed against him, on the ground that the decree was barred by lapse of time. The judgment-creditor appealed to the Judge, who rejected the appeal on the ground that no appeal was allowed from such an order. *Held* in special appeal, that, under section 11 of Act XXIII of 1861, an appeal lay from the order of the Munsif. DHAN BIBEE *v.* HARADHAN RAM [2 B. L. R., Ap. 11: 11 W. R., 4

195. ——— **Order passed on application for discharge from arrest in execution of decree.**—*Act XXIII of 1861, s. 11.—Civil Procedure Code, 1859, ss. 273, 283, 365.—Held* that the procedure, on an application for his discharge under section 273 of Act VIII of 1859, by a person arrested in execution of a decree for money, was such a question as came within the words introduced by section 11 of Act XXIII of 1861, in addition to the original provision in Act VIII of 1859, section 283; and the order passed thereon by the Court executing the decree was subject to appeal, notwithstanding that orders as to imprisonment in execution of a decree were excepted from the operation of section 365 of Act VIII of 1859, as this exception, there being no affirmative prohibition, was removed by the provision of sections 8 and 11 of Act XXIII of 1861, which Act, as directed by section 44 thereof, was to be read as part of Act VIII of 1859. YESVANTRAV AMRITRAO JAMIN *v.* ISMAIL ALI KHAN [2 Bom., 99, 2nd Ed., 94

196. ——— **Order refusing refund of purchase-money.**—*Act XXIII of 1861, s. 11.*—A sale in the execution of a decree having been cancelled, the auction-purchaser applied for the refund of the purchase-money, which the Court executing the decree ordered, subject to the deduction of the sale fees. The auction-purchaser then applied for the return of the sum deducted. The Court passed an order refusing the application, which order the auction-purchaser questioned in appeal. *Held*, that an appeal did not lie. HURDEI BEEBEE *v.* SURJOO PERSHAD . . . . . 6 N. W., 309

197. ——— **Order on application to correct error in proceeding.**—*Act XXIII of 1861, s. 11.*—Where an application was made to correct an error in a proceeding in which interest was calculated, the order passed on the application was open to appeal under section 11, Act XXIII of 1861. AMANUT ALI *v.* BINDHOO . . 13 W. R., 138

198. ——— **Order as to sum due on mortgage accounts.**—*Usufructuary mortgage.—Suit by mortgagor for possession.*—In a suit by a mortgagor against a mortgagee to recover lands in the possession of the latter under a usufructuary mortgage, the only question in issue is whether the plaintiff is entitled to enter; and no appeal lies from the finding of the Judge that a specific sum is still due, it being open to the parties to dispute that decision by a separate suit. MOTEE SOONDEREE *v.* INDRAJIT KOWAREE . . . . . Marsh., 112

S. C. BRIJOLALL UPADHYA *v.* MOTEE SOONDEREE . . . . W. R., F. B., 33

199. ——— **Order rejecting appeal in execution case.**—*Act XXIII of 1861, s. 11.—Question whether decree is barred by limitation.*—The question whether the execution of a decree is barred by limitation is a question arising between the parties to the suit; and an appeal lay under section 11 of Act XXIII of 1861 from a decision on such question, whether it be raised by the Court *proprio motu*, or by the parties. HARI VISHNU *v.* GOPAL BIN RAGJI . . . . . 6 Bom., A. C., 181

200. ——— **Order in case transferred for execution.**—*Act XXIII of 1861, s. 11.—Beng. Act III of 1870.*—Where a decree by a Deputy Collector had been transferred to the Civil Court, and application for execution was made while Bengal Act III of 1870 was in force, *Held*, that the execution proceedings were subject to the provisions of the Civil Procedure Code, and an order passed therein was appealable under Act XXIII of 1861, section 11. CHEDEE SINGH *v.* PEAREEOONNISSA [20 W. R., 19

APPEAL—*continued.*

10. EXECUTION OF DECREE—*continued.*

(*a*) QUESTION IN EXECUTION—*continued.*

Order in case transferred for execution—*continued.*

201. ——— An order passed by a Court to which a decree has been transferred for execution is not open to appeal, unless the order has been made in the course of the actual execution of the transferred decree. *Quære,*—Whether, where a decree has been transferred to the Munsif's Court for execution, an appeal will lie to the Judge from the Munsif's order in the matter of the execution? IN THE MATTER OF THE PETITION OF SUMAT DAS **[13 B. L. R., Ap. 27**

S. C. SOOMUT DASS *v.* BHOOBUN LALL **[21 W. R., 292**

See this case at a former stage in which the question was raised. SOOMUT DASS *v.* BHOOBUN LALL **[20 W. R., 478**

202. ——— A decree transmitted to a Court for execution is to be regarded as a decree of that Court for the purpose of execution, and an appeal therefore lies against the order of a District Judge passed in execution of a decree transmitted to his Court from a Small Cause Court. MOBARUCK ALI *v.* SOOMEE RUNGA CHAREE **[3 N. W., 168**

203. ——— **Order as to issue of certificate.**—*Act XXIII of 1861, s. 11.—Civil Procedure Code, 1859, s. 285.*—All orders passed by a Court between parties to the decree and relating to the execution of decree are, unless they are specially barred, appealable. There is no special prohibition against an appeal from an order directing or refusing the issue of a certificate under section 285, Act VIII of 1859. GOPAL LALL *v.* MAHOMED HADEE . **6 N. W., 73**

204. ——— **Order rejecting application as to mode of sale of property.**—*Civil Procedure Code, 1877, ss. 244, 588.—Question relative to the execution of decree.*—A judgment-debtor having applied, under section 284 of Act X of 1877, that certain property attached in execution of a decree against him should be sold in successive 8-pie shares, on the ground that the amount due under the decree was only R9,000, and that on a former occasion a similar share of the same property had sold for R5,000, the Judge refused the application. *Held,* that the question between the parties was one relating to the execution of a decree; and accordingly that, although no appeal was given by the Act against an order under section 284, there was an appeal under section 588 (*j*). CHANDHARI SITAL PERSHAD SINGH *v.* JHUMAH SINGH . . . **4 C. L. R., 27**

205. ——— **Order as to mesne profits subsequent to decree, and as to costs of execution.**—*Civil Procedure Code, 1877, s. 244.*—There is no appeal against an order, made under section 244 of the Code of Civil Procedure (X of 1877), determining the questions between the parties to a suit as to the amount of mesne profits

APPEAL—*continued.*

10. EXECUTION OF DECREE—*continued.*

(*a*) QUESTION IN EXECUTION—*continued.*

Order as to mesne profits subsequent to decree, and as to costs of execution—*continued.*

recovered by the plaintiff subsequently to the decree and as to the amount payable on account of the costs of the execution of that decree. DALPATHBHAI BHAGUBHAI *v.* AMARSANG KHEMABAI **[I. L. R., 2 Bom., 553**

206. ——— **Order disallowing objection to attachment.**—*Civil Procedure Code, 1877, ss. 244 (c), 281.—Execution of decree.—Decree against firm.—Attachment of property as property of firm.—Claim by partner to property as private property.*—The holder of a decree against a firm caused certain property to be attached in execution of the decree as the property of the firm. One of the partners in the firm objected to the attachment on the ground that such property was not the property of the firm, but was his private property. The Court disallowed the objection, whereupon such partner appealed from the order disallowing the objection. *Held,* that such order was not one under section 244 (*c*) of Act X of 1877, but under section 281, and was therefore not appealable. ABDUL RAHMAN *v.* MUHAMMAD YAR . . . **I. L. R., 4 All., 190**

207. ——— **Order for security in execution.**—*Civil Procedure Code (Act X of 1877), ss. 2, 244, cl. (c), ss. 546, 588.—Security for restitution of property.*—Where an order, requiring the decree-holder to give security within three days, is made, under section 546 of the Code of Civil Procedure, by the Judge of the Court in which the decree was passed and in which the execution is pending, such order is appealable as a decree under the provisions of the Code of Civil Procedure, section 2, and section 244, clause (*c*). LUCHMIPUT SINGH *v.* SITA NATH DOSS **[I. L. R., 8 Calc., 477: 10 C. L. R., 517**

208. ——— **Order for attachment and sale of property.**—*Civil Procedure Code (Act X of 1877), ss. 244 and 588, cls. (j) and (r).*—An order for attachment and sale of property in execution of a decree, is an order "of the same nature with" an order made in the course of a suit for attachment of the debtor's property. The latter order is appealable under section 588, clause (*r*), of the Code of Civil Procedure. It follows that an order for attachment and sale in execution of a decree is [according to the requirement of section 588, clause (*j*)] "of the same nature with appealable orders made in the course of a suit;" and therefore is appealable under that section. POLOKDHARI RAI *v.* RADHA PERSAD SINGH **[I. L. R., 8 Calc., 28**
L. R., 8 I. A. 165

Reversing the decision of the High Court in POLOKDHARI ROY *v.* RADHA PERSAD SINGH **[I. L. R., 5 Calc., 50: 4 C. L. R., 342**

APPEAL—*continued.*

10. EXECUTION OF DECREE—*continued.*

(*a*) QUESTION IN EXECUTION—*continued.*

209. ——— Order refusing to allow representative to take out execution until granted certificate.—*Civil Procedure Code, s. 244.*—On appeal from an order allowing an application by the legal representative of a deceased decree-holder for execution, the Appellate Court, holding that the applicant must obtain a certificate under Act XXVII of 1860 before he could take out execution of the decree, made an order directing that execution of the decree should be stayed until the applicant had obtained such certificate. *Held*, that such order fell under section 244 of the Civil Procedure Code, and was therefore appealable. HOTI LALL *v.* HARDEO . . I. L. R., 5 All., 212

210. ——— Order staying execution of decree.—All orders staying execution of decrees, whether passed by the Court which passed the decree, or by the Court to which it is sent for execution, are "questions arising between the parties to the suit in which the decree was passed, and relating to the execution" thereof, within the meaning of section 244 (*c*) of the Civil Procedure Code, and, as such, appealable, irrespective of the provisions of section 588. *Kristomohiny Dossee* v. *Bama Churn Nag Chowdry, I. L. R., 7 Calc., 733,* and *Luchmeeput Singh* v. *Seeta Nath Doss, I. L. R., 8 Calc., 477,* followed. The widest meaning should be attached to clause (*c*) of section 244 of the Civil Procedure Code, so as to enable the Court of first instance and the Court of appeal to adjudicate upon all kinds of questions arising between the parties to a decree and relating to its execution. GHAZIDIN *v.* FAKIR BAKSH . . . . I. L. R., 7 All., 73

211. ——— Order staying execution of decree.—*Civil Procedure Code, 1882, ss. 2, 243, 244.—Decree.*—An order under section 243 of the Civil Procedure Code staying execution of a decree determines a question relating to the execution of the decree within the meaning of section 244, and is therefore a decree within the meaning of section 2; an appeal therefore lies from such order. STEEL *v.* ICHCHAMOYI CHOWDHRAIN . I. L. R., 13 Calc., 111

212. ——— Order staying sale in execution of decree.—*Civil Procedure Code, 1877, s. 244, cl.* (*c*).—In execution of a decree on a mortgage-bond executed by the father of the judgment-debtors, since deceased, which decree directed that the mortgage lien should be enforced—*first*, by sale of the property specifically mortgaged; and *secondly*, if the debt remained unsatisfied, by the sale of the other property in the possession of the judgment-debtors, the judgment-creditor proceeded to have the mortgaged property sold. After the issue of the sale-notification, and three days prior to the date fixed for the sale, one of the judgment-debtors applied to have the sale stayed, on the ground that an administration-suit was pending with respect to the property of his father, the mortgagor, and also asked that a receiver might be appointed and arrangements made for the purpose of paying off the mortgage-

APPEAL—*continued.*

10. EXECUTION OF DECREE—*continued.*

(*a*) QUESTION IN EXECUTION—*continued.*

Order staying sale in execution of decree—*continued.*

debt and saving the property from being sold. On this application the Court passed an order staying the sale. *Held*, that such order was appealable, being a question arising between the parties to the suit in which the decree was passed and relating to the execution of that decree, and as such coming within the provision of clause (*c*), section 244, Act X of 1877. *Gambhirmal* v. *Chejmal Jodhmal, 11 Bom., 151,* distinguished. KRISTOMOHINEY DOSSEE *v.* BAMA CHURN NAG CHOWDHRY

[I. L. R., 7 Calc., 733
9 C. L. R., 344

213. ——— Order directing account in administration-suit.—*Civil Procedure Code (Act X of 1877), s. 244.*—An order directing an account is not an order in the nature of a final decree, nor one in execution of decree, and is unappealable; such an order merely directs certain proceedings to be taken, in order that a final decree may thereafter be made. SREENATH ROY *v.* RADHANATH MOOKERJEE . . . I. L. R., 9 Calc., 773

(*b*) PARTIES TO SUITS.

214. ——— Person other than party to suit.—*Act XXIII of 1861, s. 11.*—No one but a party to a suit can appeal under section 11 of Act XXIII of 1861, against an order passed in such suit. CAEMMERER *v.* BIRCH, EX PARTE BROOKS

[1 Mad., 8

KALUB HOSSEIN *v.* DEEN ALI . 4 N. W., 2

215. ——— Purchaser, objection by.—*Act XXIII of 1861, s. 11.—Civil Procedure Code, 1859, ss. 246, 247, 364.*—Where the holder (*G.*) of a simple money-decree, who is at the same time a mortgagee, applies to a Civil Court to sell mortgagor's property in execution of said decree, such property having previously been sold in execution of *K.'s* decree and purchased by *N.* (*G.'s* claim upon it being at the same time notified), and in his (*G.'s*) application inserts the name of *N.*, and calls him a judgment-debtor in the room of the heir and representative of the deceased debtor; and a purchaser comes in and denies that he is a judgment-debtor or liable, and asks for the release of the property, and the Judge disallows his objection,—*Held* that, if the Judge's order was made after investigation, then, under section 246 of Act VIII of 1859, an appeal was barred; if it was an order refusing to investigate the objection, then the appeal was barred either by section 247 or by section 364, unless allowed by section 11, Act XXIII of 1861. *Held* also, that the objector was not a party to the suit, and that he was not entitled to appeal under section 11. Section 223, Code of Civil Procedure, can have no bearing on such a case. NARAIN ACHARJEE *v.* GREGORY

[8 W. R., 304

APPEAL—*continued.*

10. EXECUTION OF DECREE—*continued.*

(*b*) PARTIES TO SUITS—*continued.*

216. ——— Purchaser, Substitution of, for original party in record.—"*Party to suit.*"—A party who had sued, on the part of himself and of his minor brother, to recover possession of ancestral property alleged to have been alienated, sold his rights and interests in the suit to a third party, whose name was accordingly substituted in the place of plaintiff. *Held*, that the substitution of such party for the plaintiff, in respect of part of the latter's share in the subject-matter of the suit, did not make that party a party to the suit, and gave him no *status* which would enable him to appeal. SAHEB ROY *v.* CHOONEE SINGH . . **9 W. R., 487**

217. ——— Intervenor.—*Act XXIII of 1861, s. 11.—Party to suit.*—The first Court gave a decree to the plaintiff for possession of land against *A.*, the original defendant in the suit, but exempted land in the possession of *B.*, an intervenor whom the Court had made a co-defendant. The Appellate Court reversed so much of that decree as adjudicated upon the claim as between the plaintiff and *B.*, and confirmed its decree for possession against *A.*, but awarded costs against *B.* *Held*, that *B.* continued to be a defendant in the suit, and had a right of appeal under section 11, Act XXIII of 1861, and that he was not as "a person other than the defendant" bound to come in under section 230, Act VIII of 1859. HUREE KISHORE ROY *v.* KALEE KISHORE SEIN . . . . . **8 W. R., 114**

218. ——— Claimant under title created subsequently to suit.—*Act XXIII of 1861, s. 11.—Party to suit.*—A female plaintiff obtained a decree against certain defendants, declaring certain ekrarnamahs, &c., void as against her husband and his representatives. After his death she proceeded to execute the decree as one for possession, and obtained an order, under section 223, Act VIII of 1859, for delivery of possession of property in the possession of a third party as being a person claiming under a title created by the defendants subsequently to the institution of the suit. The third party appealed from that order. *Held*, that this was not a case in which an appeal lay under section 11, Act XXIII of 1861, inasmuch as the questions raised by the appeal were not questions between the parties to the suit. AMEEROONISSA KHATOON *v.* ABEDOONISSA KHATOON . . **16 W. R., 307**

219. ——— Representative of deceased debtor.—*Act XXIII of 1861, s. 11.—Execution of decree.—Limitation.*—A decree was obtained in 1849, and execution issued in 1862. Several subsequent applications for execution were made, against one of which the objection was raised by some of the representatives of the judgment-debtor, that the decree was barred by lapse of time; but it was overruled by the High Court in special appeal. A further application was made, and was opposed by one of the representatives who had since attained his majority, upon the ground that the suit was barred. The Munsif disallowed the objection. On appeal

APPEAL—*continued.*

10. EXECUTION OF DECREE—*continued.*

(*b*) PARTIES TO SUITS—*continued.*

Representative of deceased debtor—*continued.*

the Judge reversed his decision. *Held*, in special appeal, that the terms of section 11, Act XXIII of 1861, did not prohibit an appeal by a representative of a deceased judgment-debtor against an order passed in execution of a decree against his ancestor. BISHTU NARAYAN BANDOPADHYA *v.* GANGA NARAYAN BISWAS
[3 B. L. R., A. C., 40 : 11 W. R., 368

220. ——— Assignee of decree.—*Act XXIII of 1861, s. 11.—Act VIII of 1859, s. 208.—Assignment of decree.*—Under section 11, Act XXIII of 1861, no appeal lay from an order passed under section 208, Act VIII of 1859, substituting the assignee of a decree in the place of the original decree-holder. MEGH NARAYAN SING *v.* RADHA PRASAD SINGH . **4 B. L. R., A. C., 200**
[13 W. R., 224

See contra FRAMJI RUSTOMJI *v.* RATANSHA PESTANJI . . . . . **9 Bom., 49**

221. ——— Surety.—*Order between judgment-creditor and surety.—Act XXIII of 1861, s. 11.—Civil Procedure Code, 1859, s. 204.*—By virtue of section 11 of Act XXIII of 1861, and the provisions of section 204 of the Code of Civil Procedure, an appeal lay from an order passed in a matter between a judgment-creditor and sureties on behalf of a judgment-debtor for the performance of the decree. EX PARTE BHIKAJI VITHAL AMBIKAR
[4 Bom., A. C., 119

GHAZEE LALL JHA *v.* SHEO NARAIN SINGH
[8 W. R., 24

222. ——— *Execution of decree.—Act VIII of 1859, ss. 204 and 363.—Act XXIII of 1861, ss. 11 and 36.*—Where a person becomes a surety in the course of the proceedings on an appeal, to pay all such sums as may be decreed against the plaintiff on appeal, the decree, when passed, can be executed against the surety under section 204 of the Civil Procedure Code, and an appeal will lie from an order made in execution of such decree against the surety. AKHUT RAMANA *v.* AHMED YOUSAFFJI . . . . . **8 B. L R., 81**
[15 W. R., 538

223. ——— Purchaser of interest in suit.—*Assignment of interest in subject-matter of suit.—Right of purchaser.*—The purchaser of the right, title, and interest of the defendant in a suit in and to the land the subject-matter of that suit, has no right as such to appeal from a decree passed against the defendant. GAJADHAR PRASAD *v.* GANESH TEWARI . . . . . **7 B. L. R., 149**
[15 W. R., 485

BEET BHUNJUN SINGH v. JOWHUR DOSS
[4 W. R., Mis., 17

KRISTOMONEE THAKOOR v. BISSUMBHUR DOSS
[5 W. R., 215

APPEAL—*continued.*

10. EXECUTION OF DECREE—*continued.*

(*b*) PARTIES TO SUITS—*continued.*

224. ——— **Purchaser at sale in execution.**—*Interlocutory order obtained by purchaser at execution sale.*—No appeal lies from an interlocutory order obtained by a purchaser at a sale in execution of a decree, who was not a party to the original suit. BHOONDUR MUL *v.* GUNGA PERSHAD [2 W. R., Mis., 50

225. ——— **Objector not party to suit.**—An appeal does not lie by an objector who is not one of the parties, *i.e.*, who is neither the decree-holder nor the judgment-debtor. LUCHMIPUT SINGH *v.* LEKRAJ ROY . . . 2 W. R., Mis., 56

RAGHOONATH NARAIN SINGH *v.* RAM CHURN SAHOO . . . 2 W. R., Mis., 48

GOSSAIN JHUNMI POOREE *v.* ANUND MOYEE DOSSEE . . . 3 W. R., Mis., 9

SOODHA MONEE DOSSEE *v.* BROJONATH MOZOOMDAR . . . . 4 W. R., Mis., 14

226. ——— **Purchaser at sale in execution.**—*Order refusing to put purchaser at sale in execution in possession.*—The order of a Munsif declining to put the purchaser, at a judicial sale of immoveable property, in possession thereof, was open to appeal under section 11, Act XXIII of 1861. IN THE MATTER OF GORUPPA BIN RACHAPPA [1 Bom., 90

227. ——— **Purchaser in execution of decree.**—*Order refusing to recognize purchaser.*—No appeal lies from an order of a Judge refusing to recognize the position of a purchaser of a decree. LALLA OJHEE LALL *v.* LOOFT ALI KHAN [2 W. R., Mis., 33

CHUNDEE PERSHAD MISSER *v.* NILANUND SINGH [2 W. R., Mis., 38

228. ——— **Purchaser at sale in execution.**—*Act XXIII of 1861, s. 11.—Representation of decree-holder and the auction-purchaser.*—An appeal did not lie under section 11, Act XXIII of 1861, from an order in execution, in which the representative of a decree-holder was on one side, and a stranger (the auction-purchaser) on the other. LUCHMUN PERSAD *v.* AMEER ALI [W. R., 1864, Mis., 15

229. ——— *Act XXIII of 1861, s. 11.*—An auction-purchaser of property sold in execution of decree is not "a party to the suit;" he is not therefore entitled to appeal from an order passed as to the execution of the decree. LUCHMEE NARAIN *v.* BAIROW PERSHAD . 1 Agra, Mis., 5

230. ——— **Third party.**—*Order excluding property from sale.*—No appeal lies from an order passed at the instance of a third party for excluding a particular property from sale in execution of decree. SAHEB JEHAN *v.* ASUDOOLLAH [5 W. R., Mis., 28

231. ——— *Order passed in execution of decree between party to suit and a third party.*—No appeal lies from an order passed in execution of a decree between either of the parties to the suit and a third party, but a regular suit may be brought to set aside the order. GOBINDNATH SANDYAL *v.* RAMCOOMAR GHOSE . 6 W. R., 21

APPEAL—*continued.*

10. EXECUTION OF DECREE—*continued.*

(*b*) PARTIES TO SUITS—*continued.*

Third party—*continued.*

232. ——— **Rival decree-holders.**—*Act XXIII of 1861, s. 11.—Act VIII of 1859, ss. 270, 271.—Proceeds of sale in execution.*—An appeal did not lie, under section 11 of Act XXIII of 1861, from an order made under sections 270 and 271 of Act VIII of 1859 with regard to the claims of several rival decree-holders in respect of the proceeds of property sold in execution of a decree. MISRI KOOER *v.* MAHESWAR BUKSH SINGH; MURDER KOOER *v.* MAHESWAR BUKSH SINGH; GURDI MISREE *v.* MAHESWAR BUKSH SING; SRIONGO KOOER *v.* MAHESWAR BUKSH SING . . B. L. R., Sup. Vol., 13 [Marsh., 527: W. R., F. B., 116

CHOONEE LALL *v.* PULTOO BHUKUT [6 W. R., Mis., 74

ALLY HOSSEIN *v.* DHUNPUT SINGH [W. R., 1864, Mis., 19

JUNGEE LALL MAHAJUN *v.* BRIJO BEHAREE SINGH . . . 2 W. R., Mis., 21

AFZOOLOONISSA BEGUM *v.* PARBUTTY KOONWAR [2 W. R., Mis., 41

MAHOMED KHAN KUZULBASH *v.* THAKOOR SINGH [3 W. R., Mis., 1

JUGOBUNDHOO SHAH PORAMANICK *v.* OFFICIAL ASSIGNEE . . . 21 W. R., 194

233. ——— *Act XXIII of 1861, s. 11.—Attachment under s. 237, Act VIII of 1859.*—One of several decree-holders, who had obtained separate decrees against the same judgment-debtor, attached, under section 237 of Act VIII of 1859, a fund in the hands of the Collector belonging to the debtor, being the surplus proceeds of a sale for arrears of Government revenue, and the fund was subsequently attached by the other decree-holders. The fund was not sufficient to satisfy all the decrees in full. The Principal Sudder Ameen, by order of the Judge, heard the various execution cases together, but recorded separate orders in each case for the rateable distribution of the fund amongst the creditors. On appeal by the first attaching-creditor, who claimed to be entitled to be paid the amount of his decree in full, to which appeal the rival decree-holders, as well as the judgment-debtor, were made parties,—*Held* (*per* PEACOCK, *C. J.*, and SETON-KARR, JACKSON, and HOBHOUSE, *J.J.*), that the several orders of the Principal Sudder Ameen were substantially only one order made upon one hearing in one case, to which all the execution-creditors in the several suits were parties; that the rival decree-holders were properly made respondents in the appeal, and could not be struck out; and that the question to be determined being one between the rival decree-holders, and not between the parties in

APPEAL—*continued.*

10. EXECUTION OF DECREE—*continued.*

(*b*) PARTIES TO SUITS—*continued.*

Rival decree-holders—*continued.*

each suit, the case was not appealable under section 11, Act XXIII of 1861. *Held, per* MACPHERSON, *J.*, that though no appeal would lie as regards the rival decree-holders, the appeal was maintainable as regards the judgment-debtor alone. DEEN DYAL SAHOO *v.* RADHA MUDDUN MOHUN DOSS; HATTEE LALL BHUGGUT *v.* RADHA MUDDUN MOHUN DOSS; KANYA LALL PUNDIT *v.* RADHA MUDDUN MOHUN DOSS . . . **B. L. R., Sup. Vol., 927 [S. C. 9 W. R., 223**

234. ——— Co-defendants.—*Appeal by defendant against co-defendant.*—One defendant cannot be allowed to appeal as against his co-defendants. KASHEE CHUNDER ROY *v.* DOORGA **[11 W. R., 410**

235. ——— *Rival defendants.*—In a suit for possession, where a second defendant is admitted (though improperly) upon the record, and both defendants claiming under different titles, issues are raised between the plaintiff and each of them, and the suit is dismissed, the decision on these issues cannot be regarded as a decision between the rival defendants, so as to give one a right of appeal against the other. KALEE KINKUR BACHUSPUTTY *v.* KISTO MUNGLE BHUTTACHARJEE **[11 W. R., 462**

236. ——— Assignee of interest in suit.—*Civil Procedure Code, 1877, s. 244, and ss. 278, 283.—Representative.*—The holders of a taluq hypothecated certain other property belonging to them as security for the rent. A decree for rent was obtained against them. Prior to attachment, the taluqdars assigned their interest in eight annas of the hypothecated property to *A.*, and made a maurasi lease of the remaining eight annas to him. The decree-holder then obtained an order for summary sale for the rent due for 1876-77. She then attempted to sell the property hypothecated to her. An objection by *A.* was allowed. A regular suit was then instituted by the decree-holder against *A.*, and it was declared that she was, after selling the taluq, entitled to sell the hypothecated property. The decree-holder again attempted to execute her rent-decree by attaching and selling the hypothecated property, and an objection by *A.* was disallowed. *Held*, that no appeal lay from the order disallowing the objection, as *A.* could not be considered to be a "representative" of the taluqdars within the meaning of section 244, cl. (*c*) of the Civil Procedure Code; and was, therefore, debarred from appealing under sections 278 and 283. RASHBEHARY MOOKHOPADHYA *v.* SURNOMOYEE . **I. L. R., 7 Calc., 403 [9 C. L. R., 79**

237. ——— Co-decree-holders.—*Order on questions arising between co-decree-holders.—Civil Procedure Code (Act X of 1877), s. 244, art. (c), s. 588.*—A decree-holder having assigned a share of her decree, applied several times jointly with such assignee for execution. On a subsequent application

APPEAL—*continued.*

10. EXECUTION OF DECREE—*continued.*

(*b*) PARTIES TO SUITS—*continued.*

Co-decree-holders—*continued.*

made by the original decree-holder alone, the Court, while granting the application, directed that the proceeds arising from such execution should only be paid over to the co-decree-holders jointly. *Held*, that the question in dispute being one between co-decree-holders, and not between parties to the suit or their representatives as contemplated by article (*c*), section 244 of the Civil Procedure Code, no appeal would lie from such order. GYAMONEE *v.* RADHA ROMON **[I. L. R., 5 Calc., 592**

238. ——— Collector.—*Civil Procedure Code, 1877, s. 244.—Refusing execution of order for costs.*—A Subordinate Judge admitted a plaint in *formâ pauperis*, but, holding that he had no jurisdiction to try the suit, returned the plaint to the plaintiff for its presentation in the proper Court, and ordered each party to pay his own costs. After the presentation of the plaint in another Court, and before the termination of the suit, the Collector applied to the Subordinate Judge for execution of the order as to costs, by seeking to recover the amount of the stamp duty from the plaintiff. The Subordinate Judge refused to execute the order, on the ground that the pauper suit was still pending in another Court. His order was affirmed by the District Judge on appeal. On second appeal to the High Court,—*Held*, that there was no appeal, and, therefore, no second appeal, under section 244, clause (*c*), of the Civil Procedure Code (Act X of 1877), against the order of the Subordinate Judge refusing execution of the order as to costs, inasmuch as the question was not between the parties to the suit. COLLECTOR OF RATNÁGIRI *v.* JANÁRDAN KÁMAT **[I. L. R., 6 Bom., 590**

239. ——— Decree-holder in character of purchaser.—*Order in execution of decree.—Fraud.—Cancellation of sale in execution of decree.—Civil Procedure Code Act XIV of 1882), ss. 2, 244, cl. (c) 311, and 588, cl. 16.*—Where it was shown that a judgment-creditor was himself the purchaser at an execution sale, and the amount for which he so purchased the property of his judgment-debtor was set off against the amount due to him under his decree, and where on the application of the judgment-debtor the Court passed an order setting aside the sale on the ground of fraud practised by the judgment-creditor on the judgment-debtor in connection with the sale, in consequence of which fraud the property had been sold at an undervalue,—*Held*, that inasmuch as the order involved the decision of a question between the parties to the suit relating to the execution, discharge, on satisfaction of the decree (the decree having been satisfied as far as the purchase-money bid by the decree-holder went, and the order cancelling that *pro tanto* satisfaction), though not appealable under the provisions of section 588, clause 16, was appealable as a decree under the provisions of the Code of Civil Procedure (Act XIV of 1882) section 2, and section 244, clause *c*. BALLODEE LALL BHAGAT *v.* ANADI MOHAPATTRO . **I. L. R., 10 Calc., 410**

APPEAL—*continued.*

10. EXECUTION OF DECREE—*continued.*

(*b*) PARTIES TO SUITS—*continued.*

240. ——— Assignee of decree.—*Civil Procedure Code, Act XIV of 1882, ss. 2, 244 (cls. a, b, and c).—Execution of decree.*—The ancestors of *B.* mortgaged their share in a certain mehal to *A.* Subsequently *B.* became entitled to this share in the mehal, and *A.* obtained a decree on his mortgage, in execution of which the right, title, and interest of *B.* was sold and purchased by *C.* Subsequently to this latter decree and sale, *B.* obtained a decree against *D.* for possession of certain lands which were proved to belong to this mehal. *E.* then obtained a decree against *B.*, in execution of which the right, title, and interest of *B.* in this same mehal was sold and purchased by *F.*; *C.* and *F.* transferred their rights under their respective purchases to *E.* *E.* thereupon, as purchaser of the right, title, and interest of *B.* from *F.*, applied to execute the decree obtained by *B.* against *D.* This application was rejected by the Subordinate Judge, but on appeal to the District Judge was allowed. *B.* thereupon applied to the High Court to have this order set aside. *Held*, that the order should be set aside, inasmuch as no appeal lay from the order of the Subordinate Judge, the order not being a decree within the meaning of sections 2 and 244 (clauses *a*, *b*, and *c*) of the Civil Procedure Code. MOHABIR SINGH *v.* RAM BAGHOWAN CHOWBEY **[I. L. R., 11 Calc., 150**

11. LETTERS PATENT, CL. 12.

241. ——— Order granting leave.—*Leave to institute suit.*—An appeal lies from an order granting leave to the plaintiff to institute a suit under clause 12 of the Letters Patent. ISMAIL HAJEE HUBUB *v.* MAHOMED HAJEE YOOSUF; ROHIM BYE *v.* MAHOMED HAJEE YOOSUF **[13 B. L. R., 91: 21 W. R., 303**

242. ——— Order refusing leave to sue.—Where at the time of filing the plaint an application for leave to sue was granted under clause 12 of the Letters Patent, leave being reserved to the defendant to move to have the order set aside, and the plaint was then filed, but in the settlement of issues the defendant questioned the jurisdiction of the High Court, and the Court eventually withdrew the permission to sue in the High Court,—*Quære*—Whether the order appealed against finally deciding that leave ought not to be granted to institute a suit for want of jurisdiction under clause 12 of the Letters Patent, was an appealable order. RADHA BIBEE *v.* MUCKSOODUN DOSS . . . **21 W. R., 204**

12. MADRAS ACTS.

243. ——— Madras Act VIII of 1865.—*Order of Collector.*—By Madras Act VIII of 1865, an appeal from the decree of the Collector lies to the Civil Court. OLAGA SUNDARAM PILLAY *v.* MUTTIEN CHETTY . . . . . **4 Mad., 227**

244. ——— *Procedure.*—The Civil Court in hearing an appeal from the decision of a Collector under the Act must be guided by the Civil

APPEAL—*continued.*

12. MADRAS ACTS—*continued.*

Madras Act VIII of 1865—*continued.*

Procedure Code. SUBRAMANEY PILLAY *v.* PERUMAL CHETTY . . . . . **4 Mad., 251**

245. ——— s. 10.—*Order to eject tenant.*—No appeal lies to the District Court from an order passed on an application to eject a tenant under section 10 of the Rent Act (Madras Act VIII of 1865). MAHOMED YAKUB SAHEB *v.* MAHOMED JAFFER ALI SAHEB . . **I. L. R., 4 Mad., 167**

13. MANAGEMENT OF ATTACHED PROPERTY.

246. ——— Order postponing sale to enable debtor to raise amount.—*Civil Procedure Code (Act VIII of 1859), s. 243.—Civil Procedure Code, 1882, ss. 305, 503.—Order postponing sale.—Act XXIII of 1861, s. 11.*—An appeal lay from an order passed under section 243 of Act VIII of 1859, postponing the sale of the property attached, in order to enable the judgment-debtor to raise the amount of the decree against him (JACKSON, *J.*, dissenting). HANUMAN PRASAD *v.* AJODHYA PRASAD . **1 B. L. R., F. B., 7: 10 W. R., F. B., 5**

247. ——— Order refusing application to appoint a manager.—An appeal lay from an order refusing the request of a judgment-debtor for the appointment of a manager under section 243, Act VIII of 1859. BISRAM SINGH *v.* INDERJEET KOONWAR . . . . . **[2 W. R., Mis., 49**

248. ——— *Quære.*—Is a refusal to make an order on an application for the appointment of a manager, an order from which an appeal lies under section 11, Act XXIII of 1861? NUZMOODDEEN AHMED *v.* ABDOOL AZEEZ **[13 W. R., 242**

249. ——— *Order of Manager—Civil Procedure Code, 1859, s. 243.*—There was no appeal against the order of a manager appointed under section 243, Act VIII of 1859. BHOOBUN MOYEE DEBEA *v.* MOOTY . . . **1 W. R., Mis., 11**

14. MEASUREMENT OF LANDS.

250. ——— Order of Deputy Collector.—An appeal from the decision of a Deputy Collector in a suit under section 9, Bengal Act VI of 1862, lay, not to the Collector, but to the Zilla Judge. ERSKINE & Co., *v.* GHOLAM KHEZUR **[9 W. R., 520**

251. ——— Question as to standard pole of measurement.—Where a question as to the standard pole of measurement in use in a pergunnah is properly raised and determined between parties by the Revenue Court in a proceeding under Bengal Act VI of 1862, section 9, the determination is final. NEEM CHAND SAHOO *v.* RAM GOLAM SINGH **[24 W. R., 424**

APPEAL—*continued.*

14. MEASUREMENT OF LANDS—*continued.*

252. ——— Order of Collector in survey and measurement of lands.—An appeal lay to the Judge from the decision of a Collector in matters of survey and measurement falling within sections 9 and 10, Bengal Act VI of 1862. No appeal lay from the decision of a Collector under section 11 of the same Act. TARUCK NATH MOOKERJEE *v.* MEYDEE BISWAS . . . . **5 W. R., Act X., 17**

253. ——— Order of Deputy Collector as to standard pole of measurement.—No appeal to the Judge lay from the decision of a Deputy Collector under section 11, Bengal Act VI of 1862, on the question of the standard pole of measurement. RAKHAL DAS MOOKERJEE *v.* TUNOO PORAMANIC . . . . . **7 W. R., 239**

254. ——— Order of Collector as to standard of measurement.—*Beng. Act VI of 1862, ss. 9 and 11.*—When the right of a proprietor to make, under section 9, Bengal Act VI of 1862, a measurement of a tenure, is disputed solely on the ground that the proper standard pole of measurement under section 11 is not employed, the Collector has power to enquire into and decide the true length of the standard pole, and an appeal lay from his decision. MANMOHINI CHOWDHRAIN *v.* PREMCHAND ROY . . **6 B. L. R., 1: 14 W. R., F. B., 4**

255. ———Order in measurement proceedings.—*Decree.—Civil Procedure Code (Act X of 1877), ss. 2 and 540.—Beng. Act VIII of 1869, s. 37, Order under.*—An order made under section 37, Bengal Rent Act (Bengal Act VIII of 1869), is a decree within the meaning of the definition contained in the Civil Procedure Code (Act X of 1877), and an appeal lies therefrom under the provisions of section 540. BROJENDRO COOMAR ROY *v.* KRISHNA COOMAR GHOSE **[I. L. R., 7 Calc., 684 9 C. L. R., 444**

256. ——— *Beng. Act VIII of 1869, s. 38.*—An appeal lies to the High Court from proceedings taken under Beng. Act VIII of 1869, section 38. AHMED ALI *v.* NITTYANUND ROY **[24 W. R., 171**

See ABDOOL BAREE *v.* NITTYANUND KOONDOO . . . **21 W. R., 103**

where an appeal was heard, though the question was not raised.

257. ——— *Beng. Act VIII of 1869, s. 38.*—There is no appeal against an order made by the Civil Court, under section 38 of Bengal Act VIII of 1869, directing the measurement of lands. *Crowdy* v. *Goburdhun Roy, 22 W. R., 491,* followed. *Goluck Kishore Acharjee* v. *Kesha Majhee, 15 W. R., 23,* and *Manoo Dassee* v. *Ishan Chunder Banerjee, ib., 245,* cited. KALLY CHURUN DUTT *v.* PROTAB CHUNDER GHOSE **[5 C. L. R., 484**

APPEAL—*continued.*

15. NORTH-WESTERN PROVINCES ACTS.

258. ——— ——N.-W. P. Rent Act, XVIII of 1873, s. 148—*Landholder and tenant.—Suit in which right to receive rent is disputed.—Determination of such right.—Determination of proprietary right.*—*C.* sued *J.* for the rent for certain land, alleging that he was the tenant of such land and *J.* was his sub-tenant. *J.* disputed *C.'s* right to receive rent for such land, alleging that he was not his sub-tenant, but *S.'s,* and had paid such rent to *S.* Under the provision of section 148 of Act XVIII of 1873, *S.* was made a party to the suit. The Collector decided on appeal in the suit that *S.* and not *C.* was the tenant of such land, and *J.* was her sub-tenant, and not *C.'s,* and had paid such rent to *S.* *Held,* that there was no determination by the Collector of the title to such land but as incidental to the question who was entitled to receive the rent, and consequently the decision of the Collector was not appealable to the District Judge. CHOTU *v.* JITAN **[I. L. R., 3 All., 63**

259. ——— ss. 148, 183, 189.—*Landholder and tenant.—Suit for arrears of rent.—Right to rent disputed by third person.—Appeal by intervenor.*—*K.* sued *B.* for arrears of rent, such arrears not exceeding R100. His right to receive rent was disputed by *H.,* a third person, who was made a defendant under the provisions of section 148 of Act XVIII of 1873. The suit was tried by an Assistant Collector of the second class, who decided that *K.* was entitled to the rent. *H.* and *B.* appealed to the Collector, who decided that *H.* was entitled to the rent. *K.* thereupon appealed to the District Judge, who affirmed the decision of the Collector. *K.* then appealed to the High Court. *Held,* that the Collector was not competent to entertain an appeal by *H.;* that as between *K.* and *B.* all that the Collector could decide was whether or not *K.* was entitled to the amount of rent claimed; that the District Judge had no jurisdiction to entertain *K.'s* appeal; and that *K.'s* appeal to the High Court was not entertainable, the District Judge not having decided any question of proprietary right that would justify such an appeal. KISHNA RAM *v.* HINGU LAL **[I. L. R., 4 All., 237**

260. ——— s. 189.—*Question of title.—Suit for arrears of rent.*—Where the defendant pleaded in answer to plaintiff's suit for arrears of rent, that defendant no longer held as tenant but as sub-proprietor under a settlement made direct with defendant by the settlement officer,—*Held,* that under section 189 of Act XVIII of 1873 the suit involved a question of proprietary title, and that an appeal lay to the Judge of the district, although the amount in suit was less than R100. BISHESHAR SINGH *v.* SUGUNDHI . . **I. L. R., 1 All., 366**

261. ——— N.-W. P. Rent Act, 1881, s. 189.—*Appeal to District Judge.*—An appeal lies to the District Judge under section 189 of the North-Western Provinces Rent Act, as well from appellate as from original decisions of the Collector. RAJA SINGH *v.* SULKA . . **I. L. R., 6 All., 398**

APPEAL—*continued.*

15. NORTH-WESTERN PROVINCES ACTS —*continued.*

N.-W. P. Rent Act, 1881, s. 189—*continued.*

262. ——————— s. 191.—*Appeal to High Court from appellate decree of District Judge passed in appeal from appellate decree of Collector.*—An appeal lies to the High Court from a decree of a District Judge passed in appeal from an appellate decree of a Collector. JAI RAM *v.* DULARI CHAND . . . . **I. L. R., 5 All., 309**

263. ——— N.-W. P. Land Revenue Act, XIX of 1873, ss. 113 and 114.—*Partition.*—Where in the course of carrying out an order for a partition and of assigning the lands to each co-sharer, certain co-sharers claimed certain plots of land as belonging to them in severalty and demanded that the same should be assigned to them, and the Collector decided that some of such plots were held in severalty and one was held in common,—*Held*, that his decision was not passed under section 113 of Act XIX of 1873, and was therefore not appealable under section 114 of that Act. SHIBBAN LAL *v.* TILOKE CHAND . . . . **I. L. R., 2 All., 619**

16. PROBATE.

264. ——— Order to suspend probate.—*Succession Act, s. 265.—Civil Procedure Code, 1859, s. 363.*—Where an application for probate has been granted, and an objection being made a subsequent order is passed directing that the case be reopened, that probate be suspended for a time certain, and that the executor bring in his evidence to prove his right to obtain probate,—*Held*, that no appeal lies from such an order. Act X of 1865, section 263, and Act VIII of 1859, section 363, discussed. BROJO NATH PAL *v.* DASMONY DASSEE **[2 C. L. R., 589**

17. RECEIVERS.

265. ——— Order refusing to remove a receiver.—*Ciml Procedure Code.—Act X of 1887, ss. 2, 244, 503, 540, 588.—Act XXIII of 1861, s. 11.*—By a decree in an administration-suit, *A.* was appointed receiver "to manage the estate." *A.* died, and by a subsequent order *B.* was appointed receiver. One of the defendants in the suit applied to have *B.* removed from the office of receiver on the ground of his alleged mismanagement of the estate. The application was refused. *Held*, that the order of refusal was appealable, whether the former Code or the present Code of Civil Procedure was deemed to be applicable, being an order made in respect of a question arising between the parties to a suit relating to the execution of the decree. MITHIBAI *v.* LIMJI NOWROJI BANAJI . . **I. L. R., 5 Bom., 45**

266. ——— Orders submitting person for and confirming nomination as receiver.—*Reference to the District Court.—Appealable order.—Civil Procedure Code (Act X of 1877), ss. 503, 504, and 505.*—No appeal lies from an order passed under Section 505 of the Civil Procedure

APPEAL—*continued.*

17. RECEIVERS—*continued.*

Order submitting person for and confirming nomination as receiver—*continued.*

Code by a Court subordinate to a District Court, submitting the name of a person sought to be appointed a receiver, together with the grounds for the nomination, such order being only a preliminary order or expression of opinion, and not an order under section 503. Nor does an appeal lie from the order of the District Court confirming such nomination, but the District Court ought, when the question is raised, to decide on the necessity for the appointment of a receiver, the words "or pass such other order as it thinks fit" in section 505 being sufficient to include that question, and not merely to decide the fitness or otherwise of the person nominated to the office of receiver. BIRAJAN KOOER *v.* RAM CHURN LALL MAHATA **[I. L. R., 7 Calc., 719 : 9 C. L. R., 203**

267. ——— Order refusing to appoint receiver.—*Civil Procedure Code 1882, ss. 503, 588 (24).*—An order refusing to appoint a receiver under section 503 of the Code of Civil Procedure is not appealable. SUBRAMANYA *v.* APPASAMI **[I. L. R., 6 Mad., 355**

268. ——————— *Civil Procedure Code, 1859, s. 92.*—An appeal did not lie against an order refusing to appoint a receiver under Act VIII of 1859, section 92. EX PARTE IMBICHI PATAMA **[1 Mad., 129**

269. ——— Order dismissing application for appointment of receiver.—*Civil Procedure Code, 1877, s. 503.*—An order made by a Subordinate Judge, dismissing an application under section 503 for the appointment of a receiver in a suit pending before him, or declining to nominate a receiver, is an order under that section and not under section 505, and is therefore appealable under section 588 of the Civil Procedure Code as amended by Act XII of 1879. GOSSAIN DULMIR PURI *v.* TEKAIT HETNARAIN . . **6 C. L. R., 467**

18. REGULATIONS.

270. ——— Beng. Reg. XV of 1793.—*Order refusing application by mortgagee for return of excess payment under Reg. XV of 1793.*—No appeal lies from an order refusing an application by a mortgagor for the return of excess payment alleged to have been made by him in a proceeding under Regulation XV of 1793 by which he redeemed his mortgage. SREEMAN CHUNDER BANERJEE *v.* MODHOO SOODUN ROY . . **24 W. R., 17**

271. ——— Beng. Reg. I of 1798.—*Order of District Judge.—Act XXIII of 1861, s. 38.*—No appeal was provided from a summary order made by a District Judge under Regulation I of 1798; but such order was open to question in a regular suit. Act XXIII of 1861, section 38, gave no right of appeal in such cases; but provided merely that the mode of trial and the procedure incidental and

APPEAL—*continued.*

18. REGULATIONS—*continued.*

Beng. Reg. I of 1798—*continued.*

ancillary thereto, laid down in the Civil Procedure Code, should be applied throughout in miscellaneous cases and proceedings. HURRENATH KOONDOO *v.* MODHOO SOODUN SAHA . . **19 W. R., 122**

272. ——— Beng. Regs. V of 1812, s. 26, and V of 1827, s. 3.—*Order for attachment and manager.*—No appeal lay to the High Court from an order passed by a District Judge, issuing a precept to the Collector to hold an estate in attachment, and to appoint a manager under section 26, Regulation V of 1812, and section 3, Regulation V of 1827. IN THE MATTER OF THE PETITION OF THE COLLECTOR OF FURREEDPORE **[12 B. L. R., F. B., 366**

S. C. GOOROO DASS ROY *v.* COLLECTOR OF FURREEDPORE **[19 W. R., 170, and 20 W. R., 262**

273. ——— Beng, Reg. V of 1812.—*Order of Collector refusing to make distribution among shareholders.*—An appeal did not lie to the High Court from the order of a Collector refusing to distribute amongst the shareholders the amount of their shares of the surplus proceeds of a joint undivided estate attached and administered under Regulation V of 1812. JUGO MOYEE CHOWDHRAIN *v.* THE GOVERNMENT . . **3 W. R., Mis., 17**

274. ——— Beng. Reg. VIII of 1819, s. 6.—*Order of Civil Court.*—There is no appeal from an order made by the Civil Court under section 6 of Regulation VIII of 1819. IN THE MATTER OF THE PETITION OF SOORJA KANT ACHARJ CHOWDHRY . . . **I. L. R., 1 Calc., 383 [25 W. R., 222**

275. ——— Beng. Reg. III of 1872, s. 5.—*Suit referred to Civil Court in Sonthal Pergunnahs, Order in.*—A decision on an issue or in a suit properly referred to a Civil Court in the Sonthal Pergunnahs, under section 5, Regulation III of 1872, was appealable to the High Court under Act VIII of 1859, which was applicable to the Sonthal Pergunnahs. TARINI PROSAD MISSER v. MAHAMMAD CHOWDHRY . . . . **6 C. L. R., 555**

19. SALE IN EXECUTION OF DECREE.

276. ——— Order refusing interest in execution of decree.—When a sale in execution was set aside, and the order directing the return of the purchase-money did not also direct the payment of interest thereon,—*Held*, that there was no appeal from the order of the lower Court refusing to give interest. BISHONATH DOSS *v.* AHMED ALI **[W. R., 1864, Mis., 19**

277. ——— Order absolving purchaser from liability for damages on re-sale.—*Civil Procedure Code, 1859, s. 254.*—A purchaser at a sale in execution of a decree is liable for damages caused by re-sale consequent on his not making the required deposit. An appeal lay from the order of

APPEAL—*continued.*

19. SALE IN EXECUTION OF DECREE—*continued.*

Order absolving purchaser from liability for damages on re-sale—*continued.*

the lower Courts absolving the purchaser from liability. SREE NARAIN MITTER *v.* MAHATAB CHAND **[3 W. R., 3**

SOORUJ BUKSH SINGH *v.* SREE KISHEN DOSS . . **6 W. R., Mis., 126**

278. ——— Order making defaulting purchaser liable for difference on re-sale.—An appeal lay from an order holding the first defaulting purchaser liable for the difference arising from re-sale in execution of decree under section 254, Act VIII of 1859. JOOBRAJ SINGH *v.* GOUR BUKSH LALL . . . . **7 W. R., 110**

279. ——— *Civil Procedure Code, s. 254.—Sale in execution.*—An appeal lay from an order passed on an application under section 254, Act VIII of 1859, to make a defaulting purchaser liable for the loss occasioned by a re-sale. RAM DIAL *v.* RAM DAS . . **I. L. R., 1 All., 181**

280. ——— Order under s. 254, Civil Procedure Code, 1859.—No appeal lay to the Judge from an order passed by a subordinate Court under section 254, Act VIII of 1859. BINDA DABEE DOSSEE *v.* GOPEE SOONDEREE DOSSIA **[6 W. R., Mis., 82**

281. ——— Order refusing to admit petition to set aside a sale.—*Civil Procedure Code, 1859, s. 256.*—Under section 256 of Act VIII of 1859 the order of a Civil Court refusing to admit a petition against a sale was final. LALL GOBINDYAL *v.* BURZIN . . . . . **2 Hay, 111**

282. ——— Order affirming rejection of petition for reversal of sale in execution of decree.—*Civil Procedure Code, 1859, s. 257.*—Under section 257, Act VIII of 1859, no appeal lay from the order of a lower Appellate Court, affirming the order of the lower Court, rejecting a petition for the reversal of a sale in execution on the ground of irregularity. RAJ NARAIN KOER *v.* INDER CHUNDER BABU . . **W. R., 1864, Mis., 39**

MUDDUN MOHUN ROY CHOWDHRY *v.* RAM CHUNDER GOOPTO **[2 W. R., Mis., 41**

283. ——— Order setting aside sale for irregularity.—Under section 257, Act VIII of 1859, the order of a Judge on appeal setting aside a sale of immoveable property, on the ground of irregularity, was final, unless, under section 35, Act XXIII of 1861, the Judge was shown to have acted without jurisdiction. KOOLDEB SINGH *v.* JUGGUNATH SINGH . . . . **2 W. R., Mis., 19**

BHUJUN RAM TEWAREE *v.* LALLA AJOODHYA PERSHAD . **2 W. R., Mis., 29**

MUDUN MOHUN ROY CHOWDHRY *v.* RAM CHUNDER GOOPTO **[2 W. R., Mis., 41**

APPEAL—*continued.*

19. SALE IN EXECUTION OF DECREE—*continued.*

Order setting aside sale for irregularity —*continued.*

MAHOMED HOSSEIN *v.* AFZUL ALI [B. L. R., Sup. Vol., Ap. 1 S. C. W. R., F. B., 83 : Marsh., 296

ABDOOL KUREEM *v.* OOGHAN LAL [6 W. R., Mis., 119

284. ——— An order setting aside a sale on the ground of irregularity where an order has been passed by the Court executing the decree postponing the sale, but the sale has taken place in consequence of the order arriving too late, is not appealable. MAIJHA SINGH *v.* JHOW LAL [6 N. W., 354

285. ——— *Civil Procedure Code, 1859, s. 257.*—Where the lower Court allowed an objection and makes an order setting aside the sale, such order, according to section 257, Act VIII of 1859, was final. IN THE MATTER OF THE PETITION OF OODIUT ZUMAN . . . 8 W. R., 109

286. ——— **Order setting aside sale.** —*Civil Procedure Code, 1877, s. 588 (m)—Execution of decree.—Application to set aside sale of immoveable property.—Auction-purchaser.—Held* that, although the auction-purchaser may not apply under section 311 of Act X of 1877 to have a sale set aside, he yet may be a party to the proceedings after an application has been made under that section, and then, if an order is made against him, he can appeal from such order under section 588 (*m*) of Act X of 1877. KANTHI RAM *v.* BANKEY LAL [I. L. R., 2 All., 396

287. ——— *Civil Procedure Code, 1877, s. 588 (m).—Execution of decree.—Auction-purchaser.*—Where, after a judgment-debtor has applied, under section 311 of Act X of 1877, to have a sale set aside, the auction-purchaser is made a party to the proceedings, and the sale is set aside, the auction-purchaser can appeal against the order setting aside the sale. *Kanthi Ram* v. *Bankey Lal* followed. GOPAL SINGH *v.* DULAR KUAR [I. L. R., 2 All., 352

288. ——— *Review of judgment.*—An application under section 311 of Act X of 1877 to set aside a sale in execution of a decree having been made by the judgment-debtor, the Court executing the decree (Subordinate Judge) disallowed the objections, and passed an order confirming such sale. The judgment-debtor subsequently applied to the Subordinate Judge for a review of judgment. The Subordinate Judge, without recording his reasons for granting such application, and without recording an order granting such application, irregularly proceeded at once to pass an order setting aside such sale, without cancelling the previous order confirming it. The auction-purchaser appealed to the District Judge. That officer, treating the appeal as one from an order granting an application for review of judgment, entertained it, and set aside the Subordinate Judge's second order. *Held*, that the District Judge was not justified in entertaining such appeal, such order not being one granting an application for review, but one setting aside a sale, and, as such, not appealable. BHAIRON DIN SINGH *v.* RAM SAHAI [I. L. R., 3 All., 316

APPEAL—*continued.*

19. SALE IN EXECUTION OF DECREE—*continued.*

Order setting aside sale—*continued.*

289. ——— **Order confirming sale.**—*Civil Procedure Code, 1877, s. 310.—Sale in execution of decree of share of undivided estate.—Confirmation of sale in favour of co-sharer.—Appeal by auction-purchaser.*—A share of undivided immoveable property was put up for sale in execution of a decree, and was knocked down to *M.* Before it was knocked down to him, *A.*, the decree-holder, who had obtained permission to bid for and purchase such share, and who was a co-sharer of such share, bid the same sum as that for which it was knocked down to *M.*, claiming the right of pre-emption. The Court executing such decree subsequently made an order confirming the sale of such share in favour of *A. M.* appealed, impugning the propriety of the confirmation of the sale in favour of *A. Held*, that such appeal would not lie. MUNIR-UD-DIN KHAN *v.* ABDUL RAHIM KHAN . I. L. R., 3 All., 674

290. ——— *Civil Procedure Code, 1882, ss. 311, 312, 588 (cl. 16).—Execution of decree.—Sale in execution.—Order disallowing objections to sale.—Appeal.—Per* PETHERAM, *C. J.*, and OLDFIELD, BRODHURST, and, DUTHOIT, *J.J.*—An order passed under the first clause of section 312 of the Civil Procedure Code, after an objection made under the provisions of section 311 has been disallowed, is appealable under art. (16) of section 588. *Per* MAHMOOD, *J.*—An application made under section 311 can be disposed of only under section 312, and if the Court rejects the objection to the sale, the order must be regarded as an order "refusing to set aside a sale of immoveable property" under the first paragraph of section 312, and therefore appealable as falling under the purview of art. (16) of section 588. *Lalman* v. *Rassu Lal, Weekly Notes, All., 1882, 117*; and *Rajan Kuar* v. *Lalta Prasad, Weekly Notes, All., 1883, 178*, dissented from by MAHMOOD, *J.* TOTA RAM *v.* KHUB CHAND [I. L. R., 7 All., 253

291. ——— **Order refusing to set aside sale.**—*Civil Procedure Code, ss. 294, 312, 313.*—There is no appeal to the High Court from an order refusing to set aside a sale, unless such order is made under section 294, 312, or 313 of the Civil Procedure Code. DURGA SUNDARI DEVI *v.* GOVINDA CHANDRA ADDY . . . . I. L. R., 10 Calc., 368

292. ——— **Order refusing permission to bid.**—*Civil Procedure Code, s. 294.—Decree-holder.*—No appeal lies from an order passed under section 294 of the Civil Procedure Code refusing permission to a decree-holder to bid at a sale in execution of his decree. JODOONATH MUNDUL *v.* BROJO MOHUN GHOSE . . I. L. R., 13 Calc., 174

APPEAL—*continued.*

19. SALE IN EXECUTION OF DECREE—*continued.*

293. ——— Order refusing to set aside dismissal of application to set aside sale.—*Civil Procedure Code, ss. 102, 103, 588, 647.—Appeal from an order refusing to set aside an order under section 102, dismissing an application under section 311.*—Section 647 of the Code of Civil Procedure (Act XIV of 1882), when read with clause (8) of section 588, does not give a right of appeal to a judgment-debtor whose application to set aside a sale of his property has been dismissed under section 102, and whose application to set the dismissal aside has been refused under section 103. Section 647 is not intended to confer any rights of appeal not expressly given elsewhere by the Code. NINGÁPPÁ *v.* GÁNGÁWÁ **[I. L. R., 10 Bom., 433**

20. ORDERS.

294. ——— Interlocutory order.—*Isolated issue of law.*—An appeal will not lie from the separate determination of an isolated issue of law or fact before the taking of evidence on the remaining issues. IN THE MATTER OF THE PETITION OF THE COURT OF WARDS . . . **7 W. R., 222**

295. ——— *Illegal order.*—The plaintiff obtained a decree in the Court of first instance. The defendant appealed. The lower appellate Court improperly directed the Court of first instance to settle the matter in dispute in accordance with a decision of a former Judge in the matter, and allowed the parties ten days after the return of the case to file objections. *Held*, that the proceeding of the lower Appellate Court was unwarranted by law, and must be taken to be, if anything, an interlocutory order, and, as such, unappealable. LUKH RAM *v.* BUNSEE DHUR . **5 N. W., 180**

296. ——— Order dismissing part of claim before final decree.—*Civil Procedure Code, 1877, s. 540.*—Where a Judge, after the defendant's written statement was put in, framed certain preliminary issues and decided them, directing part of plaintiff's claim to be dismissed and part to be tried on the merits (which trial might necessitate the taking of an account from defendant),—*Held*, that no appeal lies from such an order on the part of the plaintiff, because the Civil Procedure Code only allows an appeal against a portion of the decision when there has been a decision relating to the disposal of the entire suit, or on the part of the defendant, inasmuch as there had been no final order to take an account. VENKATAGIRI RAJA *v.* MAHOMMED RAHIMTULLA SAHIB . **I. L. R., 3 Mad., 13**

297. ——— Order rejecting application for refund of stamp duty.—An appeal does not lie from an order of the lower Court made on an application for refund of sufficient stamp duty and penalty, after a case remanded to it had been compromised. Redress should be sought by way of motion rather than as an appeal. RAMANOOJ DOSS *v.* GOVERNMENT . . **2 W. R., Mis., 36**

APPEAL—*continued.*

20. ORDERS—*continued.*

298. ——— Order of Munsif dismissing suit for under-valuation.—An appeal will lie from the order of a Munsif dismissing a suit as beyond his jurisdiction because it was undervalued. JOHAN BUKSH *v.* MEHER BIBEE *alias* MOHUR . . . . . **7 W. R., 183**

299. ——— Order disallowing appointment of ministerial officer.—*Act XVI of 1868, s. 9.*—A party whose appointment by a Subordinate Judge or Munsif is disallowed by a Zillah Judge, on the ground that he is not qualified for the appointment, has no right of appeal to the High Court against the Judge's order. IN THE MATTER OF SHOSHEE KISHEN MOOKERJEE . **14 W. R., 328**

300. ——— Order of Magistrate dismissing ministerial officer.—*Commissioner of Revenue and Circuit.*—The Commissioner is the proper authority to whom an appeal lies from the order of a Magistrate dismissing a ministerial officer from his post, and the order of the Commissioner passed in appeal is final. IN RE PARBHU NARAYAN SINGH **[3 B. L. R., A. C., 370: S. C. 12 W. R., 323**

301. ——— Order giving possession to purchaser.—*Civil Procedure Code, 1859, s. 264.*—No appeal lay from an order of a Court giving possession under section 264, Act VIII of 1859, to a purchaser at a sale in execution of a decree. OMIRTO MOYEE DOSSEE *v.* GOOROO DOSS ROY **[17 W. R., 395**

302. ——— Order refusing to grant possession.—*Civil Procedure Code, 1859, ss. 259, 263.*—No appeal lay from an order refusing to grant possession, under sections 259 and 263, Act VIII of 1859. GOPAL CHUNDER GHOSE *v.* RAJ CHUNDER DUTT . . . . . **2 W. R., Mis., 9**

303. ——— Order admitting claim of dur-putneedar.—*Civil Procedure Code, 1859, s. 269.*—No appeal lay from an order admitting the claim of a dur-putneedar who has intervened under section 269, Act VIII of 1859. JADUB CHURN THAKOOR *v.* BHOLANATH SINGH ROY **[5 W. R., Mis., 51**

304. ——— Order rejecting review.—*Civil Procedure Code, 1859, s. 378.*—No appeal lies from the order of a Judge rejecting an application for a review of his order dismissing an appeal for default of prosecution. CHOWDHRY RUTTUN PERSAD *v.* HUNOOMAN JAH . **W. R., 1864, Mis., 20**

305. ——— Under section 378, Act VIII of 1859, an order rejecting an application for review of judgment is final. CALLY DASS SIRCAR *v.* JANOKEENATH ROY . **1 W. R., Mis., 7**

306. ——— Order disposing of application for review on the merits.—Where an application for review is disposed of as upon a rehearing on the merits, an appeal lies from the order so passed. AMANUT ALI *v.* BINDHOO **[13 W. R., 138**

APPEAL—*continued.*

20. ORDERS—*continued.*

307. ——— Order amending decree.—*Correction of clerical mistake in original order.*—Where the Court, on the application for a review of judgment, amends a clerical mistake in its original order, the decree drawn up in conformity to this order becomes the final decree, and an appeal will lie against it if brought within the time prescribed for bringing an appeal against any other similar decree. JOYKISHEN MOOKERJEE *v.* ATAOOR ROHOMAN . **I. L. R., 6 Calc., 22: 6 C. L. R., 575**

308. ——— Order rejecting insufficiently-stamped document.—The question of the admissibility of an insufficiently-stamped document once admitted as evidence by a Court can form no valid ground of appeal. KHOOB LALL *v.* JUNGLE SINGH . . . . . **I. L. R., 3 Calc., 787 [2 C. L. R., 439**

309. ——— Order refusing to allow document to be filed.—No appeal lies from the refusal of the Judge of an Appellate Court to allow a fresh document to be filed. BECKWITH *v.* KISHTO JEEBUN BUCKSHEE . **Marsh., 278: 2 Hay, 286**

310. ——— Order compensating defendant for loss of property attached.—*Held*, that no appeal lies to the District Court from an order made by a Munsif compensating a defendant for loss of property attached before judgment under section 84 of Act VIII of 1859. TRIKAM GOVARDHAN *v.* DULLABH KUBER **[2 Bom., 389, 2nd Ed., 367**

311. ——— Order for compensation on release of attached property.—No appeal lies from an award of compensation on release of attached property. HUROSOONDUREE DOSSEE *v.* BUNGSEEMOHUN DOSS . **3 W. R., Mis., 28**

HURO SOONDREY CHOWDHRAIN *v.* BUNGSHEE MOHUN DASS . . . . **8 W. R., 332**

312. ——— Order releasing property from attachment.—*Claim to property attached.*—*Civil Procedure Code, ss. 86, 246.*—The plaintiff sued to recover a money-debt, and applied for attachment of certain property before judgment. The application was opposed by the wife of the defendant, who claimed an interest in the property. She was made a defendant by the Court of first instance, which made a decree in favour of the plaintiff for the debt, but releasing the property from attachment, thus allowing the wife's objection. *Held*, that notwithstanding the irregularity of thus disposing of the claim by an order contained in the decree, such irregularity did not affect the nature of the order releasing the property from attachment, and no appeal therefrom lay to the Judge. GEORGE *v.* RAM RUTTUN **[3 Agra, 272**

313. ——— Certain property having been attached in execution as belonging to the judgment-debtor, a portion was claimed by a third party and released from attachment. *Held*, that no appeal by the judgment-debtor lay from the order of release. SHAM SOONDER KOONWAR *v.* RUGHOONATH SUHAYE . . **11 W. R., 264**

APPEAL—*continued.*

20 ORDERS—*continued.*

Order releasing property from attachment—*continued.*

314. ——— No appeal lies from the order of a Court releasing a property from attachment, on the ground that it is in the possession of the judgment-debtor, not on his own account, but on account of, or in trust for, some other person. RADHA KISHEN *v.* AMEEROODEEN **[11 W. R., 204**

315. ——— Where property attached in execution is released at the instance of an intervenor, under section 246, Civil Procedure Code, and retained in his possession, the decree-holder has no right of appeal. IN THE MATTER OF AJOODHYA DASS . . . . . **12 W. R., 354**

316. ——— *Suit to establish right.*—*Civil Procedure Code, 1877, ss. 278, 283.*—An objection was made to the attachment of certain property in the execution of a decree, by the judgment-debtor, on the ground that such property was in his possession, not as his own property, but on account of an endowment. This objection was one of the nature to be dealt with under section 278 and following sections of Act X of 1877. The Court executing the decree made an order against the decree-holder releasing the property from attachment. *Held*, that such order was not appealable, the fact that the objection was made by the judgment-debtor notwithstanding, and the decree-holder's proper remedy was to institute a suit under the provisions of section 283 of Act X of 1877. SHANKAR DIAL *v.* AMIR HAIDER . . . **I. L. R., 2 All., 752**

317. ——— *Appeal by decree-holder.*—Where parties holding a decree which declares that they have a lien to be satisfied by the sale of certain property proceed to attach and sell the property, and in pursuing this course are met by an objection under Act VIII of 1859, section 246, and that objection is adjudicated unfavourably to them, no appeal lies from such adjudication, though the parties are at liberty to bring a suit to establish their rights. MITTOO LALL *v.* MAHTAB KOOEREE **[19 W. R., 98**

318. ——— *Civil Procedure Code, 1859, s. 346.*—*Act X of 1859, s. 106.*—Where land is attached in execution of a rent-decree and on an application either under Act VIII of 1859, section 246, or under Act X of 1859, section 106, it is released from attachment by order of a Court of competent jurisdiction, such order is not subject to appeal and can only be impugned by a regular suit. IN THE MATTER OF THE PETITION OF URJOON SAHOY. URJOON SAHOY *v.* NILMONEE SINGH DEO **[20 W. R., 90**

319. ——— Order dismissing claim to attached property.—*Civil Procedure Code, 1882, ss. 281, 283.*—*Execution of decree.*—*Objection to attachment.*—The heirs of the deceased obligor of a bond were sued thereon, on the ground that they were in possession of the property of the deceased, and a decree was made in this suit for the recovery of the

APPEAL—*continued.*

20. ORDERS—*continued.*

Order dismissing claim to attached property—*continued.*

amount claimed "from the property of the deceased." In execution of this decree the plaintiff caused certain property to be attached as belonging to the deceased. The defendants objected to the attachment on the ground that the property belonged to them. The Court executing the decree proceeded to investigate this objection, and finding that the property did not belong to the defendants but to the deceased, disallowed it. *Held*, that the proceedings upon such objection were taken under section 281 of the Civil Procedure Code, and the order disallowing it was therefore not appealable. AWADH KUARI *v.* RAKTU TIWARI . . I. L. R., 6 All., 109

320. ———————. *Civil Procedure Code, 1859, s. 240.*—Where a claim under section 246 of Act VIII of 1859 is dismissed, there is no appeal from the order of dismissal. BUKSHEE *v.* BUNGSHEEDHUR . . . 6 W. R., Mis., 46

321. ——— **Order on application to add party.**—*Civil Procedure Code, 1859, s. 73.*—No appeal lies against an order passed on an application made before decree under section 73 of the Civil Procedure Code, except in case of an appeal from the decree itself as provided for in section 363. *Paravartani v. Ambulavana Pillai, 1 Mad., 197,* does not conflict with this ruling, as the petition there was presented in the course of a regular appeal then pending in the High Court. MUTHAYAMMAL *v.* TIRUMALA GAUNDAN . . . 4 Mad., 22

322. ——————— *Civil Procedure Code, 1859.*—The action of the Court under section 73, Act VIII of 1856, is a matter of discretion, and, upon a true construction of sections 363 and 350, not a matter of appeal; but an appeal will lie after decree against interlocutory orders, if they affect the decision on the merits or the jurisdiction of the Court. RIDHNATH SAHOY *v.* GOPEE SAHOO . . . . 14 W. R., 90

See UPENDRA KRISHNA DEB *v.* NOBIN KRISHNA BOSE . 17 W. R., 370, note [3 B. L. R., O. C., 113

323. ——— **Order refusing application to add party.**—*Civil Procedure Code, 1877, s. 32.*—An order refusing an application under section 32 of Act X of 1877 by a person to be added as a defendant in a suit is not appealable. KARMAN BIBI *v.* MISRI LAL [I. L. R., 2 All., 904

324. ——— **Order rejecting application to add party.**—*Civil Procedure Code, ss. 32 and 588, cl. 2.*—An order rejecting an application under section 32 of the Civil Procedure Code to be made a party to a suit is not appealable under clause 2, section 588. ABIRUNNISSA KHATOON *v.* KOMURUNNISSA KHATOON [I. L. R., 13 Calc., 100

APPEAL—*continued.*

20. ORDERS—*continued.*

325. ——— **Order dismissing petition for examination of witness.**—*Civil Procedure Code, 1859, ss. 162, 163.*—The order of a Court dismissing a petition, under sections 162 and 163, Act VIII of 1859, is final. But the Court is bound to show, on the face of its judgment, that judicial discretion has been used, and the limit of its powers not exceeded. RAM SURUN SINGH *v.* GOOROO DYAL SINGH . . . . . 1 W. R., 83

HARO CHAND PORAMANICK *v.* KRISHTO MOHUN GIREE . . 1 W. R., 297

NEEM CHAND DEY *v.* ANUND COOMAR ROY CHOWDHRY . 7 W. R., 147

326. ——— **Order as to expenses of witness.**—*Civil Procedure Code, 1859, s. 151.*—An order was made directing the realization (under section 151, Civil Procedure Code, 1859), by attachment and sale of the expenses of a witness after he was discharged without being required to give evidence. A miscellaneous appeal having been filed from the order, the High Court issued a rule to show cause why the appeal should not be allowed. On no cause being shown the appeal was filed. BIJOY KISHEN MOOKERJEE *v.* JOY KISHEN MOOKERJEE [12 W., R., 430

327. ——— **Order suspending execution for cross-decree.**—No appeal lies from the order of a lower Court suspending the execution of a decree, pending the result of an enquiry in a cross-decree, held by the judgment-debtor. SMITH *v.* BULWANT SINGH . . 2 W. R., Mis., 24

328. ——— **Order staying execution of decree.**—*Civil Procedure Code, 1859, s. 209.*—No appeal lies against an order, under the last clause of section 209 of the Code of Civil Procedure, staying the execution of a decree. The High Court, however, in the exercise of its extraordinary jurisdiction, will examine the judicial propriety of such an order. GAMBHIRMAL *v.* CHEJMAL JODHMAL [11 Bom., 151

329. ——————— *Civil Procedure Code (Act X of 1877), ss. 243, 244, 588.*—A decree-holder having attached the property of his judgment-debtor in execution, the latter applied for a stay of execution until the decision of a pending suit brought by him against the judgment-creditor. The Court allowed the application, continuing the attachment on the property, and struck the execution-case off the file. The decree-holder appealed to the High Court. *Held*, that no appeal lay. NIHAL CHAND *alias* CHUTTO LALL DASS *v.* RAMESHARI DASSEE [I. L. R., 9 Calc., 214: 12 C. L. R., 53

330. ——————— *Security bond.*—*Civil Procedure Code, Act XIV of 1882, ss. 545, 588.*—The Court which passed a certain decree ordered execution thereof to be stayed pending appeal, on the debtor's furnishing security to the amount of R70,000, under the provisions of section 545 of the Code of Civil Procedure. The debtor objected to the

APPEAL—*continued.*

20. ORDERS—*continued.*

Order staying execution of decree—*continued.*

amount of security required, and appealed to the High Court on that ground. The decree-holder contended that no appeal lay. *Held*, that the order was appealable. *Held* also, on the facts, that the security required was excessive. UDEYADETA DEB *v.* GREGSON [I. L. R., 12 Calc., 624

331. ——— **Order releasing surety for stay of execution.**—No appeal will lie from an order by a District Judge releasing a surety from security taken from him by the High Court, to enable a decree-holder to take out execution of his decree pending an appeal to the Privy Council, although it is an improper one. ABEDOONISSA KHATOON *v.* AMEEROONISSA KHATOON . . 17 W. R., 464

332. ——— **Order refusing application to be declared insolvent.**—*Insolvency.—Code of Civil Procedure (Act X of 1877), ss. 351, 588, cl. 17.*—An order refusing to grant an application to be made an insolvent is appealable under clause 17, section 588 of the Code of Civil Procedure. Such an order must be considered to be one made under section 351. *Juggutjeebun Gooptoo* v. *Harcoomar Pal* dissented from. NUBBI BUKSH *v.* CHASNI [I. L. R., 6 Calc., 168: 7 C. L. R., 282

333. ——— *Civil Procedure Code (Act X of 1877), ss. 351, 588, cl. 17.*—There is no appeal from an order made under section 351 of the Code of Civil Procedure refusing to grant an application to be made an insolvent. The appeal allowed under section 588, clause 17, so far as an order under section 351 is concerned, is on behalf of the judgment-creditor only. JUGGUTJEEBUN GOOPTOO *v.* HAROOOOMAR PAL . I. L. R., 5 Calc., 719

S. C. JUGGUBUN GOOPTA *v.* HURRO KOOMAR PAL [6 C. L. R., 135

334. ——— An appeal lies against an order passed under section 351 of Act X of 1877, although it was an order refusing to declare petitioner an insolvent. BAVACHI PACKI *v.* PIERCE LESLIE & Co. . . . I. L. R., 2 Mad., 219

335. ——— *Civil Procedure Code, 1877, s. 588 (n).*—An order dismissing an application to be declared an insolvent is appealable under section 588 (*n*) of the Code of Civil Procedure, 1877. MUMTAZ HOSSEIN *v.* BRIJ MOHUN THAKOOR [I. L. R., 4 Calc., 888

336. ——— **Order on investigation of claim.**—*Civil Proceedure Code, 1859, s. 229.—Jurisdiction of District Judge.*—The plaintiff obtained a decree against *T.*, *A.*, and *J.* in a suit, the subject-matter of which exceeded R5,000, and in part execution thereof attached property worth less than that amount, *D.* having resisted the execution of the decree. The plaintiff's claim was numbered and registered as a suit under section 229 of Act VIII of 1859. Upon investigation the First Class Subordinate Judge made an order staying the execution of the decree. The

APPEAL—*continued.*

20. ORDERS—*continued.*

Order on investigation of claim—*continued.*

plaintiff appealed to the District Judge, who held that no appeal lay to him, as the subject-matter of the original suit out of which the execution suit arose exceeded R5,000. The plaintiff appealed against this decision to the High Court. *Held*, that the investigation of the claim under section 229 of Act VIII of 1859 was not to be regarded as a fresh suit, but was merely a continuation of the original suit, and that there was, therefore, no appeal against the order in question to the District Judge. RAVLOJI TAMAJI *v.* DHOLAPA RAGU . [I. L. R., 4 Bom., 123

337. ——— *Order for delivery of land.—Obstruction by mortgagee in possession.—Civil Procedure Code, 1859, ss. 229, 231.*—On a complaint by a decree-holder, under section 226 of the Civil Procedure Code, against a mortgagee in possession of the land, and two other persons who resisted the execution of the decree, the Munsif passed an order for delivery of possession, but without having numbered and registered the claim as a suit, as directed by section 229 of the Code, which, in his opinion, did not apply to the claim of a mortgagee in possession; and the senior Assistant Judge, though of opinion that the Munsif was in error in not proceeding under section 229, ruled that there was no appeal from his order, as the claim had not been numbered and registered, and investigated. *Held*, that the irregular procedure of the Munsif should not prevent the Court from correcting his error; and that his order, which could only have been made under section 229, was subject to appeal under section 231, and should therefore be reversed, and the case remanded, that the claim might be numbered and registered as a suit, and an order passed thereon after the investigation, as directed by section 229 of the Code. MUSABHI *v.* SHAUNUDDIN HISMUDDIN [4 Bom., A. C., 35

338. ——— **Order rejecting claim to possession.**—*Civil Procedure Code, 1857, s. 230.*—No appeal lies against an order of the Court refusing to entertain an application under section 230, Act VIII of 1859, by a party other than a defendant, who disputes the title of the decree-holder. RASUL BIBI *v.* MOBARIK ALI [2 B. L. R., A. C., 303, note: 11 W. R., 186

339. ——— *Person not party to suit.—Civil Procedure Code, 1859, s. 230.*—There is no appeal from an order passed under section 230, Act VIII of 1859, rejecting an application by a person, not a party to the suit, alleging that he is being dispossessed by the Court Ameen in execution of decree. KHELLUT CHUNDER GHOSE *v.* PROSUNNOMOYE DOSSEE . . W. R., 1864, Mis., 24

GOLUCK NARAIN DUTT *v.* BISTO PREA DOSSEE [1 W. R., 140

340. ——— *Civil Procedure Code, 1859, s. 230.*—Where an application was made to the Civil Court, under Section 230 of the Civil Procedure Code, by the petitioner disputing the right of a

APPEAL—*continued.*

20. ORDERS—*continued.*

Order rejecting claim to possession—*continued.*

decree-holder to dispossess him of certain immoveable property, and the Civil Judge rejected the application,—*Held*, that section 231 of the Civil Procedure Code did not give the petitioner a right of appeal to the High Court. STRINARASIMMA CHARIYAR *v.* NARASIMMA CHARIYAR . . [5 Mad., 183

341. ——— *Civil Procedure Code, 1859, s. 230.*—Where an application for the remedy provided in Act VIII of 1859, section 230, is refused by a Munsif in the exercise of his discretion, no appeal lies against the order of refusal. But where the application is admitted and filed, the opposite side called upon to meet it, and the claim subsequently rejected, the order of rejection is a decision between the parties on the merits of the application within the scope of section 231 from which an appeal lies to the Judge. MOOKANDEE MISRAIN *v.* SHRO LOCHUN PATTUCK . . . . . 21 W. R., 39

342. ——— **Order allowing claim to possession.**—*Civil Procedure Code, 1859, ss. 230, 231.—Suit under s. 15, Act XIV of 1859.*—*S.* brought a suit under section 15, Act XIV of 1859, obtained a decree, and took possession. After this *B.* applied under section 230, Act VIII of 1859, alleging that he had been in possession, and was dispossessed by *S.* in execution of a decree against another party. The Munsif decreed the case in favour of *B.* *Held*, that the latter was not a proceeding under the former suit, and the decision upon it was appealable under section 231, Act VIII of 1859. BROHMO MOYEE DABEE *v.* BURKUT SIRDAR [13 W. R., 264

343. ——— **Order rejecting plaint for want of jurisdiction.**—*Civil Procedure Code, 1859, s. 14.*—Whether the Court acting under section 14, Act VIII of 1859, enquires into and determines the preliminary question of jurisdiction or rejects the plaint, the proceeding is open to appeal; and if it appears that jurisdiction has been unduly assumed, the subsequent enquiry of right must be set aside as carried on without jurisdiction. MOHESHUR BUKSH SINGH *v.* COLLECTOR OF GHAZEEPORE [2 Agra, 214

344. ——— **Order returning plaint for presentation in proper Court.**—*Civil Procedure Code, 1877, s. 584.*—A suit to redeem a usufructuary mortgage of certain lands was instituted in the Munsif's Court. After the suit had been admitted and the parties called on to produce evidence, the Munsif ordered the plaint in the suit to be returned to the plaintiff for presentation in the proper Court, on the ground that the suit should have been instituted in the Court of the Subordinate Judge, the value of the property in suit being beyond the jurisdiction of a Munsif. *Held* that, under Act VIII of 1859, the Munsif's order was appealable to the lower Appellate Court, and under Act X of 1877, the lower Appellate Court's order to the High Court. KALIAN DAS *v.* NAWAL SINGH . I. L. R., 1 All., 620

APPEAL—*continued.*

20. ORDERS—*continued.*

Order returning plaint for presentation in proper Court—*continued.*

345. ——— *Civil Procedure Code, 1877, s. 588 and s. 57.—Act XII of 1879, s. 2.*—Where, after the issues in a suit were framed, the Court decided that it had no jurisdiction, and returned the plaint to be presented in the proper Court,—*Held* that in so doing the Court acted under section 57 of Act X of 1877, and its decision, not coming within the definition of a "decree" in section 2 of Act XII of 1879, was not appealable as such, but was appealable under section 588 of Act X of 1877 as an order. ABDUL SAMAD *v.* RAJINDRO KISHOR SINGH [I. L. R., 2 All., 357

346. ——— *Civil Procedure Code, 1877, ss. 540, 588 (6).—Second appeal.*—The lower Appellate Court (Subordinate Judge) decided on appeal by the defendant from the decree of the Court of first instance (Munsif) that the Court of first instance had no jurisdiction to entertain the suit, as the value of the subject-matter of the suit exceeded the pecuniary limits of its jurisdiction; and ordered that the "appellant's appeal be decreed, the decision of the Munsif be reversed, and the record of the case be sent to the Munsif to return the plaint to the plaintiff for presentation to the proper Court." The plaintiff appealed to the High Court from such order as an order returning a plaint to be presented to the proper Court. *Held*, that such order could not be regarded as one to which art. (6) of section 588 of Act X of 1877 was applicable. That relates to orders returning plaints for amendment or to be presented to the proper Court passed by a Court of first instance, and not to an order by an Appellate Court upon an appeal to it from the decree of a Court of first instance on general grounds. The plaintiff's proper course was to have preferred a second appeal. BINDESHRI CHAUBEY *v.* NANDU [I. L. R., 3 All., 456

347. ——— *Civil Procedure Code, 1877, ss. 57 (a), 562, 588.—Remand by Appellate Court.—Second appeal.*—The Court of first instance made an order returning the plaint in a suit to be presented to the proper Court, on the ground that it was not competent to try such suit. On appeal from such order the Appellate Court, holding that the Court of first instance was competent to try such suit, made an order "decreeing the appeal." It subsequently made an additional order directing that the case "should be returned for re-trial." On appeal to the High Court from such additional order,—*Held* that the appeal would not lie, as it was in reality one from an order passed in appeal from an order returning a plaint, which under the last clause of section 588 of Act X of 1877 was final, and not an appeal from an order remanding a case under section 562, the character of the original order of the Appellate Court not being altered by the passing of the additional order. KISHNA RAM *v.* NARSING SEVAK SINGH . . . . . I. L. R., 3 All., 855

348. ——— *Civil Procedure Code, 1877, ss. 57, 588 (6).—Institution of suit*

APPEAL—*continued.*

20. ORDERS—*continued.*

Order returning plaint for presentation in proper Court—*continued.*

in wrong Court.—Transfer of suit.—Power of the Court to which suit is transferred to return plaint to be presented to the proper Court.—Jurisdiction.—A District Court transferred for trial a suit instituted in a Court subordinate to it to another Court subordinate to it. The Court in which the suit was instituted was not the one in which the suit should have been instituted, and consequently the Court to which it was transferred made an order dismissing it, and directing the return of the plaint for presentation to the proper Court. *Held*, that such order must be taken to have been passed under section 57 of the Civil Procedure Code, and was therefore appealable under section 588 (6). PACHAONI AWASTHI *v.* ILAHI BAKHSH

[I. L. R., 4 All., 478

349. ——— Order allowing amendment of plaint.—*Civil Procedure Code, 1877, ss. 53, 588 (6).*—The plaintiff in a suit applied for the amendment of the plaint. The defendant objected to the amendment, and a day was fixed by the Court for the "admission or rejection of the petition of amendment and the determination of the defendant's objections thereto." The Court, after hearing the parties, made an order allowing the "petition of amendment," and rejecting the defendant's objections. The defendant appealed from such order to the High Court. *Held* that, inasmuch as orders amending plaints then and there are not made appealable by Act X of 1877, and it was into this category, if into any at all, that such order must fall, such order was not appealable. RAJINDRA KISHORE SINGH *v.* RADHA PRASAD SINGH . . . . **I. L. R., 3 All., 854**

350. ——— Order amending decree.—*Civil Procedure Code, 1882, s. 206.—Per* OLDFIELD, *J.*—When an original decree is amended under section 206 of the Civil Procedure Code, it, as amended, is the decree in the suit; and an appeal therefore lies from it under the provisions of section 540, when the validity of the amendment can be questioned. *Per* MAHMOOD, J.—An order passed under section 206 amending a decree is a separate adjudication, and is not merely a part of the original decree, and cannot alter its date, and such an order is not appealable under section 588 of the Code. RAGHUNATH DAS *v.* RAJ KUMAR . . . **I. L. R., 7 All., 276**

SURTA *v.* GANGA . **I. L. R., 7 All., 411**

351. ——— *Decree—Judgment.—Objections by respondent to decree.—Res judicata.—Civil Procedure Code, ss. 13, 540, 561, 584.*—In a suit to obtain possession of certain property, and to set aside a deed called a deed of endowment (*wakfnama*) on the ground that the defendant had fraudulently obtained its execution, the defendant pleaded (i) that the deed was a valid one, and (ii) that she was in possession of the property in satisfaction of a dower-debt, and her possession could not be disturbed so long as the debt remained unsatisfied. The Court of first instance

APPEAL—*continued.*

20. ORDERS—*continued.*

Order amending decree—*continued.*

held that the deed was invalid, but that the defendant was entitled to remain in possession of the property till her dower-debt was satisfied, and the Court passed a decree which merely dismissed the suit, without embodying the finding as to the deed. On appeal by the plaintiff to the District Judge, the defendant filed objections under section 561 of the Civil Procedure Code in regard to the first Court's decision that the deed of endowment was invalid. The Judge dismissed the plaintiff's appeal, affirming the finding as to dower, and, refusing to decide the question of the validity of the deed as being unnecessary for disposal of the claim, disallowed the defendant's objections. The defendant appealed to the High Court. *Held* by the Full Bench (OLDFIELD and MAHMOOD, *JJ.*, dissenting), that if a decree is, upon the face of it, entirely in favour of a party to a suit, such decree being the thing which by law is made appealable, and nothing else, that party has no right of appeal therefrom. If, in the judgment of which such decree is the formal expression, findings have been recorded upon some issues against that party, and he desires to have formal effect given to them by the decree, so as to allow of his filing objections thereto under section 561 of the Civil Procedure Code or of appealing therefrom under section 540, he must take steps under section 206 to have the decree properly brought into conformity with the judgment, so that there may be matter on the face of it to show that something has been decided against him; but if he fails to take this course, the decree, though in general terms, will stand good as finally deciding the issues raised by the pleadings upon which the ultimate determination of the cause and the decree itself rested. The findings in a judgment upon matters which subsequently turn out to be immaterial to the grounds upon which a suit is finally disposed of, as to the plaintiff's right to any portion of the relief sought by him as declared by the decree, amount to no more than *obiter dicta*, and do not constitute a final decision of the kind contemplated by section 13 of the Civil Procedure Code. *Held* also that, in the present case, the Judge was right in holding that the question as to the validity or otherwise of the deed of endowment was wholly immaterial. The judgment of STRAIGHT, *J.*, in *Lachman Singh* v. *Mohan, I. L. R., 4 All., 497*, approved and followed. *Per* OLDFIELD, *J.*, *contra*, that the decree, to agree with the judgment and fulfil the requirements of section 206 of the Civil Procedure Code, should contain the material points for determination arising out of the claim and material for the decision thereon; that if this has not been done, the defect is a good ground of appeal, notwithstanding that the decree, on its face, may be altogether in favour of the appellant, and notwithstanding that he may not have applied for amendment of the decree under section 206, or for review of judgment; and that, in the present case, the defect in the decree would afford a good ground of appeal. *Per* MAHMOOD, *J.*, that inasmuch as the provisions of section 13 of the Civil Procedure Code relate as well to the trial of issues as to the trial of

APPEAL—*continued.*

20. ORDERS—*continued.*

Order amending decree—*continued.*

suits, and in the present case the validity or otherwise of the deed was a matter directly and substantially in issue between the parties, and was adjudicated upon, the finding of the first Court upon that issue was not a mere *obiter dictum*, but would be binding upon the defendant as *res judicata*, notwithstanding the fact that the suit against her was dismissed on the ground that she held possession of the property in lieu of dower; that whatever has the force of *res judicata* is necessarily appealable; that the word "from" as used in section 540 or section 584, and the expression "objection to the decree" in section 561, refer not only to matters existing upon the face of the decree, but also to those which should have existed but do not exist there; and that the defendant in the present case was aggrieved or injured by the omission in the decree of the first Court and was therefore entitled to file objections to it, and, for the same reason, to appeal to the High Court from the decree of the lower Appellate Court. Also *per* MAHMOOD, *J.*, that it was doubtful whether the reliefs contemplated by sections 206 and 623 were open to the defendant; but that, even conceding that she ought to have sought her remedy under either of those sections, her neglect to do so did not make her incapable of obtaining the same result by the exercise of her right of appeal. *Anusuyabai v. Sakkaram Pandurang, I. L. R., 7 Bom., 484; Man Singh* v. *Narayan Das, I. L. R., 1 All., 480; Mohan Lal* v. *Ram Dayal, I. L. R., 2 All., 843; Niamat Khan* v. *Phadu Buldia, I. L. R., 6 Calc., 319;* and *Pan Kooer* v. *Bhagwant Kooer, 6 N. W., 19,* referred to. JAMAITUNNISSA *v.* LUTFUNNISSA

[I. L. R., 7 All., 606

352. ———— Order of remand after former remand.—There is no appeal from the order of a lower Appellate Court remanding a case a second time, on the ground that the former order of remand had not been carried out. RADHABULLUB SURMA *v.* ANUNDMOYEE DEBIA.

[W. R., 1864, Mis., 39

353. ———— Order of remand.—*Quære,*—Whether, when a lower Appellate Court reverses a decree of a lower Court on the plea of limitation, and remands the case to be tried upon the merits, such decision is an order prior to decree from which no appeal will lie. MAHOMED ANJOB *v.* GOUREE PERSHAD SHA . . . . **6 W. R., 61**

354. ———— Order of remand on special point.—*Reversal of decree on appeal.*—In a suit for the enhancement of rent, the Collector dismissed the suit. On appeal the Judge held that the rent was liable to enhancement, and remanded the case to the Collector to find what rate was equitable. *Held,* that an appeal lay from the decision of the Judge, notwithstanding the remand to find the rates. NEELMONEY SINGH DEO *v.* SHOBHUN BIBEE

[Marsh., 600

355. ———— Order of remand.—Where the first Court held a suit barred by limitation and

APPEAL—*continued*

20 .ORDERS—*continued.*

Order of remand—*continued.*

on the ground of *res judicata,* and the lower Appellate Court (in reversal of that Court's judgment) remanded the case for trial on its merits,—*Held,* that an appeal lay from the lower Appellate Court's order of remand. KURUMOONNISSA BIBEE *v.* GOOROO PERSHAD SHAH . . . **7 W. R., 331**

356. ———— Order of remand made without jurisdiction.—*Civil Procedure Code (Act XIV of 1882), ss. 562, 588.—Proceedings taken by first Court pending appeal from order.*—In a case where neither of the parties desired to have a local investigation, though suggested by the Courts the lower Court dealt with the case on the material, before it, and made a decree. On appeal the Appellate Court remanded the case for the purpose of a local investigation being held at the cost, in the first instance, of the plaintiff. The lower Court thereupon made an order that the plaintiff should deposit the costs of the local investigation, and on default being made by the plaintiff it dismissed the suit. The order of remand was found to be invalid as made without jurisdiction. *Held,* that all proceedings taken by the Court of first instance, after the remand, and pending the hearing of the appeal against the remand order, were null and void, inasmuch as the jurisdiction of that Court to hear the case upon remand depended upon the validity of the remand order. An appeal, therefore, lay from the order of remand, notwithstanding the Court of first instance had subsequently made what purported to be a final decree in the case. JATINGA VALLEY TEA COMPANY *v.* CHERA TEA COMPANY. **I. L. R., 12 Calc., 45**

357. ———— Order remanding appeal case for investigation.—*Civil Procedure Code, 1859, s. 363.*—No appeal lies from an order of the Judge remanding an appeal case to the Court below for further investivation as to the facts. HAROMOHUN MOOKERJEE *v.* SHOONOYANEE MOHUNT THAKOORANEY . . **Marsh., 469: 2 Hay, 591**

358. ———— Order remanding case after local investigation.—*Civil Procedure Code, 1859, s. 363.*—An appeal lies from an order remanding a case for retrial after local investigation; such order not being one under section 363. JEEBUN KISSEN ROY *v.* DWARKANATH ROY CHOWDHRY

[W. R., 1864, 363

359. ———— Order directing a local investigation.—No appeal lies from the order of a Judge directing a local investigation by an ameen. BAHADUR ALI v. BHABO SOONDUREE DEBIA CHOWDHRAIN . . . . **7 W. R., 425**

360. ———— Order in case on appeal after compromise reported.—*Civil Procedure Code, 1859, s. 363.*—An appeal having gone down on remand from the High Court, the Zillah Judge considered he was bound to proceed with it, notwithstanding a representation made to him by petition that a compromise had been entered into between the parties. *Held* that, by section 363 of the Civil

APPEAL—*continued.*

20. ORDERS—*continued.*

Order in case on appeal after compromise reported—*continued.*

Procedure Code, an appeal could not be preferred against this order of the Judge. SOROOP NARAIN PANDAH *v.* SOONDUR PORYA . **11 W. R., 505**

361. ——— Order of remand.—*Civil Procedure Code, 1877, ss. 562, 586.—Suit of the nature cognizable in Small Cause Court.*—An order on appeal from a decree in an original suit of the nature cognizable in Mufassal Courts of Small Causes, under section 562 of Act X of 1877, remanding the suit for re-trial, is appealable, section 586 of Act X of 1877 notwithstanding, as that section applies to appeals from appellate decrees and not to appeals from orders. THE COLLECTOR OF BIJNOR *v.* JAFAR ALI KHAN . . . . **I. L. R., 3 All., 18**

362. ——— *Right of second appeal.—Suits cognizable by Courts of Small Causes.—Act X of 1877, ss. 562, 586, 588, 589.*—The right of appeal given by sections 588 and 589 of Act X of 1877 from an order of remand, as contemplated by section 562, is not taken away by section 586. *Collector of Bijnor* v. *Jafár Ali Khán* followed. MAHADEV NARSINGH *v.* RAGHO KESHAV **[I. L. R., 7 Bom., 292**

363. ——— Order in Small Cause Court suit by Judge without jurisdiction.—*Institution in Court of Subordinate Judge invested with powers of a Court of Small Causes.—Trial by Subordinate Judge not so invested.—Transfer of suit.—Jurisdiction.—Civil Procedure Code, s. 25.*—A suit of the nature cognizable in a Court of Small Causes was instituted in the Court of a Subordinate Judge, the Judge of which at the time of the institution of the suit was personally invested with Small Cause Court jurisdiction. That Judge retired from office without trying the suit, and the District Judge directed his successor, who was not invested with Small Cause Court jurisdiction, to try it, and he did so. *Held*, that it must be taken that the suit was transferred under section 25 of the Civil Procedure Code to the Court of the Subordinate Judge; and that therefore, regard being had to the provisions of that section, that the Court trying any suit withdrawn thereunder from a Court of Small causes shall, for the purposes of such suit, be deemed a Court of Small Causes, no appeal would lie in the case to the District Judge. KAULESHAR RAI *v.* DOST MUHAMMAD KHAN . . . **I. L. R., 5 All., 274**

364. ——— Interlocutory order in Small Cause Court suit.—Although no appeal lies to the High Court from the final decree made in a suit cognizable by a Small Cause Court, an appeal lies from an interlocutory order made in such a suit by a District Court. GULÁM HUSEN *v.* MUSÁ MIYÁ HAMAD ALI . . . **I. L. R., 8 Bom., 260**

365. ——— Order of remand in Small Cause Court suit.—*Civil Procedure Code (Act XIV of 1882), ss. 562, 586, 588 (cl. 28), and 589.*—A Court in the exercise of Appellate Jurisdiction passed an order under section 562 of the Civil Procedure Code, remanding a case of the Small Cause Court class as described in section 586. *Held*, that under the express words of the second portion of section 589 of the Code, an appeal does lie to the High Court from such an order. KIRTE MOHALDAR *v.* RAMJAN MOHALDAR . . . **I. L. R., 10 Calc., 523**

APPEAL—*continued.*

20. ORDERS—*continued.*

Order of remand in Small Cause Court suit—*continued.*

366. ——— Order of Small Cause Court in execution.—No appeal lies to the High Court from the order of a Small Cause Court in execution. MUTEE LALL *v.* RAM DASS **[W. R., 1864, Mis., 38**

367. ——— Order of Judge refusing to execute Small Cause Court decree.—An appeal lies from the order of a Judge refusing to execute a decree of a Small Cause Court. DELLAWAR ALI *v.* DABEE PERSHAD . . **11 W. R., 203**

368. ——— Order of Subordinate Judge in overvalued Small Cause Court suit.—*Valuation of suit.—Act XI of 1865, ss. 5, 21.—Subordinate Judge invested with the jurisdiction of a Small Cause Court.*—A suit was filed in the Court of a First Class Subordinate Judge invested with the powers of a Small Cause Court up to R500. The claim was for R530-7-3, as money had and received by the defendant to the plaintiff's use. The Subordinate Judge did not deal with the case under his Small Cause Court jurisdiction, but tried it as an ordinary suit, and gave the plaintiff a decree for R441-0-7. On appeal, the District Judge was of opinion that the claim had been recklessly overvalued, and he held, therefore, that the suit was one cognizable by a Small Cause Court, and that the appeal was barred. *Held*, reversing the decision of the lower Appellate Court, that as the claim or "*demand*" exceeded R500—the pecuniary limit of the jurisdiction of a Court of Small Causes under section 5 of Act XI of 1865—and as the case was not "tried under" the Act, section 21 gave no finality to the decree of the Subordinate Judge, which was, therefore, appealable. DÁMODHAR TIMÁJI GOSÁVI *v.* TRIMBAK SAKHÁRÁM **[I. L. R., 10 Bom., 370**

369. ——— Order declining jurisdiction.—An appeal lies from the decision of a Court upon the hearing of a cause that it has no jurisdiction on the ground that the suit has been instituted in the wrong district. DHERAJ MAHATAB *v.* MUDOOSOODUN MOOKERJEE . . . . **Marsh., 572**

370. ——— Order of Mamlatdar in Boundary Dispute.—In a case where boundaries of land are disputed, an appeal from the mamlatdar lies to the Collector. A District Judge has no power to entertain such an appeal. NARAYAN VAYANKATESH *v.* DHANDU DAMODHAR . **4 Bom., A. C., 167**

371. ——— Order allowing decree-holder to take credit for his decree, as purchaser.—*Civil Procedure Code, 1859, s. 270.*—Where a second decree-holder is himself purchaser

APPEAL—*continued.*

20. ORDERS—*continued.*

Order allowing decree-holder to take credit for his decree, as purchaser— *continued.*

of a property sold in execution of his own decree, and instead of the money being deposited in Court, an order is obtained allowing the decree-holder as purchaser to pay the purchase-money by his decree being taken as a credit on account of the purchase, such order is not open to appeal under section 270, Act VIII of 1859. RAJARAM CHOWDHRY *v.* SEETOLA BUKSH MISSER . . . . . **7 W. R., 113**

372. ——— Order directing prosecution for forgery.—No appeal lies from an order of a Civil Court directing a criminal prosecution for forgery committed before it. GUNGA NARAIN SIRCAR *v.* AZEEZOONISSA BEEBEE . **5 W. R., Mis., 18**

ESHAN CHUNDER DUTT *v.* PRANNATH CHOWDHRY **[Marsh., 270: 2 Hay, 236**

373. ——— Order in execution of decree.—*Power of Senior Assistant Judge.—Held,* that a Senior Assistant Judge is not competent to hear an appeal from an order made in the execution of a decree in a case in which he is not competent to hear an appeal from the decree itself. NARBHERÁM KISANDÁS *v.* NAVNIDRÁM KÚSHIRAM **[5 Bom., A. C., 46**

374. ——— Order making over proceeds of sale to official assignee.—No appeal lies from the order of a Judge making over to the official assignee the proceeds of property sold in execution. INDUR CHUNDER DOOGAR *v.* THE OFFICIAL ASSIGNEE . . . . . **11 W. R., 100**

NEET LALL *v.* MILLER . . **11 W. R., 420**

375. ——— Order rejecting appeal.—*Civil Procedure Code, 1859, s. 336.*—An appeal is not admissible against an order passed under section 336, Act VIII of 1859. IN THE MATTER OF GOUREE SUNKUR . . . . . **11 W. R., 556**

376. ——— Order rejecting application to sue as pauper.—*Civil Procedure Code, 1877, s. 588.*—No appeal lies under Act X of 1877 from an order made under that Act rejecting an application for permission to sue as a pauper. COLLIS *v.* MANOHAR DAS . . . **I. L. R., 1 All., 745**

377. ——— Order allowing withdrawal of suit.—*Civil Procedure Code, 1882, s. 373.—Withdrawal of suit.—Appeal from order permitting withdrawal.*—An order under section 373 of the Civil Procedure Code permitting the withdrawal of a suit, with liberty to bring a fresh one, not being made appealable by section 588, or being a "decree" within the meaning of section 2, is not appealable. KALIAN SINGH *v.* LEKHRAJ SINGH . **I. L. R., 6 All., 211**

378. ——— Order directing suit to be re-admitted and registered.—An order made by a lower Court, directing a suit to be re-admitted and registered on the file of the Court, is not appealable. HIRDHAMUN JHA *v.* JINGHOOR JHA **[I. L. R., 5 Calc., 711**

APPEAL—*continued.*

20. ORDERS—*continued.*

379. ——— Order of Civil Court on conviction of escape from custody.—*Civil Procedure Code, 1877, s. 651.—Quære,*—Whether a person convicted under section 651 of the Civil Procedure Code, of escaping from lawful custody, who is sentenced to one month's imprisonment only, can under section 588 (29) of that Code appeal. EMPRESS *v.* AMAR NATH . . **I. L. R., 5 All., 318**

380. ——— Order of Collector in execution of decree.—*Transfer to Collector.—Appeal to High Court from orders of Collector.—Jurisdiction.—Civil Procedure Code, s. 320.*—Orders passed by a Collector in the exercise of the powers conferred on him under section 320 and the following sections of the Civil Procedure Code, relating to the execution of a decree of a Civil Court, after transfer of the decree to him under section 320, are not appealable to the High Court. *Held,* therefore, that the order of a Collector disallowing an application by the judgment-debtor that the amount of the decree might be satisfied by the temporary transfer of his immoveable property, and ordering the sale of such property, and the order of a Collector confirming a sale, were not appealable to the High Court. MADHO PRASAD *v.* HANSA KUAR. MAN KUAR *v.* RAM KISHORE . . . **I. L. R., 5 All., 314**

381. ——— Order disallowing claim.—*S. 322-B of Civil Procedure Code, Act X of 1877.—Miscellaneous appeal.*—An appeal from the decision by which a disputed claim is settled under section 322-B of the Code of Civil Procedure, Act X of 1877, is cognizable as a miscellaneous appeal, *i.e.* an appeal from a decree not passed in a *regular* suit. SRÍNIVÁSA AYYANGÁR *v.* PERIA TAMBI NÁYAKAR **[I. L. R., 4 Mad., 420**

382. ——— Order directing penalty to be enforced under Stamp Act.—*Decision as to penalty not appealable as a decree.—Civil Procedure Code (Act VIII of 1859), s. 365.—Civil Procedure Code, Act X of 1877, s. 588.*—A decision of a Judge directing a penalty to be enforced under the Stamp Act, the case being afterwards proceeded with, is not appealable as a decree, as it cannot be said to be a decree affecting the merits of the case or the jurisdiction of the Court. Nor can such a decision be said to be "an order as to a fine" within the meaning of section 365 of Act VIII of 1859 (with which section 588 of Act X of 1877, clause 29, corresponds). SONAKA CHOWDRAIN *v.* BHOOBUNJOY SHAHA **[I. L. R., 5 Calc., 311**

383. ——— Order dismissing suit on failure to serve summons.—*Civil Procedure Code (Act X of 1877), ss. 97, 588.*—An order under section 97 of the Civil Procedure Code dismissing a suit on it being found that the summons has not been served on the defendant, in consequence of the failure of the plaintiff to pay the Court fee leviable for such service, is not appealable. LUCKY CHURN CHOWDHRY *v.* BUDURRUNNISSA . **I. L. R., 9 Calc., 627 [12 C. L. R., 484**

APPEAL *continued.*

20. ORDERS—*continued.*

384. ——— Order dismissing suit on failure to give security for costs.—*Civil Procedure Code, s. 381.—Decree.—Held* by the Full Bench, that an appeal lies from an order passed under section 381 of the Civil Procedure Code, dismissing a suit for failure by the plaintiff to furnish security for costs as ordered, such order being the "decree" in the suit. WILLIAMS *v.* BROWN
[I. L. R., 8 All., 108

385. ——— Order of single Judge of High Court.—*Civil Procedure Code, 1877, s. 588.*—Section 588, Act X of 1877, restricting appeals against orders, does not apply to prevent an appeal to the High Court from the order of a Judge of that Court. HURRISH CHUNDER CHOWDHRY *v.* KALISUNDARI DEBI
[I. L. R., 9 Calc., 482: 12 C. L. R., 511

21. OBJECTIONS BY RESPONDENT.

386. ——— Objection, Meaning of.—*Civil Procedure Code, 1859, s. 348, 1877, 1882, s. 561.*—The word "objection" used in section 348 of Act VIII of 1859 was not limited to written objections simply, but comprehended also verbal objections. RAMNARAIN BHUTTACHARJEE *v.* MOHESCHUNDER ROY . . . . . **2 Hay, 79**

387. ——— Applicability of section 348.—*Special appeal.*—Section 348, Act VIII of 1859, was as applicable to special as to regular appeals. NARAYAN AYYAR *v.* LAKSHUN AMMAL
[3 Mad., 216

388. ——— Time for objection.—Objections under section 348, Act VIII of 1859, might be urged at any time in the course of hearing of an appeal. THAKUR DASS GOSHAMEE *v.* GOPEE KISTO GOSHAMEE . . . . . **15 W. R., 18**

389. ———. *Hearing of appeal.*—It was too late to take an objection under section 348, Act VIII of 1859, when the Appellate Court has given its decision. ABDUL GUNNEE *v.* GOUR MONEE DEBIA . . **9 W. R., 375**

390. ——— Time for filing objection.—*Application to file cross-appeal, Requisities of.*—An application to file a cross-appeal orally was rejected, firstly, because a written memorandum of its grounds had not been filed previously; secondly, because the objection, when taken, was not filed on the regulated stamp; and lastly, because the ground now urged had not been advanced as an objection in a regular appeal previously filed. HOOLAS KOOEREE *v.* SUFEEHUN. SUFEEHUN *v.* MAHOMED HUBEEBOOLLAH KHAN . . . . **8 W. R., 379**

391. ———. *Practice.*—A respondent might under section 348 file a notice with the Registrar, specifying therein the objections which he intends to take on the hearing of the appeal. IN THE MATTER OF MADHOBEE DOSSEE
B. L. R., Sup. Vol., 587: 6 W. R., Mis., 102

APPEAL—*continued.*

21. OBJECTIONS BY RESPONDENT—*continued.*

Time for filing objection—*continued.*

392. ——— The notice of objections referred to in section 561 of the Civil Procedure Code, 1882, must be filed not less than seven days before the date fixed for the hearing in the summonses issued to the parties. DEO KISHEN *v.* MAHESHAR SHAHAI . **I. L. R., 4. All., 248**

393. ——— *Cross-appeal.*—*Notice of objection.*—A notice of objection under section 561 of the Code of Civil Procedure, Act XIV of 1882, must be filed not less than seven days before the date (if any) fixed for the hearing of the appeal in the notice served upon the respondent. Section 5 of Act XV of 1877 does not apply to an objection under section 561 of the Procedure Code. KALLY PROSUNNO BISWAS *v.* MUNGALA DASSEE
[I. L. R., 9 Calc., 631

394. ———. *Practice.*—Objections to a decree under section 561 of the Civil Procedure Code (XIV of 1882) need not necessarily be filed seven days before the day originally fixed for hearing the appeal. When the hearing is postponed, it is sufficient if the objections are filed seven days before the day fixed for the postponed hearing, the object of section 561 being merely to give the appellant timely intimation of proposed objections. RANGILDAS *v.* BAI GIRJA
[I. L. R., 8 Bom., 559

395. ——— An appeal having been filed on the 10th April 1879, and the date for hearing fixed for May 1879, a memorandum of objections under section 561 of the Civil Procedure Code was filed by the respondent on the 18th September 1879, before the actual hearing, which took place in July 1880. *Held*, that the memorandum of objections, under section 561 of the Code of Civil Procedure as amended by section 86 of Act XII of 1879, ought to have been filed not less than seven days before the date fixed for hearing, and was therefore inadmissible. RAM GOBIND JUGODEB *v.* DENO BUNDHU SEI NUNDUN MOHAPATTEE
[9 C. L. R., 281

396. ——— Hearing of appeal.—*Calling on of case.*—The mere calling on of a case to be heard does not mean the same thing as the hearing of the case in the sense of section 348, Act VIII of 1859. RAM PERSHAD OJHA *v.* BHUROSA KOONWAR
[9 W. R., 328

397. ——— Withdrawal of appeal.—If the case is withdrawn, objections under section 348 cannot be heard. RAM PERSHAD OJHA *v.* BHUROSA KOONWAR . . . **9 W. R., 328**

PURESH NARAIN ROY *v.* WATSON
[23 W. R., 229

38. ——— Where, in the course of the hearing of an appeal, the appellant desired to withdraw, in order to avoid the decision of a question raised by the respondent at the hearing,—

APPEAL—*continued.*

21. OBJECTIONS BY RESPONDENT—*continued.*

Withdrawal of appeal—*continued.*

Held that, under section 348 of the Civil Procedure Code, the respondent was entitled to have the case heard and determined. VENKATARAMANAIYA *v.* KUPPI . . . . . **3 Mad., 302**

399. ——— *Held*, that objections under section 348, Act VIII of 1859, can only be heard when the opposite party being appellant prosecutes his appeal, and not when he withdraws from it. BAHADUR SINGH *v.* BHUGWAN DOSS **[1 Agra, 23**

SHAMA CHURN GHOSE *v.* RADHA KRISTO CHAKLANUVIS . . **14 W. R., 210**

400. ——— *Right of respondent to have objections decided.*—An appellant finding after the hearing had commenced that his appeal was hopeless, claimed the right of withdrawing the appeal in order to prevent the objections filed under section 561 of the Civil Procedure Code (XIV of 1882) by the respondent against the decree from being heard. *Held*, that after the hearing of an appeal has commenced, the Appeal Court is seized of the respondent's objections, and that the appeal cannot be withdrawn so as to prevent the objections from being heard and determined. DHONDI JAGANNÂTH *v.* THE COLLECTOR OF SALT REVENUE **[I. L. R., 9 Bom., 28**

401. ——— Where an appeal was dismissed upon the application of the appellant himself made before the hearing,—*Held* that the respondents, who had filed objections to the decree of the Court of first instance under section 561 of the Civil Procedure Code, had no claim to have their objections heard, notwithstanding the dismissal of the appeal. *Coomar Puresh Narain Roy* v. *Watson and Co., 23 W. R., 229*, and *Dhondi Jagannath* v. *The Collector of Salt Revenue*, referred to. MAKTAB BEG *v.* HASAN ALI . . **I. L. R., 8 All., 551**

402. ——— **Dismissal of appeal for default.**—*Civil Procedure Code, 1859, s. 348.*—Where an appeal is dismissed for default, the hearing of objections under Act VIII of 1859, section 348, cannot be allowed to proceed. BARODA KANT BHUTTACHARJEE *v.* PEAREE MOHUN MOOKERJEE **[23 W. R., 57**

403. ——— **What objections may be taken.**—*Civil Procedure Code, 1859, s. 348.*—Section 348 in no way restricted respondents as to the points on which they may, by way of cross-appeal, object to the decision appealed against. HUNOOMAN SINGH *v.* SUDDOLALL . . . **W. R., 1864, 232**

MUDHOO MOKEE DABEE *v.* GUNGA GOBIND MUNDLE . . . . . **W. R., 1864, 299**

404. ——— **Objection on ground of limitation.**—*Civil rocedure Code, 1859, s. 348.*—The first Court held that the plaintiff's suit was barred by the law of limitation, but the decision was reversed on appeal, and the case was remanded by the lower Appellate Court for trial on the merits. The first Court then gave a decree for the plaintiff, but on appeal the lower Appellate Court dismissed the suit on the merits. The plaintiff preferred a special appeal to the High Court. *Held*, it was competent to the defendant on such appeal, under section 348 of the Civil Procedure Code, to raise the objection that the suit was barred by the law of limitation. IN THE MATTER OF THE PETITION OF HIMMAT BAHADUR **[B. L. R., Sup. Vol., 429: 5 W. R., 91**

See RAYEKISHOREE DOSSEE *v.* BONOMALLEE CHURN MYTEE . **10 W. R., 209**

KISHEN CHUNDER GAEN *v.* SEERSHEE DHUR KHATTAH . **8 W. R., 208**

405. ——— **Objection on ground of jurisdiction.**—*Civil Procedure Code, 1859, s. 348.*—An appeal from an order dismissing a suit for want of jurisdiction was not such an appeal as is contemplated by section 348, Act VIII of 1859, and on such an appeal the respondent was not entitled to go into the merits. KAMEEKHAPERSHAD MOOKERJEE *v.* LARMOUR . . . . . **W. R., F. B., 86**

406. ——— **Objections against party not appealing.**—A respondent in taking advantage of the provisions of section 348 of the Civil Procedure Code can only take such objections as have reference to the party appealing. If he wishes to raise objections against parties who do not appeal, he must do so by independent appeal. GANESH PANDURANG AGTE v. GANGADHUR RAMKRISHNA **[6 Bom., A. C., 244**

407. ——— *Appeal only partly in respondent's favour.*—*Civil Procedure Code, s. 348.*—If a decree is passed partly in favour of and partly against a plaintiff, and one of the defendants alone appeals as against the decree in favour of the plaintiff, making a co-defendant a respondent, there is no reason why the latter should appear or interest himself in the result, nor why the plaintiff should be allowed at the hearing to raise objections to his suit having been dismissed against the other defendant. GOONOMONEE DOSSIA *v.* PARBUTTY DOSSIA . . . . **10 W. R., 326**

408. ——— *Civil Procedure Code, 1859, s. 348.*—In a suit to recover possession of certain land against *A.*, who claimed to be its proprietor, in which *J. B.*, who claimed to be a ryot, was made co-defendant, plaintiff obtained a decree against the former, but his suit as against the latter was dismissed. *A.* appealed from the decree, and during the course of the appeal the plaintiff was allowed to take a cross-appeal with regard to the dismissal of his suit against *J. B.* *Held*, that the cross-appeal should not have been admitted. ANWAR JAN BIBEE *v.* AZMUT ALI . **15 W. R., 26**

409. ——— *Civil Procedure Code, 1859, s. 348.*—Section 348, Act VIII of 1859,

APPEAL—*continued.*

21. OBJECTIONS BY RESPONDENT—*continued.*

Objections against party not appealing—*continued.*

was wide enough to empower an Appellate Court on cross-appeal to reopen the whole case, and assess damages on defendants who had been acquitted in the original suit, and who were not parties to the appeal. ANUND CHUNDER GOOPTO *v.* MOHESH CHUNDER MOZOOMDAR . . **1 W. R., 229**

410. ——— Altering decree on appeal where respondent makes no objection.—Where, in the lower Appellate Court, no objection to the decree of the Court of first instance was urged by the plaintiff (respondent), it is not competent to such Court to disturb the decree, by giving him a larger sum than that awarded by the Court of first instance. APEE *v.* HEERA NUND . . **2 N. W., 44**

411. ——— Altering decree on appeal where respondent takes no objection.—*Civil Procedure Code, 1859, s. 348.*—In a suit to establish title to three annas and a fraction of an estate, plaintiff having obtained a decree for two annas appealed, but the lower Appellate Court reduced the share allotted to the plaintiff,—*Held* that, as no question of the share to be awarded was raised before the lower Appellate Court by the defendant under section 348, Code of Civil Procedure, that Court should not have interferred with the decision in the way it did. RITOORAJ *v.* OOJAGUR SINGH **[15 W. R., 227**

412. ——— Objections by opposite parties in same interest.—*Appeal by defendant from dismissal of suit.—Cross-objection by plaintiff.*—Where a plaintiff's suit is dismissed, and a defendant appeals, seeking no relief whatever, but acting in the same interest with the plaintiff, the latter is not entitled, by way of cross-appeal under section 348, to argue that his suit was wrongly dismissed. SABETOOLLAH MEAH *v.* ROHIM DEWAN . **9 W. R., 273**

413. ——— Objections by opposite parties in separate appeals.—Both parties appealed from the decree of the Court of first instance, and both the appeals were dismissed by the lower Appellate Court. The plaintiff appealed to the High Court from the decree of the lower Appellate Court dismissing his appeal, whereupon the defendant took objections to the decree of the lower Appellate Court dismissing his appeal. *Held*, that such objections could not be entertained. GANGA PRASAD *v.* GAJADHAR PRASAD . **I. L. R., 2 All., 651**

414. ——— Finding in favour of respondent who had not appealed or objected.—*Right of respondent to benefit by such finding.*—*H.* sued *B.* for arrears of rent, alleging that the annual rent payable by the latter was R212-1-0. The Court of first instance gave *H.* a decree based on the finding that the annual rent payable by *B.* was R94. *H.* appealed, and the lower Appellate Court gave him a decree based on the finding that the annual rent payable

APPEAL—*continued.*

21. OBJECTIONS BY RESPONDENT—*continued.*

Finding in favour of respondent who had not appealed or objected—*continued.*

by *B.* was R128-12-0. *B.* appealed to the High Court from the lower Appellate Court's decree. *H.* did not appeal from that decree, neither did he take any objections thereto under section 561 of Act X of 1877. STUART, *C. J.*, and OLDFIELD, *J.*, before whom such appeal came for hearing, remanded the case to the lower Appellate Court for a fresh determination of the question as to the amount of annual rent payable by *B.* The lower Appellate Court then found that the annual rent payable by *B.* was R212-1-0. *Held* by STUART, *C. J.* (OLDFIELD, *J.*, dissenting), that such second finding of the lower Appellate Court should be accepted and the amount awarded by its decree be enlarged accordingly, notwithstanding *H.* had not appealed from that decree or preferred objections thereto. BIKRMAJIT SINGH *v.* HUSAINI BEGAM **[I. L. R., 3 All., 643**

415. ——— Objections which could not have been taken on appeal.—*Incidental decision of issue.*—The plaintiff sued the defendants for compensation for the wrongful taking of the fruit on a tree which he alleged belonged to him. The defendants set up as a defence that the fruit on such tree had not been removed, and that such tree belonged to them. The Court of first instance dismissed the suit, on the ground that the fruit on such tree had not been removed, but found incidentally that such tree belonged to the plaintiff. The plaintiff appealed from the decree of the Court of first instance; and the defendants objected to the decree, contending that such tree belonged to them. *Held* that, inasmuch as the Court of first instance did not, in deciding that such tree belonged to the plaintiff, decide a question substantially in issue, it did not decide in this matter "against the defendants," within the meaning of section 561 of the Civil Procedure Code, and, as the decree was limited to dismissing the suit, the defendants as respondents were not qualified to take an objection which they could not have taken by way of appeal, and therefore the Appellate Court was not warranted by law in entertaining the objection taken by the defendants. BALAK TEWARI *v.* KAUSIL MISR **[I. L. R., 4 All., 491**

416. ——— Objection by party improperly made respondent.—*Extent of respondents' right.*—*A.* obtained a decree for possession of land against *B.* and for costs against *B. C. D.* and others, defendants in the suit. *C.* and other defendants appealed against this decree so far as it awarded costs against them, making *A.* and *D.* respondents to the appeal. Under section 561 *D.* objected to that part of the decree which awarded possession of the land to *A.* *Held*, on appeal, that it was open to *D.*, although improperly made a party to the appeal by *C.* against *A.*, to take objection to the rest of the decree. TIMMAYA MADA *v.* LAKSHMANA BHAKTA **[I. L. R., 7 Mad., 215**

APPEAL—*continued.*

21. OBJECTIONS BY RESPONDENT—*continued.*

417. ——— Objections on appeal as to costs.—*Procedure.—Notice of objections.*—The Court of first instance found for the defendants on the merits, and passed a decree in their favour without costs. The defendants appealed against that part of the decree which disallowed them their costs. The plaintiff filed a notice of objections to the decree on the merits as required by section 561 o the Code of Civil Procedure (XIV of 1882). The lower Court of Appeal varied the decree by allowing the defendants their costs of suit, and held that the plaintiff was not entitled to file any objections. *Held,* that the Court of Appeal was in error in holding that the plaintiff's objections could not be entertained. Section 561 of the Code gives the respondent the power of taking any objection to the decree at the hearing of an appeal which he could have taken by way of appeal, provided he has filed a notice of his objections not less than seven days before the date fixed for the hearing of the appeal; and this power is independent of whether an appeal lies on a mere question of costs. KAMAT *v.* KAMAT **[I. L. R., 8 Bom., 368**

418. ——— Unsuccessful intervenors.—*Civil Procedure Code, 1859, s. 348.*—Unsuccessful intervenors (defendants) who have not appealed cannot raise questions under section 348, Act VIII of 1859. BIPRO PERSHAD MYTEE *v.* KANYE DEYEE **[1 W. R., 341**

419. ——— Co-respondents.—A defendant or respondent cannot be heard by way of cross-appeal, under section 348, Act VIII of 1859, as against a co-defendant or co-respondent. TARUCKNATH ROY *v.* TABOORUNISSA CHOWDHRAIN **[7 W. R., 39**

420. —————— *Civil Procedure Code, 1859, s. 348.*—A respondent, making a cross-appeal, can take objection to any part of the judgment of the first Court adverse to him to which the appellant can answer, and which affects the appellant's interests only; but the cross-appeal of a respondent does not open up any question between himself and his co-respondents, for they cannot be allowed to interplead. The law gives a respondent a right to raise objections at the hearing of the appeal; but, under section 348, Civil Procedure Code, reasonably construed, the contest is between two parties equally interested, and not with third parties. MAHBOOB ALI *v.* ZUR BANOO BIBEE . . **9 W. R., 78**

421. —————— *Civil Procedure Code, 1859, s. 348.*—Plaintiff sued two tenants and his co-sharer for joint rents. His suit was dismissed, and the dakhilas produced by the tenant defendants were declared to be false. The latter appealed, making the former and his co-sharer respondents. Plaintiff then appeared and made a cross-appeal under section 348, Act VIII of 1859. *Held,* that plaintiff had no *locus standi* to entitle him to make a cross-appeal against his co-sharer upon the appeal of the tenant defendants. ANUNTO DOSS SEIN *v.* RAM JOY SEIN . . . . . **11 W. R., 435**

APPEAL—*continued.*

21. OBJECTIONS BY RESPONDENT—*continued.*

Co-respondents—*continued.*

422. —————— *Civil Procedure Code, 1859, s. 348.*—A plaintiff (respondent) may take an objection, under section 348, against defendants, who have not appealed, but who are *pro formâ* brought in as co-respondents. RAM LALL MOOKERJEE *v.* TARRA SOONDUREE DEBIA . **W. R., 1864, 3**

Contra, HOSSAIN BUKSH PUTOOAH *v.* BABOO BEPAREE . **5 W. R., 49**

423. —————— *Civil Procedure Code, 1859, s. 348.*—One defendant cannot take an objection, under section 348, on the appeal of a co-defendant. BURRODA SOONDUREE DOSSEE *v.* NOBOGOPAL MULLICK . . . **W. R., 1864, 294**

See KHERMUKUREE DOSSEE *v.* NILAMBUR MUNDUL . . **2 W. R., 227**

GUDHADHUR BANERJEE *v.* MONMOHINEE DOSSEE . . . **7 W. R., 366**

KISHEN CHUNDER *v.* CHUNDRABOLLY DOSSEE . . . **2 Hay, 180**

424. —————— *Absence of co-respondent.—Civil Procedure Code, 1859, s. 348.*—The lower Appellate Court was held to be justified in refusing to enter into an objection raised by the respondent under Act VIII of 1859, section 348, in the absence as a party to the appeal of one of the parties interested in the decision of the first Court. MOIZZUNNISSA *v.* MOORAREE DHUR DEY **[22 W. R., 314**

425. —————— *Absence of co-respondent.—Cross-appeal by only some of respondents.*—A question having arisen in the execution of a decree as to assessing wasilat, the first Court held that the decree-holders were entitled to wasilat of a 2 anna 13 gundah share. The Judge held on the appeal of some of the judgment-debtors that the decree-holders were entitled to 1 anna 10 gundah share, and rejected the objections raised by the decree-holders under section 348, Civil Procedure Code. *Held,* that the Judge was wrong in amending the Munsif's decree as to the share, as the objection was not taken in the Court of first instance, and that he was bound to dispose of the objections taken by the decree-holders under section 348; and if there was any difficulty arising from the absence of some of the judgment-debtors, he ought to have directed that they should be made respondents. PRAN KISHORE DEB *v.* MAHOMED AMEER . . **21 W. R., 338**

426. —————— *Objection against absent correspondent.*—An objection by way of cross-appeal cannot be taken against a co-respondent who is not present in Court, and so unable to answer the objection of the cross-appellant. LALL CHAND *v.* KUDMOO KOONWAR . **7 W. R., 532**

427. ——— Allowing objection not taken.—*Civil Procedure Code, 1859, s. 348.—Court Fees Act, 1870, s. 16.*—The principle that an Appellate

APPEAL—*continued.*

21. OBJECTIONS BY RESPONDENT—*continued.*

Allowing objection not taken—*continued.*

Court should not go beyond the subject-matter of the appeal applies to an objection, called a cross-appeal, under section 348, which enables the respondent to take any objection to the decision of the lower Court which he might have taken if he had preferred a separate appeal. The joint effect of this section and of Act VII of 1870, section 16, is to place the respondent in the position of a cross-appellant in so far that he must, before the hearing, specify his matter of objection, and must pay into Court the Court fee attaching thereto. An Appellate Court was held to have acted without authority, and to have contravened the Court Fees Act, in having voluntarily suggested what it thought to be an error of the Court below, and allowed the respondent to take it as an objection giving effect to the objection subject to the payment of the Court fee stamp. SHARODA SOONDUREE DEBEE *v.* GOBINDMONEE *alias* BROJO SOONDUREE DEBEE . . **24 W. R., 179**

428. ——— Objections by pauper respondent.—*Civil Procedure Code, 1882, s. 561.*—Objections by a respondent to a decree under section 561 of the Code of Civil Procedure cannot be filed *in formâ pauperis. Bábáji Hari* v. *Rájáram Ballál, I. L. R., 1 Bom., 75,* followed. NARAYANA' *v.* KRISHNA . . . **I. L. R., 8 Mad., 214**

429. ——— *Civil Procedure Code, 1882, s. 561.*—A plaintiff who has obtained leave to sue *in formâ pauperis,* and has been successful in obtaining a decree for a portion of his claim, but has failed as to the other portion, is not entitled, on an appeal by the defendant, to be heard *in formâ pauperis* on cross-appeal as to the portion of his claim decided against him in the lower Court. IN THE MATTER OF BROJESHWARI DASI *v.* GUROO CHURN DAS . . **I L. R., 11 Calc., 735**

22. GROUNDS OF APPEAL.

430. ——— Objections to order of remand in appeal from final decree.—*Civil Procedure Code, 1859, s. 333; 1877, 182, s. 541.*—It is competent to an appellant appealing from the final judgment and decree, to include in his appeal any legal grounds of objection against a prior decretal order of remand. MIZAJOOL NISSA *v.* BUNSHEE DHUR . . **1 N. W., 193: Ed. 1873, 277**

APPEAL WHERE NO RIGHT OF APPEAL IS GIVEN.

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APPEAL, GROUNDS OF, ALLOWED TO BE ARGUED THOUGH NOT TAKEN IN MEMORANDUM OF APPEAL.

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APPEAL IN CRIMINAL CASES. Col.

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1. ACQUITTALS, APPEALS FROM—

1. ——— Appellate judgment of acquittal.—*Criminal Procedure Code, 1872, s. 272.*—The words "Appellate judgment of acquittal" in Act X of 1872, section 272, were meant to include all judgments of an Appellate Court by which a conviction is set aside. GOVERNMENT OF BENGAL *v.* GOOKUL CHUNDER CHOWDHRY
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2. ——— Time for appealing.—*Criminal Procedure Code, 1872, s. 272.*—*Act XI of 1874, s. 23.*—*Limitation.*—Under section 272 of the Code of Criminal Procedure, as amended by section 23 of Act XI of 1874, an appeal against an acquittal presented

APPEAL IN CRIMINAL CASES—*continued.*

1. ACQUITTALS, APPEALS FROM—*continued.*

Time for appealing—*continued.*

by the Government six months after the date of the judgment complained of, was barred by lapse of time, even though the six months expired on the day the amending Act became law. The amended section 272 should be read by itself and not as a clause of the ordinary Statute of Limitation. EX PARTE THE GOVERNMENT OF BOMBAY. IN THE MATTER OF REG. *v.* DORABJI BALABHAI . **11 Bom., 117**

3. ——— *Criminal Procedure Code (Act X of 1872), s. 272.—Limitation Act, X of 1871, s. 5, clause b, and sch. II, art. 153.*—An appeal by the Local Government under section 272, Criminal Procedure Code, was within time if presented within six months from the date of acquittal. The sixty days' rule did not apply. EMPRESS *v.* JYADULLA . . **I. L. R., 2 Calc., 436**

4. ——— **Officer appointed to prefer appeal.**—*Judgment of acquittal.—Conviction of culpable homicide on charge of murder.*—On the trial by a jury of a person on a charge of murder, the jury found the accused not guilty of the offence of murder, but convicted him of culpable homicide not amounting to murder. The Sessions Judge, although he disagreed with the verdict, declined to submit the case to the High Court under section 263 of the Criminal Procedure Code. The Local Government thereupon directed the Legal Remembrancer to appeal under section 272 of the Code, and in pursuance of this direction an appeal was preferred by the Junior Government Pleader. *Held*, that the appeal was duly made. *Held* further, that the judgment passed by the Court of Session, following the verdict of a jury acquitting the prisoner, was a judgment of acquittal within the meaning of section 272. *Held* also, that there being an acquittal on the charge of murder, the appeal lay. EMPRESS *v.* JUDOONATH GANGOOLY . . . . **I. L. R., 2 Calc., 273**

5. ——— **Appeal upon facts from verdict of a jury.**—*Criminal Procedure Act X of 1882, ss. 417, 418, 423.*—Under the provisions of Act X of 1882, no appeal at the instance of the Local Government lies from an order of acquittal in a case which has been tried by a jury, when the questions involved are purely questions of fact: for such an appeal to lie, it must be supported upon a ground which is covered by section 418. GOVERNMENT OF BENGAL *v.* PARMESHUR MULLICK **[I. L. R., 10 Calc., 1029**

6. ——— **Ground for setting aside acquittal on appeal.**—*Criminal Procedure Code, 1872, s. 272.*—It is not because a Judge or a Magistrate has taken a view of a case in which the Local Government does not coincide, and has acquitted accused persons, that an appeal by the Local Government must necessarily prevail, or that the High Court should be called upon to disturb the ordinary course of justice, by putting in force the arbitrary powers conferred on it by section 272 of the Criminal Procedure Code. The doing so should be limited to

APPEAL IN CRIMINAL CASES—*continued.*

1. ACQUITTALS, APPEALS FROM—*continued.*

Ground for setting aside acquittal on appeal—*continued.*

those instances in which the lower Court has so obstinately blundered and gone wrong as to produce a result mischievous at once to the administration of justice and the interests of the public. *Held*, therefore, the Local Government having appealed from an original judgment of acquittal of a Sessions Judge, that, as such judgment was an honest and not unreasonable one, of which the facts of the case were susceptible, such appeal should be dismissed. EMPRESS OF INDIA *v.* GAYADIN . **I. L. R., 4 All., 148**

7. ——— **Acquittal by Sessions Judge where he might have convicted under different section of Penal Code.**—*Criminal Procedure Code, 1872, s. 272.*—Where the Sessions Judge might upon appeal have convicted the defendants under a different section of an Act from that under which they were convicted by the Magistrate, but instead of doing so he acquitted them,—*Held*, upon appeal by the Local Government, that it was not a case which called for the interference of the High Court. ANONYMOUS CASE. IN THE MATTER OF THE PETITION OF THE GOVERNMENT PLEADER **[7 Mad., 339**

8. ——— *Criminal Procedure Code, 1872, s. 272.*—Where a person was convicted by a Magistrate, under section 409 of the Penal Code, for committing criminal breach of trust in the capacity of a public servant, and was acquitted by the Session Court on appeal, on the ground that the breach of trust was not committed in such capacity, and the facts proved constituted the offence of criminal breach of trust, the High Court, on the appeal of Government, directed a new trial by the Magistrate on charges under section 406 of the Penal Code, under the provisions of section 272 of Act X of 1872. The Court concurred in the view taken by the High Court in an *Anonymous case, 7 Madras, 339*, that the powers under section 272 should be exceptionally exercised. QUEEN *v.* DUKARAN **[7 N. W., 196**

9. ——— **Difference of opinion between assessors.**—*Criminal Procedure Code, 1872, s. 272.—Setting aside order of acquittal.*—In a case tried by assessors in which the accused was charged with culpable homicide not amounting to murder, he was acquitted by the Sessions Judge and one of the assessors, while the other assessor was for a conviction. The Government of Bengal having appealed under section 272, Code of Criminal Procedure, the High Court, on a consideration of the evidence, set aside the order of acquittal, and convicted the accused of the offence charged. GOVERNMENT OF BENGAL *v.* HANEEF FAKEER **[23 W. R., Cr., 50**

10. ——— **Conviction by assessors but acquittal by Judge.**—*Criminal Procedure Code, 1872, s. 272.—Conviction and sentence to death by High Court.*—Where the assessors found a prisoner

APPEAL IN CRIMINAL CASES—*continued.*

1. ACQUITTALS, APPEALS FROM—*continued.*

Conviction by assessors but acquittal by Judge—*continued.*

guilty, but the Judge acquitted him, the High Court on an appeal under section 272, Criminal Procedure Code, 1872, reversed the Judge's decision of acquittal and sentenced the prisoner to death. QUEEN *v.* RHIDAY PATRO . . . [26 W. R., Cr., 1

11. ——— Power of Court to order arrest pending appeal.—*Criminal Procedure Code, 1872, s. 272 (1882, s. 427).*—In an appeal under section 272 of Act X of 1872, the High Court has power to order the accused to be arrested pending the appeal. THE QUEEN *v.* GOBIN TEWARI [I. L. R., 1 Calc., 281

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12. ——— Act XXXVII of 1855.—*Conviction by Commissioner of Sonthal Pergunnahs.*—No appeal lies to the High Court, under Act XXXVII of 1855, from a conviction by the Deputy Commissioner of the Sonthal Pergunnahs. QUEEN *v.* BOYDONAUTH MOOKERJEE . . 17 W. R., Cr., 11

13. ——— s. 4, cl. 1.—*Sonthal Pergunnahs.—Scheduled Districts Act, XIV of 1874.*—Under section 4 (clause 1) of Act, XXXVII of 1855 (which is still in force in the Sonthal Pergunnahs), all sentences passed in criminal cases are final. DULAR DAT RAI *v.* NIJABAT HOSEIN [I. L. R., 12 Calc., 536

14. ——— Act II of 1864, s. 29.—*Appeal from sentence of Political Resident at Aden to High Court, Bombay, in criminal case arising in Perim.*—A prisoner charged with having committed murder in the island of Perim was committed by the Magistrate at Perim to be tried before the Political Resident at Aden. Having been found guilty and sentenced to death, he appealed to the High Court of Bombay. By the Aden Act II of 1864, section 29, it is provided that "no appeal shall lie from an order or sentence passed by the Resident in any criminal case." The High Court, however, admitted the appeal, being doubtful as to whether the above provision applied to cases arising in the island of Perim. QUEEN-EMPRESS *v.* MANGAL TEKCHAND [I. L. R., 10 Bom., 258

15. ——— Act XIV of 1868, s. 11, Order of conviction under.—There is no appeal from a conviction under section 11, Act XIV of 1868, for a registered prostitute neglecting to appear for examination. IN RE MUKTA BIBEE [17 W. R., Cr., 11

16. ——— Bombay Cotton Frauds Act, IX of 1863, Order under.—*Quære,*—Whether an appeal lay, notwithstanding section 411 of the Criminal Procedure Code, 1861, in a case of conviction

APPEAL IN CRIMINAL CASES—*continued.*

2. ACTS—*continued.*

Bombay Cotton Frauds Act, IX of 1863, Order under—*continued.*

under section 2 of the Bombay Cotton Frauds Act (IX of 1863) and sentence of one month's rigorous imprisonment with an order for confiscation of the cotton. REG. *v.* JIVAN USMAN . 3 Bom., Cr., 12

17. ——— Bombay Ferries Act, XXXV of 1850, Order of Magistrate under.—*Bom. Reg. XIX of 1827, s. 14.*—An appeal lay from the summary determination of the Magistrate of a zillah, under section 16 of Act XXXV of 1850 (an Act for regulating the Bombay Ferries) to the Sessions Judge. Such appeal need not be preferred within eight days, under section 14 of Regulation XIX of 1827. REG. *v.* MALHARI LAUJI . . 6 Bom., Cr., 45

18. ——— Burma Courts Act, 1875, s. 35.—*Transfer of case from Sessions Judge.—Criminal Procedure Code, 1872, s. 64.—Power of Special Court at Rangoon.—Burma Courts Act, XVII of 1875, s. 35.*—The Special Court of British Burma has power to entertain an appeal from a sentence of death or other sentence passed by the Judicial Commissioner, in a case transferred by him to his own Court from that of the Sessions Judge, under the powers conferred by section 64 of the Code of Criminal Procedure, and section 35 of Act XVII of 1875 (the Burma Courts Act), the hearing subsequent to the transfer being an exercise of original jurisdiction on the part of the Judicial Commissioner. THE EMPRESS *v.* TSIT OOE . I. L. R., 4 Calc., 667

19. ——— Income Tax Act, IX of 1869, s. 25.—No appeal lay to a Sessions Judge from the order of a Magistrate fining a defaulter under section 25 of the Income Tax Act, IX of 1869. QUEEN *v.* MUDHOO DUTT . . . 14 W. R., Cr., 71

20. ——— Police Act V of 1861, Convictions under.—Convictions under the Police Act V of 1861 are apppealable like other convictions. When the appellants are convicted by an officer exercising the powers of a Magistrate and sentenced to imprisonment exceeding the limit prescribed by section 411 of the Code of Criminal Procedure, the appeal lies to the Sessions Court. QUEEN *v.* THAKOOR DOSS . . . . . 5 W. R., Cr., 22

21. ——— Presidency Magistrates Act, 1877, s. 41.—*Prosecution, Sanction of Judge to.*—No appeal lay from the order of a Judge directing a prosecution under section 41 of the Presidency Magistrates Act. IN THE MATTER OF THE PETITION OF JANOKEY NATH ROY [I. L. R., 2 Calc., 466

22. ——— Presidency Magistrates Act, 1877, s. 167.—Where a person has, on his own plea, been convicted on a trial held by a Presidency Magistrate, an appeal to the High Court, on the ground that the conviction was illegal and therefore also the sentence, does not lie according to the provisions of section 167 of the Presidency Magistrates Act, No. IV of 1877, albeit that the

APPEAL IN CRIMINAL CASES—*continued.*

2. ACTS—*continued.*

Presidency Magistrates Act, 1877, s. 167—*continued.*

Magistrate has sentenced the person to imprisonment for a term exceeding six months, or to a fine exceeding two hundred rupees.* EMPRESS *v.* JÁFAR M. TALAB . . . **I. L. R., 5 Bom., 85**

3. CRIMINAL PROCEDURE CODES, 1861, 1872, 1882.

23. ——— Effect of Repeal of Act.—*Criminal Procedure Code (Act X of 1872), s. 36.—Act X of 1882, s. 408.*—On the 9th of December 1882, a person was convicted under sections 457 and 109 of the Indian Penal Code, and sentenced to three years' rigorous imprisonment by a Deputy Magistrate in Assam, exercising special powers under section 36 of the old Code of Criminal Procedure, Act X of 1872. The new Code of Criminal Procedure came into force on the 1st of January 1883. The prisoner presented an appeal to the High Court from the conviction and sentence above mentioned on the 23rd of January 1883. *Held* by FIELD, *J.* (MITTER, *J.*, expressing no decided opinion), that the case was governed by section 408 of the new Code of Criminal Procedure, and that no appeal lay to the High Court. RONGAI *v.* THE EMPRESS . . **I. L. R., 9 Calc., 513 [12 C. L. R., 500**

24. ——— Order of Deputy Commissioner.—*Criminal Procedure Code, 1872, s. 36 and s. 270.—Omission to get sanction of Sessions Judge.*—Where a Deputy Commissioner's order required, under Act X of 1872, section 36, the sanction of the Sessions Judge, the High Court had no jurisdiction to entertain an appeal from it until so sanctioned. QUEEN *v.* SHAM SOONDER DASS **[25 W. R., Cr., 18**

25. ——— Conviction by Deputy Commissioner under Criminal Procedure Code, 1872, s. 36.—*Quære,*—Whether, where a person had been convicted by a Deputy Commissioner invested under section 36 of Act X of 1872, and sentenced to a term of imprisonment requiring under that section to be confirmed by the Sessions Judge to which such Deputy Commissioner was subordinate, and such sentence had been confirmed accordingly, an appeal lay to the High Court against such conviction and sentence. EMPRESS OF INDIA *v.* NADUA . . . . **I. L. R., 2 All., 53**

26. ——— Order sanctioning entertainment of complaint.—*Case under ss. 468, 469, Criminal Procedure Code, 1872.*—No appeal lay to the District Judge from an order of a subordinate Court according sanction to the entertainment of a complaint in cases in which such sanction was required by sections 468 and 469 of Act X of 1872. IN THE MATTER OF THE PETITION OF BULWUNT RAI **[6 N. W., 124**

27. ——— Sentence by officer in Non-Regulation District.—*Criminal Procedure Code, 1869, ss. 445A, 445C.*—An appeal from a

APPEAL IN CRIMINAL CASES—*continued.*

3. CRIMINAL PROCEDURE CODES, 1861, 1872, 1882—*continued.*

Sentence by officer in Non-Regulation District—*continued.*

sentence passed by an officer in a Non-Regulation district invested with the powers mentioned in section 445A, Act VIII of 1869, lay under section 445C to the High Court only. QUEEN *v.* LUNTRO SINGH **[14 W. R., Cr., 18**

28. ——— Trial held by officer with special powers.—*Criminal Procedure Code (Act VIII of 1869), ss. 445A and 445C.—Deputy Commissioner.—Act X of 1872, ss. 36 and 270.*—The right of appeal to the High Court given by section 445C of the Criminal Procedure Code to persons convicted on a trial held by an officer invested with the power described in section 445A, was confined to cases in which the officer has exercised that power. QUEEN *v.* DHONA BHOOYA **[5 B. L. R., F. B., 658 S. C. 14 W. R., Cr., 33**

29. ——— Illegal conviction.—*Appeal on the merits.*—No appeal upon the merits can be entertained from a conviction which was based on no legal evidence, and which was absolutely bad in law. *Queen* v. *Mohesh Chunder Chuttopadhia, 2 W. R., Cr., 13,* distinguished. QUEEN *v.* POORNO CHUNDER DOSS . . . . . **8 W. R., Cr., 59**

30. ——— Order for additional evidence by Appellate Court.—*Criminal Procedure Code, 1861, s. 422.*—When an Appellate Court, under section 422 of the Code of Criminal Procedure, directed a Court of first instance to take additional evidence, an appeal on the merits to the High Court was not thereby given. REG. *v.* NANTAMRAM UTTAMRAM . . . . **6 Bom., Cr., 64**

31. ——— Order for additional evidence by Sessions Judge.—*Criminal Procedure Code (Act VIII of 1869), s. 422.—Act X of 1872, s. 282.*—Upon an appeal from a sentence passed by a Magistrate, the Sessions Judge remanded the case for the purpose of additional evidence being taken by the lower Court. Such evidence having been taken by the Magistrate, the case was returned to the Appellate Court. The Sessions Judge then disposed of the case in the manner prescribed by section 419 of the Criminal Procedure Code. On an application by the prisoner to the High Court to be allowed to appeal on the merits of the case under section 408, Act XXV of 1861,—*Held,* no appeal lay to the High Court on the merits. IN THE MATTER OF THE PETITION OF DHANOBAR GHOSE . . **6 B. L. R., 483 [15 W. R., Cr., 33**

32. ——— Judgment of Sessions Judge confirming illegal sentence of Magistrate.—The Assistant Magistrate having decided a case without examining the witnesses for the defence named by the prisoners, the Sessions Judge, on appeal ordered the evidence of those witnesses to be taken by the Assistant Magistrate. Their

APPEAL IN CRIMINAL CASES—*continued.*

3. CRIMINAL PROCEDURE CODES, 1861, 1872, 1882—*continued.*

Judgment of Sessions Judge confirming illegal sentence of Magistrate—*continued.*

depositions having been returned to him, the Sessions Judge proceeded to deal with the case under section 422 of the Code of Criminal Procedure, and, convicting all the prisoners, confirmed the judgment and sentence passed by the Assistant Magistrate. *Held*, that the judgment of the Sessions Judge (though in form confirming the Assistant Magistrate's judgment and sentence) was in substance an original judgment, and that under section 408 an appeal lay from it to the High Court upon the merits. QUEEN *v.* MOHESH CHUNDER CHUTTOPADHIA [2 W. R., Cr., 13

33. ——— **Order for fine and imprisonment not in alternative.**—*Criminal Procedure Code, 1869, s. 411.*—Section 411 of the Criminal Procedure Code, 1869, must be construed strictly and will only apply to cases in which either imprisonment or fine has been awarded by the sentence, and not to cases in which both punishments are awarded by one sentence. In the latter case, therefore, there was a right of appeal. ANONYMOUS CASE [1 N. W., Ed. 1873, 302

34. ——— **Decision of Jury as to nuisance.**—There was no right of appeal from the decision of a jury appointed to try whether the order of a Magistrate for the removal of a nuisance under section 308 of the Code of Criminal Procedure was reasonable and proper. SHITARAM *v.* RAMANAND [16 W. R., Cr., 66

35. ——— **Order of Sessions Judge fining Assessor under Criminal Procedure Code, 1861, s. 354.**—The order of a Sessions Judge under section 354 of the Code of Criminal Procedure fining an assessor was not appealable. IN THE MATTER OF THE PETITION OF GOUR SURUN DASS [8 W. R., Cr., 83

36. ——— **Order of Sessions Court for detention on refusal to give security.**—*Criminal Procedure Code, 1872, s. 508.*—No appeal lay from the order of a Sessions Court fixing a period of detention under Act X of 1872, section 508, for an accused party refusing to furnish security. QUEEN *v.* ROGHOO DOME . . . 24 W. R., Cr., 12

37. ——— **Order for detention on refusal to give security for good behaviour.**—*Code of Criminal Procedure (Act X of 1882), s. 123.*—No appeal lies to the High Court from an order passed by a District Magistrate under the provisions of section 123 of the Criminal Procedure Code, and on reference by the Magistrate confirmed by the Sessions Judge under the same section, requiring a person to be detained in prison until he should provide security for his good behaviour. CHAND KHAN *v.* THE EMPRESS [I. L. R., 9 Calc., 878

APPEAL IN CRIMINAL CASES—*continued.*

3. CRIMINAL PROCEDURE CODES, 1861, 1872, 1882—*continued.*

38. ——— **Order requiring security for good behaviour.**—*Criminal Procedure Code, 1872, ss. 267 and 286, Illus. (d.)*—Under sections 267 and 286, Illustration (*d*), Act X of 1872, there was no appeal to the High Court from an order passed by a Magistrate of the district requiring a person to give security for good behaviour. QUEEN *v.* NUJJUAH [22 W. R., 68

39. ——— **Decision of Bench of Magistrates.**—*Summary Procedure.—Criminal Procedure Code (Act X of 1872), Chap. XVIII.*—No appeal lay to a District Magistrate from the decision of a Bench of Magistrates composed of an Assistant Magistrate with second-class powers and two or more Honorary Magistrates, in a case tried under Chapter XVIII of the Criminal Procedure Code, 1872. IN THE MATTER OF THE PETITION OF HAVILDAR ROY. HAVILDAR ROY *v.* JAGU MEAN [I. L. R., 9 Calc., 96: 11 C. L. R., 423

40. ——— **Decision of Bench of Magistrates with second-class powers.**—*Conviction.*—An appeal lies under section 407 of the Code of Criminal Procedure from a conviction by a Bench of Magistrates invested with second or third class powers. QUEEN-EMPRESS *v.* NÂRÂYANASÂMI [I. L. R., 9 Mad., 36

41. ——— **Order for maintenance of illegitimate child.**—*Criminal Procedure Code, 1861, s. 316.—Held* (MARKBY, *J.*, dissenting), that no appeal lay from the order of a Magistrate under section 316 of Act XXV of 1861, directing a man to pay a monthly allowance for the support of his illegitimate child. QUEEN *v.* GOLAM HOSSEIN CHOWDHRY [2 Ind. Jur., N. S., 88: 7 W. R., Cr., 10

42. ——— **Order for recognizance to keep peace.**—*Criminal Procedure Code, 1861, ss. 209, 280, 424.*—There was no appeal to the Sessions Court from an order made by a Magistrate under section 409 of the Criminal Procedure Code, 1861, requiring a penal recognizance to keep the peace under section 280. The Court of Session may, however, in such a case, under sections 434 of the Code, call for and examine the record of the Court below; and if it shall be of opinion that the order of the Magistrate is contrary to law, refer the proceedings for the orders of the High Court. REG. *v.* BHASKAR K. KHARKAR [3 Bom., Cr., 1

43. ——— **Order of Magistrate levying penalty for forfeiture of recognizances to keep the peace.**—*Criminal Procedure Code, 1872, s. 502.*—A first-class Deputy Magistrate decided that a bond for keeping the peace had been forfeited, and, proceeding under section 502 of the Criminal Procedure Code, levied the penalty. An appeal was entertained from this order by the Sessions Judge of South Arcot and the order was reversed. A petition was then presented under section

APPEAL IN CRIMINAL CASES—*continued.*

3. CRIMINAL PROCEDURE CODES, 1861, 1872, 1882—*continued.*

Order of Magistrate levying penalty for forfeiture of recognizances to keep the peace—*continued.*

294 of the Criminal Procedure Code, praying the High Court to reverse the order of the Sessions Judge. *Held*, that the order of the first-class Deputy Magistrate was not open to appeal. The effect of the penultimate clause of section 502 considered. ANANTHACHÁRRI *v.* ANANTHACHÁRRI [I. L. R., 2 Mad., 169

44. ——— Order dismissing complaint.—*Appeal by prosecutor from order of dismissal.*—In a case of dismissal of complaint by a Deputy Magistrate it was held that a prosecutor had no right of appeal, but ought to have moved the Magistrate to procure, under section 434 of the Code of Criminal Procedure, a reversal by the High Court of the order of dismissal. LYALL AND CO., *v.* SAM MUNDLE . . . W. R., 1864, Cr., 23

45. ——— Order of Magistrate refusing to recall witness for prosecution.—No appeal lies to the Sessions Court from the order of the Deputy Magistrate refusing to recall the witnesses for the prosecution for the purpose of cross-examination. IN THE MATTER OF THE PETITION OF BELILIOS. BELILIOS *v.* THE QUEEN ON THE PROSECUTION OF KALI DASS BANERJEE [19 W. R., Cr., 53

46. ——— Order of Sessions Judge imposing fine on witness under s. 228, Penal Code.—*Insult to Judge.*—An appeal lay against an order of the Session Court imposing a fine upon a witness under section 228 of the Penal Code for intentional insult to the Sessions Judge sitting in a stage of a judicial proceeding. Where the High Court on appeal were satisfied that the witness did not intent to insult the Judge, the order was set aside. QUEEN *v.* CHAPPU MENON . 4 Mad., 146

47. ——— Order for imprisonment.—*Consolidation of separate sentences.*—*Criminal Procedure Code (Act XXV of 1861), s. 411.*—*Act X of 1872, s. 273.*—*A.* was convicted of offences under sections 143, 447, and 211 of the Penal Code, and sentenced by the Magistrate to one month's imprisonment for each offence. *Held* that, under section 411 of Act XXV of 1861, there was no appeal. The separate sentences could not be taken together and combined into one sentence, so as to give a right of appeal. QUEEN *v.* NAGARDI PARAMANIK [1. B. L. R., A. Cr., 3: 10 W. R., Cr., 3

QUEEN *v.* MORLY SHEIKH . 6 W. R., Cr., 51

48. ——— Sentence of Fine and Imprisonment.—*Criminal Procedure Code, 1861, s. 411.*—*Held*, that no appeal lay, where the sentence of imprisonment, and of further imprisonment in default of payment of a fine, does not in the aggregate exceed the term of one month. REG. *v.* SHANKAR VENKAJI [3 Bom., Cr., 15

APPEAL IN CRIMINAL CASES—*continued.*

3. CRIMINAL PROCEDURE CODES, 1861, 1872, 1882—*continued.*

49. ——— Order for punishment for separate offences.—*Criminal Procedure Code, 1872, s. 273.*—*Addition of sentences.*—Where a person is charged with two separate offences in one trial, the amount of the whole punishment awarded for the two offences must be regarded as one sentence for the purpose of determining whether an appeal lies under section 273 of the Code of Criminal Procedure or not. IN THE MATTER OF THE EMPRESS *v.* HARADHAN TAMULI . . . . 3 C. L. R., 511

50. ——— Cases tried together of which some are appealable and some not.—*Criminal Procedure Code, 1861, s. 411.*—Where several persons were tried together and convicted under section 147 of the Penal Code of rioting, and two of them were sentenced to pay each a fine of R50, or in default of payment to undergo rigorous imprisonment for a month, and the others were sentenced to a severer punishment, the Sessions Judge entertained an appeal by all the prisoners, being of opinion that the test, under section 411 of the Code of Criminal Procedure, as to whether a case is appealable, is the maximum sentence passed in it. *Held*, that an appeal only lay in the cases of those who had been more severely sentenced, and the High Court annulled the order of the Sessions Judge passed with reference to those of the accused who had been only fined R50, and restored the original sentences passed upon them. REG. *v.* KÁLUBHÁI MEGHÁBHÁI [7 Bom., Cr., 35

51. ——— Transfer of territory from one Presidency to another, Effect of on right of appeal.—*Criminal Procedure Code, 1861, s. 408.*—*24 & 25 Vict., c. 104.*—*Letters Patent, 1862, cl. 26.*—*Bom. Reg. II of 1827, s. 16, cl. 2.*—*Held*, that there was nothing in the manner in which the district of North Canara was detached from the Madras Presidency and annexed to the Presidency of Bombay, to prevent the Code of Criminal Procedure from operation therein as if it had always formed a part of the Presidency of Bombay, or to deprive a convict, found guilty by the Sessions Judge of the district on the 18th September 1862, of the right of appeal which he then would have had to the High Court by virtue of section 408 of the Criminal Procedure Code, and of 24 and 25 Vict., c. 104, and the Letters Patent (1862), clause 26. Giving an appeal to the High Court from a district is not subjecting that district to the Regulations within the meaning of Regulation II of 1827 (Bom.), section 16, clause 2. REG. *v.* VYANKATSVAMI [2 Bom., 112, 2nd Ed., 106

4. PROCEDURE.

52. ——— Appeal preferred after time.—*Criminal Procedure Code, 1861, s. 415.*—An appeal preferred out of time, and without any explanation of the delay, may be rejected at once, under section 415 of the Code of Criminal Procedure. QUEEN *v.* HULLODHUR GHOSE . 5 W. R., Cr., 40

APPEAL IN CRIMINAL CASES—*continued.*

4. PROCEDURE—*continued.*

53. ——— Computation of time for appeal.—*Time for obtaining copy of sentence or judgment, Deduction of.*—In computing the time within which it is competent to a defendant to appeal against the sentence of a Magistrate, the number of days taken by the Court to prepare a copy of the sentence should be omitted. QUEEN *v.* TOTI CHENGAN [6 Mad., 349

54. ——— Right to appear by Mooktear.—*Criminal Procedure Code, Act X of 1872, s. 278.*—An appellant in a criminal case has a right to appear and be heard by a mooktear. EMPRESS *v.* SHIVRÁM GUNDO . [I. L. R., 6 Bom., 14

55. ——— Presentation of petition of appeal.—A petition of appeal in a criminal case may be presented to the Appellate Court by any person authorized by the appellant to present it. IN THE MATTER OF SUBBA AITALA [I. L. R., 1 Mad., 304

56. ——— Notice of appeal.—*Criminal Procedure Code, 1872, ss. 278, 279.—Pleader, Notice to.*—The fact that the pleader of the accused is present in Court when an order is made admitting an appeal does not relieve the Court from the necessity of giving notice to the appellant of the day fixed for the hearing of the appeal. IN THE MATTER OF GOPAL CHUNDER MUNDLE . 10 C. L. R., 57

57. ——— *Criminal Procedure Code, 1872, s. 278.—Duty of Court to fix date of hearing.*—A general notice posted in a Sessions Court-house that appeals will be heard for admission only on the first Court-day after the date of presentation of the appeal, is not a compliance with the requirement of section 278 of the Code of Criminal Procedure, *viz.*, that a reasonable time shall be fixed within which the appellant, his counsel or agent, may appear and be heard in support of the appeal. MALAN *v.* THE QUEEN . . . . I. L. R., 5 Mad., 11

58. ——— Rejection of appeal for non-appearance.—*Criminal Procedure Code, 1872, s. 278.*—When a criminal appeal has been rejected without hearing the appellant's pleader, and it is afterwards proved to the satisfaction of the Appellate Court that an adequate excuse has been made for the pleader's non-appearance, it is open to the Appellate Court to re-hear the appeal on its merits. ANONYMOUS [7 Mad., Ap., 29

59. ——— Omission to fix time for hearing.—*Criminal Procedure Code, 1872, s. 278.*—When the Appellate Court did not fix a reasonable time for the appearance of the appellant or his counsel as required by section 278, Act X of 1872, the error was held to invalidate the proceedings. IN THE MATTER OF THE PETITION OF HURI PERSHAD [24 W. R., Cr., 60

60. ——— Power of Court on appeal.—*Stolen property.—Criminal Procedure Code, ss. 517, 520.*—An order passed under section 517 of the Code of Criminal Procedure may be revised by a

APPEAL IN CRIMINAL CASES—*continued.*

4. PROCEDURE—*continued.*

Power of Court on appeal—*continued.*

Court of Appeal although no appeal has been preferred in the case in which such order was passed. QUEEN-EMPRESS *v.* AHMED [I. L. R., 9 Mad., 448

61. ——— Powers of Appellate Court to alter finding of Court of first instance.—*Criminal Procedure Code, s. 423.*—Where the Court of Session had tried, convicted, and sentenced an accused person under section 409 of the Penal Code, and the High Court was of opinion that the conviction was not sustainable under that section, the Court refused to alter the finding, under section 423 of the Criminal Procedure Code, to a conviction for some other offence for which the accused had not been charged or tried. QUEEN-EMPRESS *v.* IMDAD KHAN . . . . I. L. R., 8 All., 120

62. ——— Power of single Judge on Appellate Side.—*Rule 30, Jan. 1865.*—A Judge of the High Court, sitting alone on the Appellate Side, has the power to hear and dispose of appeals in criminal cases. QUEEN *v.* CHANDRA JUGI [9 B. L. R., 6: 17 W. R., Cr., 47

63. ——— Power to hear appeals.—*Criminal Procedure Code, 1861, ss. 14 and 412.—Officer to hear criminal matters.—Magistrate of District.*—Government may by proclamation declare and direct that an Assistant Collector in charge of the Collectorate during the absence of the Collector shall be, during that period, "the officer in charge with the executive administration of the district in criminal matters;" and such officer being, within the meaning of section 14 of the Criminal Procedure Code, the Magistrate of the district, may hear appeals from Subordinate Magistrates under section 412 of the Code. REG. *v.* BHAISHANKAR HARIRAM [3 Bom., Cr., 18

64. ——— *Concurrent Jurisdiction of Magistrate.—Held,* that the power conferred upon the Magistrate F. P., at Broach, to hear appeals, did not exclude the jurisdiction which the Magistrate of the district had by law, and that the proceedings in any case in which a prisoner has appealed from the decision of a Subordinate Magistrate to the District Magistrate, must be forwarded to the latter. REG. *v.* UMTHÁ RUGNÁTH [5 Bom., Cr., 8

65. ——— Powers of Appellate Court in disposing of appeal.—*Appellant bound to show ground for interference.—Criminal Procedure Code, ss. 421, 423.*—A convicted person appealing is not in the same position before the Appellate Court as he is before the Court trying him: he must satisfy the Appellate Court that there is sufficient ground for interfering with the order of conviction; and if no such ground is shown, it is the duty of the Appellate Court not to interfere. EMPRESS *v.* SAJIWAN LAL . . I. L. R., 5 All., 386

APPEAL IN CRIMINAL CASES—*continued.*

4. PROCDURE—*continued.*

66. ——— Appellate Court, Duty of.—*Presumption.—Per* WHITE, *J.*—The sound rule to apply in trying a criminal appeal where questions of fact are in issue, is to consider whether the conviction is right, and in this respect a criminal appeal differs from a civil one. In the latter case the Court must be convinced, before reversing a finding of fact by a lower Court, that the finding is wrong. PROTAB CHUNDER MUKERJEE *v.* EMPRESS

[11 C. L. R., 25

67. ——— *Evidence not given in lower Court.—Opinion of Judge as to credibility of witnesses.*—The High Court declined on appeal to receive evidence which was available on the trial below when the prisoner deliberately elected not to give evidence in reply to the case made against him. *Per* MARKBY, *J.*—It is not the duty of the High Court in appeal to try a prisoner *de novo* upon the recorded depositions. The Court is bound, in forming its conclusions as to the credibility of the witnesses, to attach great weight to the opinion which the Judge who heard them has expressed upon that matter. QUEEN *v.* MADHUB CHUNDER GIRI . . . 21 W. R., Cr., 13

68. ——— Appeals from conviction on Trials by Jury.—Appeals from convictions on trials by jury, where illegal evidence has been admitted, should be dealt with on the same principles as appeals in which there has been a misdirection by the Judge, or an omission on his part to give the jury proper directions. REG. *v.* RAMASWAMI MUDLIAR . . . . . 6 Bom., Cr., 47

69. ——— Improper admission of evidence.—*Discharge of prisoner on appeal.—Conviction set aside.*—Where the High Court on appeal found the evidence against a prisoner insufficient to support the conviction, and would, if the case had been before them on the facts, have reversed the conviction if the case had been tried without a jury, they ordered the verdict to be set aside, and the prisoner to be discharged, though where a verdict is set aside on appeal they can order a new trial. QUEEN *v.* MAHIMA CHANDRA DAS

[6 B. L. R., Ap., 108: 15 W. R., Cr., 37

70. ——— Evidence.—*Procedure on appeal.*—Evidence taken before the Magistrate, but not used at the trial, cannot be referred to on appeal. QUEEN *v.* WAZIRA

[8 B. L. R., Ap., 63: 17 W. R., Cr., 5

71. ——— Right of complainant to be heard as respondent on appeal.—In criminal cases a complainant cannot claim as of right to be heard as a respondent in appeal. The matter is in each case in the discretion of the Court. ANONYMOUS . . . . . 7 Mad., Ap., 42

72. ——— Difference of opinion between Judges of Division Bench.—*Letters Patent, cl. 36.—Criminal Procedure Code (Act XXV of 1861), s. 420.*—When a criminal appeal is heard by two Judges, sitting as a Division Court,

APPEAL IN CRIMINAL CASES—*continued.*

4. PROCEDURE—*continued.*

Difference of opinion between Judges of Division Bench—*continued.*

and they differ in opinion, the opinion of the senior Judge must prevail under section 36 of the Letters Patent of the High Court of 1865, notwithstanding section 420 of the Criminal Procedure Code. QUEEN *v.* KAZIM THAKOOR

[2 B. L. R., F. B., 25: 10 W. R., Cr., 45

73. ——— Alteration of charge and conviction of graver offence.—It is not competent to an Appellate Court to find a prisoner on appeal guilty of a graver offence than that with which he was charged at his trial, unless an opportunity is afforded to the accused of defending himself against the charge so altered. IN THE MATTER OF DWARKA MANJHEE . . 6 C. L. R., 427

74. ——— Stay of proceedings.—*Power of High Court.—Stay of criminal proceedings.—Perjury.—Forgery.*—When a Civil Court directs that criminal proceedings be taken against a party to a suit before it for perjury or forgery, the High Court has no power, on an appeal being preferred against the decision of that Court, to direct that such proceedings be stayed until the appeal shall have been heard and determined. IN THE MATTER OF THE PETITION OF RAMPRASAD HAZRA

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S. C. RAM PARSHAD HAZAREE *v.* SOOMATHRA DABEA

[5 W. R., Mis., 24

75. ——— Death of appellant.—Abatement of appeal.—*High Court, Power of Revision of.*—The Code of Criminal Procedure gives no right to the heir, devisee, executor, or any other representative of a deceased convict, to lodge an appeal, or continue and prosecute an appeal already lodged. (KEMBALL, *J.*, dissenting).—The appeal lodged by a convict abates on his death. The High Court, nevertheless, may call for and examine the record of the case with a view to revision and rectification, and may make such order thereon as it may consider just. EMPRESS *v.* DONGÁJI ANDÁJI

[I. L. R., 2 Bom., 564

76. ——— Rejection of appeal.—*Criminal Procedure Code, 1872, s. 278.—Act XI of 1874, s. 26.*—When the Appellate Court rejects an appeal under Act X of 1872, section 278, it is prohibited by Act XI of 1874, section 26, from enhancing the sentence. AKOOL SIRCAR *v.* PARTAMA

[24 W. R., Cr., 29

77. ——— Right to withdraw appeal.—A petition of appeal presented for admission may be withdrawn. IN THE MATTER OF CHUNDER NATH DEB . . . . 5 C. L. R., 372

78. ——— *Quære,*—Whether a petition of appeal against a conviction can be withdrawn after the Appellate Court has perused the evidence. IN THE MATTER OF DWARKA MANJHEE

[6 C. L. R., 427

APPEAL TO PRIVY COUNCIL.

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1. CASES IN WHICH APPEAL LIES.

(a) APPEALABLE ORDERS.

1. ——— **Order of High Court dismissing Munsif.**—*Bengal Reg. V of 1831, s. 26, cl. 2.*—An order of the High Court at Calcutta under section 26, clause 2 of Bengal Regulation V of 1831, dismissing a Munsif for corruption in the exercise of his functions as Judge, is final, and there is no jurisdiction in the Judicial Committee to admit a special appeal therefrom. IN THE MATTER OF SREE MOHUN GHUTTUCK . 13 Moore's I. A., 343

2. ——— **Decision as to admissibility of special appeal.**—*Act III of 1843.*—By Act III of 1843, the decision of a single Judge of the Sudder Court of Bombay as to the admissibility of a special appeal was final so far as the Sudder Court was concerned; but the Act did not extend to take away the right of appeal to the Privy Council. MODEE KAIKHOOSROW HORMUZJEE *v.* COOVERBAEE
[4 W. R., P. C., 94: 6 Moore's I. A., 448

3. ——— **Award under Act XVIII of 1848.**—*Administration of private estate of Nawab of Surat.—Statutes 7 & 8 Vict., c. 69; 3 and 4 Will. IV, c. 41.*—An Act of the Legislature of India—XVIII of 1848—empowered the Governor in Council of Bombay to administer the private estate of the late Nawab of Surat, and it was by section 2 enacted "that no Act of the said Governor of Bombay in Council in respect of the administration to, and distribution of, such property, from the date of the death of the said Nawab, should be liable to be questioned in any Court of law or equity." No provision was made for an appeal from the Governor's decision. In pursuance of the power conferred by this Act, the Govern-

ment agent at Surat, to whom the matter was referred, made an award distributing the estate in certain shares among the heirs of the deceased, which award was confirmed by the Governor in Council. On an application by a claimant dissatisfied with the award to the Judicial Committee, for leave to appeal from the Governor in Council's confirmation of the award, - *Held*, that the award was not such a judicial act as to come within the operation of section 3 of the statute 3 and 4 Will. IV, c. 41, or the 7 and 8 Vict., c. 69, and could not be entertained by the Judicial Committee without a special reference to them by the Crown under section 4 of the statute 3 and 4 Will. IV, c. 41. IN RE NAWAB OF SURAT . 5 Moore's I. A., 499

4. ——— **Order under Act XL of 1858.**—An appeal from an order under Act XL of 1858, appointing a person to be guardian of a minor and manager of his property, bears no value and cannot be carried to Her Majesty in Council. PEAREE DAYE *v.* HURBUNS KOER . [14 W. R., 299

5. ——— **Order rejecting application for review.**—An appeal lies to the Privy Council, under section 39 of the Charter of the High Court, from an order rejecting an application for a review of judgment. The petition of appeal must be presented within six months from the date of the said order. NAZUR ALI KHAN *v.* OJOODHYARAM KHAN
[1 W. R., Mis., 13

AMEEROONISSIA BEGUM *v.* INDURJEET KOONWAR
[5 W. R., Mis., 17

6. ——— **Order confirming sale in execution.**—*Order made on appeal.—Letters Patent, cl. 39.—24 & 25 Vict., c. 104, s. 15.*—Certain property having been sold in execution of a decree, the judgment-debtor applied to have the sale set aside. This application was rejected; but a review of the order rejecting it was subsequently granted, and the sale set aside; and an application by the auction-purchaser for the cancelment of the order setting aside the sale was refused. Thereupon the purchaser applied by petition to the High Court, praying that the order made on review might be reversed. In his petition he submitted that "the sale ought to have been confirmed" when the application of the judgment-debtor to have it set aside was first rejected; but the petition did not contain a formal prayer for confirmation of the sale. A rule, however, was granted, calling on the judgment-debtor to show cause why the order reversing the sale should not be set aside and the sale confirmed, which rule, after argument, was made absolute. The judgment-debtor having obtained leave to appeal to the Privy Council from the order making the rule absolute, the purchaser objected that such order was not appealable under cl. 39 of the Letters Patent, 1865, on the ground that it was not an order "made on appeal." *Held*, that as the purchaser had obtained a rule

APPEAL TO PRIVY COUNCIL—*continued.*

1. CASES IN WHICH APPEAL LIES—*continued.*

(*a*) APPEALABLE ORDERS—*continued.*

Order confirming sale in execution—*continued.*

calling on the judgment-debtor to show cause why the sale should not be confirmed, and had allowed that rule to be made absolute, he could not contend that the order making the rule absolute was not an order made on appeal. *Semble,*—Orders made by the High Court under section 15 of 24 and 35 Vict., c. 104, are subject to appeal to the Privy Council. HURDEO NARAIN SAHU *v.* GRIDHARI SINGH

[13 B. L. R., 103

GRIDHARI SINGH *v.* HURDEO NARAIN SAHU

[21 W. R., 263

7. ——— **Order rejecting review.**—*Order made on appeal.—Letters Patent, cls. 39 and 42.*—An order rejecting a review of judgment is not an "order made on appeal" within the meaning of clause 39 of the Letters Patent of the High Court. In cases of appeal made under clause 42 of the Letters Patent, the Court ought not, in transmitting the proceedings connected therewith, also to send such proceedings as applications for review of the judgment of the High Court and the orders of the Court thereupon. ENAYET HOSSEIN *v.* ROUSHAN JEHAN

[1 B. L. R., F. B., 1: 10 W. R., F. B., 1

8. ——— **Difference of opinion between Judges of Division Bench of High Court.**—*Letters Patent, 1865, ss. 15 and 39.*—An appeal lies directly to the Privy Council from the decree of a Division Bench of the High Court on an appeal from the mofussil, although the Judges differed, and upon the points of difference a further appeal to the High Court is given under clause 15 of the Letters Patent. IN THE MATTER OF THE PETTION OF THE COURT OF WARDS ON BEHALF OF THE RAJA OF DARBANGA . 7 B. L. R., 730: 16 W. R., 191

9. ——— **Letters Patent, cl. 39.**—*Appeal from decision of High Court, Appellate Side.*—Clause 39 of the Letters Patent of 1865 does not rest for its authority on the 24 and 25 Vict., c. 104, and was not inserted in pursuance of that Act; consequently any power which it gives to admit an appeal to the Privy Council from a decision of the High Court on its Appellate Side, is not one of the powers which the High Court is, by the first part of section 9 of 24 and 35 Vict., c. 104, commanded to exercise. IN THE MATTER OF THE PETITION OF FEDA HOSSEIN

[I. L. R., 1 Calc., 431

10. ——— **Interlocutory judgment.**—*Letters Patent, cl. 40.—Question of practice.—Order for inspection of documents.*—No appeal lies, under section 40 of the Amended Letters Patent of the High Court, to the Privy Council from an interlocutory judgment or order of a Judge of the High Court, until such judgment or order has been subjected to an appeal to the High Court under clause 15 of the Letters Patent, except in those cases in which, by reason of the number of the Judges who have

APPEAL TO PRIVY COUNCIL—*continued.*

1. CASES IN WHICH APPEAL LIES—*continued.*

(*a*) APPEALABLE ORDERS—*continued.*

Interlocutory judgment—*continued.*

made such order, an appeal under clause 15 is given directly to the Privy Council. *Semble,*—The High Court will not, in the exercise of its discretion, allow an appeal to the Privy Council upon a mere question of practice, such as an order for the inspection of documents. SONBAI *v.* AHMEDBHAI HABIBHAI

[9 Bom., 398

11. ——— **Interlocutory decree.**—*Civil Procedure Code (Act XIV of 1882), s. 595.—Final decree.—Practice.*—Where the High Court reverses the decree of the Court below, and remands the case for re-trial on the merits, and for a new decree to be passed by the Court below, no appeal lies as a matter of right, under section 595 of the Code of Civil Procedure (XIV of 1882), to the Privy Council, albeit the value of the subject-matter admittedly exceeds ₹10,000, as such a decree of the High Court is not a final but an interlocutory decree. In such a case a certificate should first be obtained under clause (*c*) of the section that the case is a fit one for appeal to Her Majesty in Council ISHVARGAR BUDHGAR *v.* CAUDASAMA AMARSANG

[I. L. R., 8 Bom., 548

12. ——— **Interlocutory order.**—*Civil Procedure Code, 1877, s. 595, cl. (a).—Final order.*—An order of the High Court, directing execution to proceed, is not a "final" decree, judgment, or order within the meaning of clause (*a*), section 595 of the Code of Civil Procedure, Act X of 1877, and therefore no appeal lies from it to the Privy Council JOGESSUR SAHAI *v.* MURACHO KOOER

[1 C. L. R., 354

13. ——— *Civil Procedure Code, 1877, ss. 594, 596.*—The District Judge of Ghazipur recalled to his own file the proceedings in the execution of a decree which were pending in the Court of the Subordinate Judge of Shahabad, and disallowed an application for the execution of the decree which had been preferred to that Judge. The High Court, on appeal from an order of the District Judge, annulled his order as void for want of jurisdiction, and remitted the case in order that the application, might be disposed of on its merits, directing that the record of the case should be returned to the Subordinate Judge of Shahabad. On an application for leave to appeal to Her Majesty in Council from the order of the High Court,—*Held,* that such order was in the nature of an interlocutory order, and was not one from which the High Court could or ought to grant leave to appeal to Her Majesty in Council. PALAK DHARI RAI *v.* RADHA PRASAD SINGH

[I. L. R., 2 All., 65

14. ——— *Final decree or order.—Civil Procedure Code (Act X of 1877), ss. 595, 600.*—An order in a partenership suit for account refusing to allow the plaintiffs to have their accounts taken in a particular manner suggested by themselves, unless they would consent to give

APPEAL TO PRIVY COUNCIL—*continued.*

1. CASES IN WHICH APPEAL LIES—*continued.*

(*a*) APPEALABLE ORDERS—*continued.*

Interlocutory order—*continued.*

certain credits in their accounts to the defendants, is not a final decree within the meaning of clause (*b*) of section 595 of the Civil Procedure Code, although the effect of such order may be to make it impossible for the plaintiffs to proceed further in the case, and consequently an appeal from such an order of the High Court to the Queen in Council does not lie. ABEN SHA *v.* CÁSSIRÁO BÁBÁ SÁHEB [I. L. R., 6 Bom., 260

15. ——— *Civil Procedure Code, 1877, s. 595 (a).—"Final decree."*—Certain persons interested in an award applied under section 525 of the Civil Procedure Code to have it filed in Court. The Court made an order under section 526 "that the claim of the plaintiffs be decreed." The defendants appealed to the High Court from this "decree." The High Court held that the appeal would not lie, and suggested to the plaintiffs to apply to the lower Court to give judgment according to the award, and a decree to follow it. Thereupon the plaintiffs made an application to the lower Court of the nature suggested, but styled it one for review of judgment. The lower Court granted the so-called review of judgment. The defendants appealed from the order of the lower Court, contending that the "review of judgment" had been improperly granted. On the 23rd June 1880 the High Court held that the order of the lower Court was not appealable, not being one passed on review of judgment, but on an application to give judgment and decree in accordance with an award which had been filed in Court. The defendants applied for leave to appeal to Her Majesty in Council from the order of the High Court of the 23rd June 1880. *Held*, that such order was not a "final decree" within the meaning of section 595 (*a*) of the Civil Procedure Code, and therefore it was not appealable to Her Majesty in Council. RAMADHIN MAHTON *v.* GANESH . . I. L. R., 4 All., 238

16. ——— **Cancellation of notification on the ground of error.**—*Pleadership examination.—Notification of a candidate having qualified.—Civil Procedure Code, Chap. XLV.*—A candidate at an examination for pleaderships, a mistake in the computation of his marks having been made, was erroneously declared qualified for admission as a vakil of the High Court by a Government notification. The mistake having been discovered, such notification was, so far as he was concerned, cancelled. He then petitioned the High Court in the matter, and was informed by it that his name must be excluded from such notification, as he had not qualified by obtaining the requisite number of marks. The candidate having applied for leave to appeal to Her Majesty in Council,—*Held*, that Chapter XLV of the Civil Procedure Code had no application, and the matter was not one in which the High Court was concerned to grant or refuse leave to appeal to Her Majesty in Council. IN THE MATTER OF THE PETITION OF SAKHNANDAN LAL . I. L. R., 6 All., 163

APPEAL TO PRIVY COUNCIL—*continued.*

1. CASES IN WHICH APPEAL LIES—*continued.*

(*a*) APPEALABLE ORDERS—*continued.*

17. ——— **Order remanding suit for re-trial.**—*Privy Council's Appeals Act, VI of 1874.—Letters Patent, N.-W. P., s. 31.—Interlocutory order.—Order remanding case for re-trial.—Held*, that the High Court has not any power under Act X of 1877, or clause 31 of the Letters Patent, N.-W. P., to grant leave to appeal to Her Majesty in Council from an order of the Court remanding a suit for re-trial. The provisions of clause 31 of the Letters Patent are repealed by the Code and Act VI of 1874 which preceded it. TETLEY *v.* JAI SHANKAR [I. L. R., 1 All., 726

18. ——— **Power to admit appeal.**—*Privy Council's Appeals Act (II of 1863), s. 1.—Act XXXII of 1871, s. 18.—Subordinate Court.*—The words "Court of highest civil jurisdiction in any Province" in Act II of 1863 have reference to the general jurisdiction of the Courts, and not to the finality of their decisions in particular cases. A Court which, under the provisions of Act XXXII of 1871 is a subordinate Court, has no authority, under Act II of 1863, to admit an appeal to Her Majesty in Council even where its decision is final. HARDOE BUX *v.* JAWAHIR SINGH . I. L. R., 3 Calc., 522

(*b*) SUBSTANTIAL QUESTION OF LAW.

19. ——— **Power of Indian Legislature.**—*Act VI of 1874, s. 5.—Letters Patent, 1865, cl. 39.—24 & 25 Vict., c. 104, s. 9.—24 & 25 Vict., c. 67 (Indian Councils Act), s. 22.*—The provision in section 5 of Act VI of 1874, that where there are concurrent decisions on facts, the case must, in order to give a right of appeal to the Privy Council, involve some substantial question of law, is not *ultra vires* of the power of the Indian Legislature as being a curtailment of the jurisdiction given to the High Courts by the Letters Patent, 1865, clause 39. Section 22 of 24 and 25 Vict., c. 67, must be read with sections 9 and 11 of 24 and 25 Vict., c. 104. By the express words of section 9 all previously existing powers were reserved to the High Court, provided the Letters Patent did not interfere with them, and as to these powers the Governor General in Council is expressly empowered to legislate. Even if, therefore, the power to admit an appeal to the Privy Council were conferred by the Letters Patent under the authority of 24 and 25 Vict., c. 104, it was, not being a new power, subject to the legislative control of the Governor General in Council. The *ratio decidendi* in *The Queen v. Meares, 14 B. L. R., 106*, dissented from. IN THE MATTER OF THE PETITION OF FEDA HOSSEIN . . . I. L. R., 1 Calc., 431

20. ——— **Question of law arising on evidence.**—*Act VI of 1874, s. 5.—Substantial question of law.*—The substantial question of law which, by section 5, Act VI of 1874, the appeal must involve, in order to give an appeal to the Privy Council in a case where the decree appealed from affirms the decision of the Court below, is not limited

APPEAL TO PRIVY COUNCIL—*continued.*

1. CASES IN WHICH APPEAL LIES—*continued.*

(*b*) SUBSTANTIAL QUESTION OF LAW—*continued.*

Question of law arising on evidence—*continued.*

to a question of law arising out of the facts as found by the Courts from whose decisions it is desired to appeal. A question of law arising on the evidence taken in the case is, without reference to the findings of the lower Courts, sufficient to found an appeal. MORAN *v.* MITTU BIBEE

[I. L. R., 2 Calc., 228

(*c*) VALUATION OF APPEAL.

21. ——— Suit for possession and mesne profits.—Where a plaintiff sued for possession of property with wasilat, and did not (it being under the rules unnecessary for him to do so) include the wasilat in the valuation of the suit; and the suit was valued at R5,815, but with the wasilat would have been valued at over R10,000,—*Held,* that on appeal from a decree in favour of the plaintiff there was matter in dispute in excess of R10,000. ANONYMOUS

1 Ind. Jur., O. S., 58

S. C. GOOROO DASS ROY *v.* GHOLAM MOWLAH . Marsh., 24: 1 Hay, 103

22. ——— Appeal as to portion of property.—*Portion under R10,000.*—An appeal to the Privy Council involving a question or demand respecting property which on the whole is of the value of more than R10,000, is admissible, although the portion of the property to which the appeal relates is below that value. ONOOROOP CHUNDER MOOKERJEE *v.* PERTAB CHUNDER PAUL

[6 W. R., Mis., 4

23. ——— Under-valuation of suit, Omission to object to.—Where a defendant, having the means of proving the real value of property, made no objection to the plaintiff's under-valuation, and also herself in special appeal knowingly undervalued the property by valuing the subject-matter at R675,—*Held,* that she could not be heard to represent the real value of the property to be over R10,000 for the purpose of securing admission for an appeal to Her Majesty in Council. IN THE MATTER OF BHUGGOBUTTY DEBIA . . 14 W. R., 62

24. ——— Decision to govern other similar suits by same party.—*Subject-matter of suit below appealable value.—Practice.—Leave to Appeal.*—Leave to appeal to the Privy Council granted where the appeal, though valued at less than R10,000, involved indirectly questions respecting property of the value of R10,000, inasmuch as the judgment of the High Court would govern the decision in other suits which the plaintiff intended to bring on precisely the same grounds, and in respect of which precisely the same questions would arise as had arisen in the suit sought to be appealed. ANANDA CHANDRA BOSE *v.* BROUGHTON

[9 B. L. R., 423

APPEAL TO PRIVY COUNCIL—*continued.*

1.—CASES IN WHICH APPEAL LIES—*continued.*

(*c*) VALUATION OF APPEAL—*continued.*

25. ——— Conflicting claims to waters of flowing stream.—*Court Fees Act, 1870, s. 7.*—In ascertaining whether or not there ought to be an appeal to the Privy Council, the High Court has only to look at the value of the question at issue in the litigation. In a case of conflicting claims with regard to the waters of a flowing stream, the matter at issue, so far as regarded the applicant, having been to have her lands irrigated in the way she claimed, the value of that matter, according to section 7 of the Court Fees Act, VII of 1870, was held to be the extent to which her interests would be deteriorated if that right could not be established. AJNAS KOOER *v.* LUTEEFA . . . 18 W. R., 21

26. ——— Appeal as to portion of property.—*Letters Patent, cl. 39.*—The High Court refused under section 39 of the Charter to open so wide a door to appeal as to allow it in a case involving less than R10,000, only because the whole property which would be reduced in value in the event of the appeal proving successful was worth not less than R10,000. IN THE MATTER OF THE PETITION OF REEDNATH SAHOO. REEDNATH SAHOO, *v.* GOPEE SAHOO

[19 W. R., 191

27 ——— Proof of real value of property in suit where stamp duty has been paid on a less amount.—Where the suit was one in which the stamp originally paid was upon an amount very much less than R10,000, and the whole course of the litigation and the stamps paid throughout had reference to that valuation, though the property was really of the value of R10,000, the Court, upon the strength of a former decision in the Privy Council Department, refused the application for leave to appeal to Her Majesty in Council. *Quære,*—Can the mere payment of a stamp calculated on an under-valuation with reference to the rule in Act XXVI of 1867, schedule, art. 11, note *a,* be treated as of itself a fraud which, *ipso facto,* deprives a party of his right of appeal. LEKHRAJ ROY *v.* KANHYA SINGH

[18 W. R., 494

On a petition to the Privy Council in the same case for leave to appeal, it was held that a party who in observance of the rules of valuation prescribed by the stamp law of the country in which he sues, has paid stamp duty upon a sum lower than the appealable amount, is not thereby precluded from obtaining leave from the Courts of that country to appeal to Her Majesty in Council, if he can show that the value of the property in dispute does reach the appealable amount. LEKHRAJ ROY *v.* KANHYA SINGH

[L. R., 1 I. A., 317

28. ——— Decree indirectly involving question of title to property over R10,000.—Three different plaintiffs claiming through the same original title to be the owners of a certain mehal, sued the same defendant in separate suits for possession, and for the mesne profits of their respective shares. The defence raised being

APPEAL TO PRIVY COUNCIL—*continued.*

1. CASES IN WHICH APPEAL LIES—*continued.*

(c) VALUATION OF APPEAL—*continued.*

Decree indirectly involving question of title to property over R10,000—*continued.*

the same in each case, the suits were heard together, the result being that in both the lower Courts and in the High Court the plaintiffs obtained a decree for their claims. The aggregate value of the three suits amounted to more than R10,000, though the value of each suit was under that sum. The defendant applied to be allowed to appeal in each case to Her Majesty in Council. *Held*, that he was entitled to have each of the three cases admitted under the second clause of section 596 of Act X of 1877, as the decree in each case involved indirectly a question of title to property of the amount or value of R10,000. ASHANULLA *v.* KAROONAMOYI CHOWDHRY; ROHINI CHOWDHRANI *v.* KISHEN GOBIND DAS **[4 C. L. R., 125**

29. ——— Concurrent decisions on facts.—*Grounds of appeal.—Act VI of 1874, s. 5.*—Where there were two concurrent decisions on facts, an application to appeal to the Privy Council was refused; the right of appeal from a decision of the High Court on its Appellate Side, simply on the ground that the subject-matter of the suit was above R10,000, having been taken away by Act VI of 1874, section 5. IN THE MATTER OF THE PETITION OF FEDA HOSSEIN . . **I. L. R., 1 Calc., 431**

30. ——— Appeal in two suits together over appealable value.—*Civil Procedure Code (Act X of 1877), s. 596.—A.* and *B.* purchased the same properties deriving title through different persons. The value of the properties with mesne profits was over R10,000. *B.* granted two patni leases of the properties to different persons. *A.* was therefore obliged to bring two suits for the recovery of the properties, and the value of the subject-matter in each suit was less than R10,000. *Held*, that an appeal would lie to the Privy Council. JOOGULKISHORE *v.* JOTENDRO MOHUN TAGORE **[I. L. R., 8 Calc., 210**

31. ——— Question of law in suit under appealable value.—*Amount under R10,000.—Civil Procedure Code (Act XIV of 1882), ss. 595, 596, 600.*—Leave to appeal to Her Majesty in Council granted in one of six suits directed to be heard together, although the amount involved in such suit was under the appealable value; there being an important question of law, which did not arise in the five other suits, the suit, however, involving other questions of law common to all the six suits; such suits having been, by agreement of counsel, heard upon the same evidence, and concluded by the same judgment; five of such suits being appealable as of right, and the aggregate amount in the six suits being considerably more than the appealable value. BYJNATH *v.* GRAHAM . **I. L. R., 11 Calc., 740**

APPEAL TO PRIVY COUNCIL—*continued.*

1. CASES IN WHICH APPEAL LIES—*continued.*

(c) VALUATION OF APPEAL—*continued.*

32. ——— Order in execution of decree.—An appeal lies to Her Majesty in Council from an order passed by the High Court in a case of execution of decree in which the amount involved exceeds R10,000. VELAETY BEGUM *v.* RUGHONATH PERSAD . **B. L. R., Sup. Vol., 747: 2 Ind Jur., N. S., 263: 8 W. R., 147**

33. ——— *Execution of decree of Privy Council.*—An appeal will lie as of right from the order of a single Judge of the High Court as to execution of a decree of the Privy Council, where the property is over R10,000. LEELANAND SING *v.* LUCKIMPUR SINGH BAHADUR **[5 B. L. R., 605**

S. C. LEELANUND SING *v.* LUCKMESSUR SINGH **[14 W. R., P. C., 23**

34. ——— *Civil Procedure Code, 1877, ss. 244, 595.—Final order passed on appeal by the High Court.*—An order passed on appeal by the High Court determining a question mentioned in section 244 of Act X of 1887, is a final "decree" within the meaning of section 595 of that Act. *Held*, therefore, where such an order involved a claim or question relating to property of the value of upwards of ten thousand rupees, and reversed the decisions of the ower Courts, that notwithstanding the value of the subject-matter of the suit in which the decree was made in the Court of first instance was less than that amount, such order was appealable to Her Majesty in Council. RAM KIRPAL SHUKUL *v.* RUP KUAR . **I. L. R., 3 All., 633**

2. PRACTICE AND PROCEDURE.

(a) LEAVE TO APPEAL.

35. ——— Petition of appeal.—*Act VI of 1874, ss. 5, 7, and 9.—Practice.*—The petition of appeal to the Privy Council should distinctly state what the substantial question of law is that it is proposed to submit to the Privy Council. Petitions on the Original Side should be signed by counsel and on the Appellate Side by counsel or a pleader. ALI ABKAR *v.* ABDUL LATIF SHUSBU . **12 Bom., 8**

36. ——— *Appeal presented without security bond.—Rule of 7th December, 1858.*—The High Court has no authority to receive a petition of appeal to England tendered without the usual security bond duly registered, as provided by the 8th Rule of the 7th December 1858. PERSHAD SEIN *v.* RAJENDRA KISHORE . . . **7 W. R., 338**

37. ——— Appeal in forma pauperis.—An application to appeal to the Privy Council *in formâ pauperis* may be made to be High Court on unstamped paper, and accompanied by a certificate of counsel that there is a reasonable ground of appeal; the usual security for costs being given, and the costs of translation deposited. IN THE MATTER OF THE PETITION OF JOWAD ALI . . . **8 W R., 4**

APPEAL TO PRIVY COUNCIL—*continued.*

2. PRACTICE AND PROCEDURE—*continued.*

(*a*) LEAVE TO APPEAL.

Appeal in forma pauperis—*continued.*

38. ——— *Effect of, on right to appeal to Privy Council without leave.*—*Quære,*— Whether the leave given by the Courts in India to a party to sue *in formâ pauperis* would enable him to prosecute the appeal to the Privy Council without obtaining the leave of the Privy Council. MUNNI RAM AWASTY *v.* SHEO CHURN AWASTY **[7 W. R., P. C., 29: 4 Moore's I. A., 114**

39. ——— Ground for delay in applying.—*Ground for refusing to admit petition of appeal.*—An application for permission to appeal to the Privy Council was presented on the last day of the six months allowed for such appeals, and with it was deposited, not the sum which had been estimated as the cost of translating, printing and transmitting the record, but the estimate less the charges of printing; nothing being deposited as the cost of transcription. The petition was accordingly refused. *Held,* that the petitioner had no right to amend the estimate made by the clerk of the Privy Council Department, still less to amend it in the way he did; and that the plea of oversight was not sufficient to excuse him for non-compliance with the rules of Court or to admit his application beyond the prescribed time. IN THE MATTER OF THE PETITION OF GOUR SURN DASS **[19 W. R., 305**

(*b*) TIME FOR APPEALING.

40. ——— Calculation of period of limitation.—In calculating the period of six months allowed for appealing to the Privy Council, the date on which the decree was pronounced or dated should be excluded. IN THE MATTER OF THE PETITION OF RAMANOOGRA NARAIN . **13 W. R., P. C., 17**

41. ——— Power of Supreme Court to grant leave after expiration of time.—The Supreme Court at Madras admitted an appeal to the Privy Council after the expiration of six months from an original decree. *Held,* that the Court was not authorized to grant such leave to appeal by the Madras Charter of 1800. EAST INDIA COMPANY *v.* SYED ALLY . **7 Moore's I. A., 555**

42. ——— Closing of Court for vacation.—*Privy Council Rules.*—The High Court has no power to allow an appeal to Her Majesty in Council when the petition is not presented within six calendar months from the date of the decree complained of. When the six months expired during the Durga Pooja vacation, and the petition of appeal was presented on the first day the Court resumed its sittings,—*Held,* that the petition was too late, and leave could not be given to appeal. TAMVACO *v.* SKINNER . . . . **1 B. L. R., O. C., 39**

43. ——— If the period within which an appeal is required by law to be filed expires while the High Court is closed for the vacation, parties are allowed to file their petitions of appeal on the first open day after the vacation. LUCHMUN CHUNDER SINGH *v.* KALEECHURN SINGH **[12 W. R., 293**

APPEAL TO PRIVY COUNCIL—*continued.*

2. PRACTICE AND PROCEDURE—*continued.*

(*b*) TIME FOR APPEALING—*continued.*

Closing of Court for vacation—*continued.*

44. ——— Review, Pendency of application for.—When an application to review a judgment is rejected by the High Court, the six months allowed for appeal to Her Majesty in Council run from the date of the judgment, and not from that of the order rejecting the review. SOUDAMINEE DOSSEE *v.* DHERAJ MAHATAB CHAND **[B. L. R., Sup. Vol., 585: 6 W. R., Mis., 102**

45. ——— Date of decree.—*Appeal from Vice-Admiralty Court of Bengal.*—*Rule 35 of Vice-Admiralty Rules.*—By rule 35 of the rules respecting appeals from the Vice-Admiralty Courts abroad, made and ordained by King William IV in Council, in pursuance of the Statute 2 Will. IV, in c. 51, all appeals from the decrees of Vice-Admiralty Courts are to be asserted within fifteen days after the date of the decree. *Held,* that the words "after the date of the decree" mean after the date when the decree is pronounced by the Admiralty or Vice-Admiralty Court, as the case may be; not the date when the decree is reduced to writing and signed. On the 23rd July 1880, the High Court in its Appellate Jurisdiction, modifying a decree of the High Court as a Court of Vice-Admiralty in a cause of damage by collision, referred it to the Registrar to assess the damages that had been incurred in reference to one of the ships, both of which were held to be in fault. The parties went, without protest, before the Registrar for that purpose, the impugnants also having taken out process to compel the appearance of the promovents before him, and the damages were assessed with the consent of both parties at a certain amount. On the 2nd September 1880, a notice of appeal was given on behalf of the impugnants, and was recorded as asserted pursuant to rule 35 above referred to. *Held,* that the appeal was not within time, more than fifteen days having elapsed after the decree before the appeal was asserted. According to the law laid down in the Vice-Admiralty Courts, the proceedings taken before the Registrar were themselves sufficient also to prevent an appeal as of right. THE OWNERS OF THE SHIP "BRENHILDA" *v.* THE BRITISH INDIA STEAM NAVIGATION COMPANY . . . **I. L. R., 7 Calc., 547**

46. ——— Deposit of costs of appeal.—*Act VI of 1874, ss. 8 and 11, cl. b.*—*Limitation Act, 1871, s. 5.*—*Closing of the Court.*—*Deposit of money for expenses of appeal. Power of High Court to enlarge time.*—The petitioners had obtained a certificate on the 1st of September to appeal to Her Majesty in Council from a decision passed against them by the High Court on the 4th of May. Accordingly the period during which they were required to deposit the amount for the translation of the record, under section 11, clause *b*, of Act VI of 1874,

APPEAL TO PRIVY COUNCIL—*continued.*

2. PRACTICE AND PROCEDURE—*continued.*

(*b*) TIME FOR APPEALING—*continued.*

Deposit of costs of appeal—*continued.*

expired on the 4th of November. The offices of the Court reopened after the vacation on the 23rd October, but the Benches did not begin to sit till the 16th November. On the last-mentioned date, the petitioner brought in the money, and it was refused by the officer of the Court as being too late. *Held*, that it was rightly refused, and that the Court had no power to grant permission to deposit it after the prescribed time. IN THE MATTER OF THE PETITION OF LALLA GOPEE CHUND . **I. L. R., 2 Calc., 128**

47. ——————— *Act VI of 1874, s. 11.—Power to enlarge time.—Practice.*—The requirements of section 11, Act VI of 1874, as to the deposit of costs, are not absolutely imperative. The Court has power in its discretion to modify them, and when the period for making the deposit expires on a day when the offices of the Court are closed, it is a reasonable exercise of that discretion to allow the deposit to be made on the day they reopen. IN THE MATTER OF THE PETITION OF SOORJMUKHI KOER . . . . **I. L. R., 2 Calc., 272**

48. ——————— *Dismissal of appeal for default in deposit of security and in transcribing record.—Act VI of 1874, ss. 11, 14, and 15.*—On an application to stay proceedings in an appeal to the Privy Council, which had been presented on 2nd July 1874 from a decision of the High Court on its Original Side, it appeared that no deposit had been made by the appellant to defray the costs of transcribing, &c., as provided by section 11, Act VI of 1874; that no steps had been taken to prosecute the appeal; and that no security had been deposited for the costs of the respondent since the petition of appeal was presented. The Court granted a rule calling on the appellant to show cause why the proceedings on appeal should not be stayed, and on his not appearing to show cause, ordered that the appeal should be struck off the file. THAKOOR KAPILNATH SAHAI *v.* THE GOVERNMENT **[I. L. R., 1 Calc., 142**

49. ——————— *Failure to give security.—Power to enlarge time.—Act VI of 1874, ss. 5 and 11.*—An intending appellant to the Privy Council, who held a certificate under Act VI of 1874, section 5, having failed to give the requisite security and deposit within the six weeks prescribed by section 11, an order was passed to strike off his application to appeal. As, however, the defendant in the Court below, who would have been respondent in the appeal, had filed an appeal under the Letters Patent, section 15, against the grant of the certificate, the applicant contended that the six weeks would not begin to run until such appeal was finally disposed off. *Held*, that there was no ground for this contention, as the appeal did not operate as a stay of proceedings, nor remove the record to any other Court. *Held*, that the Court had no jurisdiction to enlarge the time specified in section 11. FUNEENDRO DEB ROY KUT *v.* JOGENDRO DEB **[23 W. R., 220**

APPEAL TO PRIVY COUNCIL—*continued.*

2. PRACTICE AND PROCEDURE—*continued.*

(*b*) TIME FOR APPEALING—*continued.*

50. ——————— **Deposit of security.**—*Civil Procedure Code, 1882, s. 602.—Extension of time for giving security.*—The time allowed by section 602 of the Civil Procedure Code for giving the security and making the deposit required by that section may be extended. FAZUL-UN-NISSA BEGUM *v.* MULO **[I. L. R., 6 All., 250**

51. ——————— *Extension of time for security in appeal.—Civil Procedure Code (Act X of 1877), s. 602.*—The words in section 602 of Act X of 1877, relating to the time within which security is to be given, are directory only; and although they are not to be departed from without cogent reason, the Court from which the appeal is preferred has the right of extending the time. In this case, a satisfactory explanation having been given of delay in giving security until after the time limited by the above section had expired,—*Held*, that the Court had rightly exercised discretion in extending the time. *In the matter of the petition of Soorymukhi Koer, I. L. R., 2 Calc., 272*, approved. BURJORE *v.* BHAGANA **[I. L. R., 10 Calc., 557: L. R., 11 I. A., 7**

52. ——————— **Appeal struck off for want of prosecution.**—*Civil Procedure Code (Act XIV of 1882), ss. 598, 599, 600.*—*A.* on the 8th September 1885 filed his petition of appeal to Her Majesty in Council against a decree obtained against him by *B.* on the 19th May 1885. On the 11th September 1885 *A.'s* attorney received for approval from the Registrar the usual draft notice calling upon *B.* to show cause why the case was not a fit and proper one for appeal to Her Majesty in Council; this draft notice was never returned as approved or otherwise to the Registrar, and no further steps were taken to prosecute the appeal. On the 1st April 1886 *B.* applied to have the appeal struck off for want of prosecution. *Held* that he was entitled to the order. MOORAJEE POONJA *v.* VISRANJEE VISENJEE **[I. L. R., 12 Calc., 658**

53. ——————— *Delay in transmission of appeal.—Power of High Court.*—Until a petition of appeal to the Privy Council presented to the High Court has been admitted and allowed, a party has no right of appeal to the Privy Council. If the petition is allowed to remain on the file of the Court, and is not prosecuted within a reasonable time, the Court has power to order its removal from the file. GOBARDHAN BARMONO *v.* MANO BIBI **[3 B. L. R., O. C., 126: S. C. on appeal, 5 B. L. R., 76: 14 W. R., O. C., 34**

54. ——————— **Appeal admitted after time.**—*Power to reject appeal.*—In a case where the period within which an application for leave to appeal to England expired during the Dusserah vacation, and the application was presented on the first day of the Court sitting after the vacation, when, though notice was served under the rules,—no cause being shown to the contrary,—the appeal was admitted and

APPEAL TO PRIVY COUNCIL—*continued.*

2. PRACTICE AND PROCEDURE—*continued.*

(*b*) TIME FOR APPEALING—*continued.*

Appeal admitted after time—*continued.*

the applicant allowed to incur large costs for translation and transcription, and the record was nearly ready for transmission,—*Held*, that the plea of limitation could not at this stage be heard in bar to the admission of the appeal, and that the High Court was bound to allow it to go on, subject to the orders of the Privy Council. RAJ KISHEN SINGH *v.* HURO SOONDUREE DASSEE . . . **15 W. R., 255**

55. ——— Power of High Court to consolidate appeals or admit time-expired appeals.—The High Court has no power to consolidate appeals to the Privy Council or to admit appeals to the Privy Council in cases in which the time for filing an appeal has expired: such consolidation or admission cannot be made without the permission of the Privy Council. PRAN NATH ROY CHOWDHRY *v.* KASHEENATH CHOWDHRY **[2 W. R., Mis., 26**

See MAHOMED MUDSUR *v.* RAM LAL ROY **[6 W. R., Mis., 50**

56. ——— Power of High Court to restore appeal.—After an appeal to Her Majesty in Council has been dismissed for default, or for any reason removed from the file of the High Court, under the law or under the rules of the Court, it is in the discretion of the High Court to restore the appeal after the period of six months allowed for preferring such appeals has expired. IN THE MATTER OF THE PETITION OF RADHA BINODE MISSER . . **B. L. R., Sup. Vol., 730**

S. C. RADHA BINODE MISSER *v.* KRIPAMOYEE DEBIA . . **7 W. R., 531**

Contra, IN RE BOLAKUN **[6 W. R., Mis., 121**

57. ——— *Appeals struck off for default in making deposit.*—The High Court has no authority to restore appeals to Her Majesty in Council, dismissed or struck off the file for default in making deposit. IN THE MATTER OF THE PETITION OF SREEKANT ROY. . . **7 W. R., 74**

(*c*) MISCELLANEOUS CASES.

58. ——— Papers forwarded with record.—*Review.*—Where an application for review was rejected and no appeal to the Privy Council was filed against the order of rejection, papers filed with the application for review will not be forwarded with the record to the Privy Council on the appeal of the case. FUKEERUDDEEN MAHOMED AHSAN CHOWDHRY *v.* NAJUMUNISSA CHOWDHRAIN **[2 B. L. R., A. C., 264: 11 W. R., 145**

59. ——— Translation of account-books and papers.—*Costs.*—Where it was impossible to say whether certain account-books and papers were material or relevant, or even were part of the evidence in the case, the High Court declined to put the appellant in an appeal to England to the expense of

APPEAL TO PRIVY COUNCIL—*continued.*

2. PRACTICE AND PROCEDURE—*continued.*

(*c*) MISCELLANEOUS CASES—*continued.*

Translation of account-books and papers—*continued.*

translating and transcribing them, but gave the respondent the option of translating them at his own expense, with a view to their being sent to England as an appendix to the record, leaving it to the Privy Council, in the event of the respondent being successful, to make any order they pleased as to the costs of translation. IN THE MATTER OF THE PETITION OF RAJ COOMAR BABOO DEO NUND SINGH **[7 W. R., 90**

60. ——— Translation of deeds.—Razeenamas and safeenamas, as well as security bonds, connected with appeals to England, need not be in English. MAHOMED TUKEE CHOWDHRY *v.* LUCHMEPUT SINGH DOOGUR . **7 W. R., 291**

61. ——— Appeal, Pendency of effect of.—*Legal disability.—Right to sue.*—The pendency of an appeal to England does not put the party who, subject to that appeal, is the owner of an estate under a legal disability to bring a suit in that character against third parties. PRAHLAD SEN *v.* RAJENDRA KISHORE SINGH **[2 B. L. R., P. C., 111: 12 W. R., P. C., 6**

62. ——— Agreement not to appeal.—*Application to stay proceedings.*—Where an appeal is preferred contrary to an agreement not to appeal, application to stay the proceedings should be made before the case is prepared for hearing. AMIR ALI *v.* INDERJIT KOER . . . **9 B. L. R., 460**

3. STAY OF EXECUTION PENDING APPEAL.

63. ——— Security against party in possession.—*Beng. Reg. XVI of 1797, s. 4.*—Within six months after decree and prior to the admission of an appeal therefrom to England, the Sudder Court, on an *ex parte* application without notice, issued an execution order putting the decree-holder in possession. This was done without calling for security as provided by section 4, Bengal Regulation XVI of 1797. The appellant on the admission of the appeal, applied to the Sudder Court for security from the party in possession pending the appeal, but that Court held that as the decree-holder was in possession under an execution order which could not be appealed from, they had no power to interfere. On petition the Judicial Committee under the circumstances, and on affidavit of waste, made an order declaring that it was competent to the Sudder Court to require security to be given for protection of the property pending the appeal, notwithstanding execution of the decree had issued and gave permission to the appellant to apply to the Sudder Court with an intimation of that opinion. JARIUTOOL BUTOOL *v.* HOSEINEE BEGUM . **10 Moore's I. A., 196**

64. ——— *Beng. Reg. XVI of 1797, s. 4.*—The plaintiff obtained a decree for possession of a zemindary, which was reversed on

APPEAL TO PRIVY COUNCIL—*continued.*

3. STAY OF EXECUTION PENDING APPEAL —*continued.*

Security against party in possession—*continued.*

appeal by the High Court. The plaintiff then appealed to the Privy Council. Under such circumstances, the High Court has no power under section 4, Regulation XVI of 1797, to order security to be taken from the defendant (respondent) in the appeal to the Privy Council for the due performance of such orders as the Privy Council may pass in the appeal, or to suspend the decree reversing the decision of the first Court. NILKISSEN THAKOOR *v.* BEERCHUNDER THAKOOR GOSSAIN . **2 W. R., Mis., 23**

65. ——————— The High Court cannot interfere to require security from a party who has formally been put in possession of the property in dispute in execution of a decree, where execution was taken out before an appeal to the Privy Council was preferred and admitted. HURO SOONDUREE DEBIA *v.* STEVENSON . **5 W. R., Mis., 13**

66. ——— **Security.**—*Failure to furnish security—Beng. Reg. XVI of 1797, s. 4.*—In the case of an appeal to the Privy Council, the Court has no power, on failure of both parties, to furnish security as required by section 4, Regulation XVI of 1797, to attach any property held by the appellant beyond that decreed. KHOROO LALL *v.* KANT LALL **[5 W. R., Mis., 37**

67. ——————— *Beng. Reg. XVI of 1797, s. 4.*—When an appeal to the Privy Council has been admitted, all that the High Court can do is to proceed, under section 4, Regulation XVI of 1797, to stay the execution of the decree, on the appellant giving security for the due performance of the decree of the Privy Council. But the Court cannot continue an attachment of money made under Regulation II of 1806 during the pendency of the suit in the Zillah Court, after the decree of the Zillah Court has been reversed by the High Court on appeal. IN RE PETITION OF RAMNATH CHOWDHRY **[6 W. R., Mis., 17**

68. ——————— In the case of an appeal to the Privy Council, security to the extent of the whole sum decreed need not always be taken from the decree-holder. When security is taken for less than the full amount decreed, the decree-holder should be restrained from issuing process of execution with a view to realizing any sum in excess of the amount for which security is given. MOLKA *v.* SUMPUT KOONWAR . . **6 W. R., Mis., 62**

69. ——————— The Zillah Court decreed a suit in plaintiff's favour. On appeal the High Court reversed the judgment, and remanded the case, making no order as to the costs of the appeal. Against such remand an appeal was preferred to Her Majesty in Council. The Zillah Court, however, proceeded with the case, and eventually dismissed the whole suit, and the defendant applied to execute the decree for his costs. *Held* that, in such circumstances, the High Court was not competent, under section 4, Regulation XVI of 1797 (the last-mentioned decree not having been appealed to it), to suspend execution of decree, or to direct the taking of security. IN THE MATTER OF THE PETITION OF ONOOROOP CHUNDER MOOKERJEE **[6 W. R., Mis., 45**

APPEAL TO PRIVY COUNCIL—*continued.*

3. STAY OF EXECUTION PENDING APPEAL —*continued.*

Security—*continued.*

70. ——————— When an appellant to the Privy Council applies to the High Court to stay execution of the decree on giving security, and action is taken by the Court on such application, a Principal Sudder Ameen has no authority, without the direction of the High Court, to make an order on an application to execute the decree, though the judgment-debtor should have failed to give security. DEBEE PERSHAD *v.* UMURTH NATH CHOWDHRY **[8 W. R., 275**

71. ——————— *Power of High Court.*—The High Court can, on cause shown, require security from a decree-holder who has been put in possession in execution of decree against which an appeal has been preferred to the Privy Council, and is still pending. It is not imperative on the High Court, under such circumstances, to take security from the decree-holder in possession, unless it be shown that the party in possession is making waste, or is so embarrassed by debt that the estates are likely to be seized by creditors in satisfaction of their claims, or unless some other good cause be given. SOORAJ MONEE DAYEE *v.* SUDDANUND MOHAPATTUR **[12 W. R., 296**

72. ——————— *Widow's interest.*—A judgment-debtor, who had been permitted to retain possession of disputed property pending an appeal to England, on furnishing security for mesne profits and costs, deceased, and the widow offered her life-interest in his estate as security. *Held,* that as her interest was only temporary, it could not be accepted as competent security. PHOOL KOER *alias* KANAYA KOER *v.* DABEE PERSAUD **[12 W. R., 187**

73. ——————— *Beng. Reg. XVI of 1797, s. 4.*—When an appeal is preferred to Her Majesty in Council from a decree of the High Court, the security to be taken from the decree-holder must be regulated by section 4, Regulation XVI of 1797; the practice being to calculate for an amount sufficient to meet the mesne profits which are to go to his hands from the date of his obtaining possession to the probable date of the eventual execution of the decree of the Privy Council, which period is generally taken to be three years. AMEEROONISSA KHATOON *v.* DUNNE . . . . . **14 W. R., 361**

74. ——————— *Beng. Reg. XVI of 1797, s. 4.*—Application for decree-holder pending decision of appeal to the Privy Council to give security refused; AINSLIE, *J.*, following the Full Bench ruling in *the case of Rajkissen Sing,* B. L. R., Sup. Vol., 605: 6 W. R., Mis., 111; and PAUL, *J.* (whilst

APPEAL TO PRIVY COUNCIL—*continued.*

3. STAY OF EXECUTION PENDING APPEAL —*continued.*

Security—*continued.*

declining to follow that ruling), considering the application premature, because merely put on the file of the High Court without the appeal being submitted. BURRA LALL *v.* THE COURT OF WARDS [16 W. R., 289

75. ——— *Sufficiency of security.*—The High Court having ordered a judgment-debtor, pending an appeal to the Privy Council, to furnish security within two months, he put in a petition in the Zillah Court on the last day allowed by the order, tendering a durputnee mehal as security, and on the day following gave an unregistered security bond. The Judge rejected the bond. *Held*, that the bond was not required to be registered until the security had been accepted; and that the Judge should have directed an investigation into the goodness and sufficiency or otherwise of the property tendered. DUNNE *v.* AMEEROONISSA KHATOON [13 W. R., 41

76. ——— The decree-holder (respondent to England) was required immediately to elect between furnishing security and drawing the sum deposited by the appellant on account of wasilat and costs, and (upon her failure to do so) allowing the appellant to obtain a refund of the deposit upon giving the like security. A party, who seeks to obtain security after the decree has been executed, must show special circumstances (*e.g.* waste or improper dealing with the property) before the Court can grant such an order. JUGGOO LALL OOPADHYA *v.* JANKEE BIBEE . . . . . 17 W. R., 521

77. ——— *Beng. Reg. XVI of 1797, s. 4.*—In a suit in which an appeal to the Privy Council from a decree of the High Court has been admitted and is still pending, the Court of original jurisdiction which made the decree first appealed from has jurisdiction to issue execution. Although, as a general rule, the High Court will take security, under section 4, Regulation XVI of 1797, before allowing execution of a decree while there is an appeal to the Privy Council pending, yet the Court may, under certain circumstances, allow execution without taking security. Where the lower Court is informed that there has been an appeal to Her Majesty in Council from the decree which it is asked to execute, the lower Court should, in the exercise of its discretion, allow time to the parties to apply to the High Court to stay execution or to require security from the party left in possession, before issuing execution, unless it should see danger of the property being made away with in the interval. LOCH, *J.*, differed. WISE *v.* RAJKRISHNA ROY . . B. L. R., Sup. Vol., 541: 6 W. R., Mis., 84

78. ——— *Beng. Reg. XVI of 1797, s. 4.*—The plaintiff obtained a decree for possession of part of a zemindari in the Court below, and in execution obtained possession on giving security. On appeal by the defendants to the High Court, the decree was reversed and restitution ordered. Plaintiff then appealed to the Privy Council, and applied to the High Court to be left in possession upon his former security. *Held*, that section 4, Regulation XVI of 1797, did not apply, and the plaintiff was not entitled either to keep possession or to require the defendants to give security; but the defendants were entitled to restitution of the property without security, whether the judgment of the High Court ordered restitution or not: but that it was within the discretion of the Court to call upon the defendants to give security for costs, if any, awarded by the decree of reversal. IN THE MATTER OF THE PETITION OF RAJKISSEN SINGH [B. L. R., Sup. Vol., 605: 6 W. R., Mis., 111

79. ——— *Beng. Reg. XVI of 1797, s. 4.*—The plaintiffs, in execution of a decree, which had been affirmed by the High Court on appeal, obtained possession of the land decreed, and realised their costs. The defendant afterwards filed an appeal to the Privy Council against the decree of the High Court. After admission of the appeal he applied that the plaintiffs might be called upon to furnish security. *Held* that, under section 4, Regulation XVI of 1797, the application could not be entertained. JOYNARAIN PATTUR *v.* RUSSICK MOHUN BANERJEE [B. L. R., Sup. Vol., 744: 8 W. R., 144

80. ——— **Security by party in possession.**—*Mad. Reg. VIII of 1818.*—After an appeal had been asserted from a decree of the Sudder Court at Madras, the appellant applied to that Court, under section 4, Regulation VIII of 1818 and the Circular Order of the 21st September 1826, for an order calling on the respondents, who had been in possession of the estates in dispute before the institution of the suit, to give security as prescribed by that Regulation. The Sudder Court refused the application as not being within the provisions of the Regulation. On petition the Judicial Committee declined to interfere, as there was no allegation of waste by the respondents in the petition. *Quære,*—Whether there was any jurisdiction in the Judicial Committee, under section 4 of Madras Regulation VIII of 1818, to call for security from the respondent when put in possession. NAGALUTCHMEE UMMAL *v.* GOPOO NADARAJA CHETTY . . . 6 Moore's I. A., 309

81. ——— **Procedure where decree-holder attempts to execute it.**—Procedure where there is an order of Court to stay the execution of a decree obtained by a party who has appealed to the Privy Council from another decree against himself, if the holder of the decree which is appealed against attempts to execute it. DWARKANATH ROY *v.* WOOMASOONDUREE DASSEE . 14 W. R., 329

82. ——— **Power of Civil Court in Mofussil.** A Civil Court in the mofussil has no power to stay execution in cases where an appeal has

APPEAL TO PRIVY COUNCIL—*continued.*

3. STAY OF EXECUTION PENDING APPEAL —*continued.*

Power of Civil Court in Mofussil—*continued.*

been made to the Privy Council against a decree of the High Court. MUTTEALAUMMMAL *v.* CHELLAYAMMAL . . . . . **5 Mad., 98**

83. ——— Restoration of property pending appeal.—The Court has power, under section 608, Civil Procedure Code, to stay execution of a decree of the High Court in a suit subsequently appealed to Her Majesty in Council. *Quære,*—Where the Court has power to order restitution of possession of property already taken in execution of its own decree pending an appeal to the Privy Council. ASHANULLA *v.* KAROONAMOYI CHOWDHRY; ROHINI CHOWDHRANI *v.* KISHEN GOBIND DASS **[4 C. L. R., 125**

4. CRIMINAL CASES.

84. ——— Felony.—*Semble,*—No appeal lies in cases of felony to the Queen in Council, from any of the dominions of the Crown of Great Britain which are governed by the law of England. QUEEN *v.* EDULJEE BYRAMJEE **[3 Moore's I. A., 468**

85. ——— Right of appeal.—No right of appeal to the Privy Council exists in any matter of criminal jurisdiction, and the High Court has no power to grant leave in such a case. IN THE MATTER OF GOOROO DASS ROY . . . **18 W. R., 407**

IN THE MATTER OF AMEER KHAN **[18 W. R., 407, note**

86. ——— Case referred under s. 404, Criminal Procedure Code, 1869.—*Letters Patent, 1865, s. 41.*—The High Court has no power, under clause 41 of the Amended Letters Patent of 1865, to grant leave to appeal to Her Majesty in Council from an order made or decision given in a criminal case referred by a Magistrate under section 404 of the Code of Criminal Procedure. REG. *v* REAY **[7 Bom., Cr., 77**

87. ——— . Irregularity in trial causing injustice.—*Prerogative of Crown.*—There is no right of appeal to the Privy Council in criminal cases. In a petition for leave to appeal against a conviction and sentence of the Sudder Nizamut Adawlut of Bengal, on the ground of alleged irregularities in the proceedings causing great hardship and injustice,—*Held* that, assuming that the prerogative of the Crown extended to the granting of leave to appeal in such a case, and was not curtailed by the operation of the Indian Act XXV of 1861, and that this was *primâ facie* a cause of great grievance, yet the consequences of allowing appeals in criminal cases would be such as to justify their Lordships in advising Her Majesty, in the exercise of her discretion, to refuse to grant the prayer of the petition. JOYKISSEN MOOKERJEE *v.* QUEEN **[1 Ind. Jur., O. S., 61**
[1 W. R., P. C., 13: 9 Moore's I. A., 168

APPEAL TO PRIVY COUNCIL—*continued.*

4. CRIMINAL CASES—*continued.*

88. ——— Question of law or practice.—*Ground for leave to appeal.*—In criminal cases the High Court will not, in general, grant leave to appeal to the Privy Council, unless some important question of law or practice or jurisdiction is involved. Considerations that guide the Court in granting leave to appeal in such cases, stated; and instances in which such leave has been granted, mentioned. REG. *v.* PESTANJI DINSHA . . . **10 Bom., 75**

APPEARANCE, DEFAULT IN, DISMISSAL FOR—

See CIVIL PROCEDURE CODE, 1882, ss. 98, 99 (1859, s. 110).

See RES JUDICATA—ADJUDICATIONS.

APPEARANCE, DEFAULT IN, POWER TO RESTORE CASE STRUCK OFF FOR—

See SMALL CAUSE COURT, PRESIDENCY TOWNS—PRACTICE AND PROCEDURE. **[I. L. R., 1 Calc., 476**

APPEARANCE, EXTENSION OF TIME FOR—

See NEGOTIABLE INSTRUMENTS, SUMMARY PROCEDURE ON—
[1 Ind. Jur., N. S., 395
3 B. L. R., O. C., 83
6 B. L. R., Ap., 64
9 B. L. R., 441: 18 W. R., 424

APPEARANCE OF MAGISTRATE TO SHOW CAUSE.

See PRACTICE—CIVIL CASES—RULE TO SHOW CAUSE.
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3 C. L. R., 93

APPEARANCE SUFFICIENT TO PREVENT EX PARTE DECREE.

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APPELLATE COURT.

Col.
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See CASES UNDER CIVIL PROCEDURE CODE, 1882, s. 544 (1859, s. 337).

1. GENERAL DUTY OF APPELLATE COURTS.

1. **——— High Court, Practice of.**—*Appeal on questions of fact.—Credibility of witnesses.*—The High Court, sitting in appeal on questions of fact, was guided by the same rules as those of the Privy Council when they sat upon motions for a rule for new trials from the old Supreme Court. The High Court, sitting in appeal, will not disturb a judgment upon a question as to the credibility of witnesses, unless it be manifestly clear, from the probabilities attached to certain circumstances in the case, that the Court was wrong in the conclusion drawn from such evidence. The High Court, sitting in appeal, will look upon the decree of a Judge as to facts in the same light as the verdict of a jury; and though some of the reasons given for the conclusion arrived at be erroneous, the High Court in appeal will not say that the decree is against the weight of evidence, if sufficient reason for such decree still remain. HEERALALL CHUCKERBUTTY *v.* MOHESH CHUNDER GHOSAUL . . . **1 Hyde, 105**

2. **——— Privy Council, Practice of.**—*Appeal on questions of fact.*—The rule of the Privy Council not to disturb a judgment of a Court in India upon a question of fact, unless it is clear from the probabilities of the case that the judgment is wrong, however necessary as regards a Court of Appeal far removed from India, would hardly be extended as one equally necessary and applicable with the same strictness to a Court of Appeal in India. SARODA SOONDERY *v.* TINCOWRY NUNDY, **[1 Hyde, 223**

3. **——— Question of fact, Ground for disturbing finding on.**—*Held,* on examination of the evidence, that the lower Appellate Court ought not to have disturbed the distinct finding of the lower Court, as it had, upon what appeared to be mere conjecture. LAL MAHOMED BIPARI *v.* SHOILA BEWA . . . **11 C. L. R., 104**

4. **——— Jurisdiction where appeal is barred.**—When an appeal is barred by law, an Appellate Court cannot interfere in any matter legitimately arising out of the case, unless there is want of

APPELLATE COURT—*continued.*

1. GENERAL DUTY OF APPELLATE COURTS—*continued.*

Jurisdiction where appeal is barred—*continued.*

jurisdiction. KURUM CHAND KOLEEAH *v.* HUREE MOHUN GHOSE . . . **2 W. R., Mis., 45**

5. **——— Presumption of correctness of judgment appealed from.**—*Duty of Judge.*—A Judge of appeal is not in the position of an arbitrator who has to look at the evidence on both sides and determine which is preferable. He has to deal with the decision of a properly constituted Court, which, if not shown to be erroneous, ought to be affirmed. SHETABDEE BISWAS *v.* MOLAMDEE MUNDUL . . . . **25 W. R., 30**

6. **——— Credibility of witnesses.**—In cases turning on the credibility of witnesses, the Appellate Court gives great weight to the decision of the Courts below. WOMESH CHUNDER ROY *v.* DEENDYAL PORAMANICK . . . **2 Hay, 12**

7. ——— Where credit has been given to witnesses by the Court of first instance before which they have been examined, the Appellate Court is not at liberty to say that it disbelieves them without stating reasons. HOYMO DASSEE *v.* SEEKISSEN NUNDY . . . . **14 W. R., 58**

8. ——— *Dealing with documentary evidence.*—Where a Munsif pronounces an opinion as to the authenticity of certain documents, the lower Appellate Court must assume that he did his duty and looked into each and every one of them before pronouncing such opinion. On a question of simple credit to be given to a witness, an Appellate Court, having before it merely written depositions, is not authorized to set aside the opinion of the Court of first instance which heard the witness and recorded that his demeanour was not satisfactory. GOPEE NATH MOOKERJEE *v.* BODDHUMUNT MAL **[25 W. R., 26**

See NOBIN CHUNDER POOSHALEE *v.* RUNGO CHUNDER CHATTERJEE. **[25 W. R., 363**

9. ——— *Method of dealing with questions of fact in appeal.*—In dealing with questions of fact which turn entirely upon evidence given on the trial, the High Court ought not merely to consider whether the lower Court has come to the same conclusion as that to which it should have come if it had originally heard the witnesses, but, before reversing the decision, it ought to be satisfied that the Court was clearly wrong. OOTUM *v.* MULLICK GHOLAM HOSSEIN . . . **2 Hay, 359**

10. **——— Point taken in appeal but not argued by pleader.**—Where a point is taken on appeal, the Appellate Court should consider and decide it, although the vakil may omit to argue it. DADA VALAD VALLI *v.* BAVASHA VALAD KASAM **[6 Bom., A. C., 9**

11. **——— Duty of Judge to hear comments on evidence.**—It is the duty of the Judge of an Appellate Court to allow the parties or their pleaders to submit the evidence to him at the hearing

APPELLATE COURT -*continued.*

1. GENERAL DUTY OF APPELLATE COURTS —*continued.*

Duty of Judge to hear comments on evidence—*continued.*

in open Court, and to make upon the evidence so submitted every comment, and found upon it every argument they may think necessary. LALLA JUGGESHUR SAHOY *v.* GOPAL LALL . **15 W. R., 54**

2. EXERCISE OF POWERS IN VARIOUS CASES.

(*a*) GENERAL CASES.

12. ——— **Discretion, Exercise of.**—*Discretion capriciously exercised.—Error of law.*—The discretion vested in a Court of Justice must be exercised in a sound and reasonable manner, and a capricious and unreasonable exercise of discretion on the part of a Court of first instance is an error in law which it is the duty of an Appellate Court to correct. PENDSE *v.* MALSE . . . **3 Bom., A. C., 94**

13. ——— *Appellate Court's power to interfere with exercise of discretion.*—When an appeal against an order based on facts is given from a subordinate to a superior Court, the discretion vested in the former is absorbed in the latter, and it is the duty of the superior Court to weigh the facts which form the basis upon which the subordinate Court proceeds and arrive at its own independent conclusion: and this is so notwithstanding that the subordinate Court exercised its discretion after a proper enquiry and due consideration of the facts put before it, and not capriciously or with prejudice. KIRANI AHMEDULA *v.* SUBABHAT **[I. L. R., 8 Bom., 28**

14. ——— *Costs.—Miscarriage or mistake.*—An Appellate Court will not interfere with the discretion of a lower Court as to costs, unless satisfied that there has been some miscarriage or mistake. LUCHMUN RAM UNOOJ *v.* WATSON . . . . . **W. R., 1864, 146**

DESAJI LAKHMAJI *v.* BHAVANIDAS NOROTAMDAS . . **8 Bom., A. C., 100**

KESHAVRAV KRISHNA JOSHI *v.* BHAVANJI BIN BABAJI . **8 Bom., A. C., 142**

KAPPUSVAMIAYYAN *v.* NANNUVAYYUN **[1 Mad., 74**

15. ——— *Costs. — Action on contract.—Verdict for less than R1,000.—Certificate under Act XXVI of 1864, s. 9.*—Where, in an action in the High Court founded on contract, a verdict was found for the plaintiff for a sum less than R1,000, and the Judge who tried the case awarded costs without certifying under section 9, Act XXVI of 1864, that the action was fit to be brought in the High Court,—*Held,* that the Court might supply the omission on appeal. NOBOCOOMAR DOSS *v.* KEWATA MUG . . . . . **10 B. L. R., 358**

S. C. KEWATA MUG *v.* NOBOCOOMAR DOSS **[19 W. R., 207**

APPELLATE COURT—*continued.*

2. EXERCISE OF POWERS IN VARIOUS CASES—*continued.*

(*a*) GENERAL CASES—*continued.*

Discretion, Exercise of—*continued.*

16. ——— *Discretion of Judge.—Refusal to admit appeal.—Limitation.* Where the law leaves a matter within the discretion of a Court, and the Court, after proper enquiry and due consideration, has exercised the discretion in a sound and reasonable manner, the High Court will not interfere with the conclusion arrived at, even though it would itself have arrived at a different conclusion. Consequently, where a District Judge, after due enquiry, refused to admit an appeal presented after the time prescribed by the Statuate of Limitations, the High Court would not interfere with his order. RANCHODJI *v.* LÁLLU **[I. L. R., 6 Bom., 304**

17. ——— **Question of limitation.** *Appeal.—B.* sued *M.* and *T.* for money due on a bond, and on the 27th April 1877 obtained a decree against *T.*; the suit against *M.* being dismissed. *T.* applied for a review of judgment, and *B.* also made a similar application. On the 25th May 1877 *T.'s* application was granted, and on the 16th July 1877, *B.'s* was rejected. On the 29th June, 1878, the Court re-heard the suit against *T.* and dismissed it. *B.* appealed, making *T.* and *M.* respondents, and impugning in his memorandum of appeal the decree of the 27th April 1877, as well as that of the 29th June 1878. The Appellate Court, assuming that the appeal was one from the decree of the 27th April 1877, preferred beyond time, admitted it after time, and after hearing the case on its merits gave a decree against *M.* and dismissed the suit as regards *T.* *Held,* that the Appellate Court erred in assuming that the appeal was from the decree of the 27th April 1877, and that it was at liberty to admit it beyond time, the appeal being from the decree of the 29th June 1878, that decree being the one which had brought *B.* before that Court as an appellant; and that the Appellate Court was not competent, on an appeal from the decree of the 29th June 1878, to reconsider the merits of the case against *M.*, the appeal from the decree of the 27th April 1877 being barred by limitation, and that decree and the decree of the 29th June 1878 being separate and distinct, and not appealable in one memorandum of appeal from the latter decree. MOTI BIBI *v.* BIKANU . . **I. L. R., 2 All., 772**

18. ——— An Appellate Court can *ipso motu* raise the question of limitation for the first time, where it appears on the face of the plaint that the suit is barred. MOZAFFUR ALLY *v.* GIRISH CHANDRA DAS **[1 B. L. R., A. C., 25: 10 W. R., 71**

(*b*) SPECIAL CASES.

19. ——— **Analogous cases.**—*Joinder of causes.—Cases in which evidence is similar.*—A number of cases having been instituted against the same defendant, and relating to the same matter, the plaintiff in one of them applied to both the lower Courts to have them all tried together, pointing out particularly that the documentary evidence in one of

APPELLATE COURT—*continued*

2. EXERCISE OF POWERS IN VARIOUS CASES—*continued.*

(*b*) SPECIAL CASES—*continued.*

Analogous cases—*continued.*

the other cases was necessary, and should be made use of in the trial of his case. This application was refused by the first Court, and the lower Appellate Court decided the case of the applicant upon evidence recorded with it, and disposed of the others as governed by that judgment. *Held*, that all the cases should have been tried together; but as the Judge failed to comply with the application to do so, he should have tried each case separately on its merits. NEHAL SINGH *v.* ALI AHMED . . **15 W. R., 110**

20. ——————— *Cases in which evidence is similar.*—A Judge should not, without the consent of the parties, allow his judgment in one case to govern his decision in another, even if the subject of dispute is of a similar nature and the evidence similar in character, when the parties are not the same and the subject-matter of the suit is different. SOORENDRONAUTH ROY *v.* PURMANUND GHOSE . . . . . **15 W. R., 342**

21. ——— **Appeal.** — *Civil Procedure Code, 1877-1882, s. 582 (Act XXIII of 1861, s. 37).*—"*Powers.*"—"*Jurisdiction.*"—Section 37 of Act XXIII of 1861 did not apply to cases where the subject which was being dealt with by the Court was not the actual appeal itself, and could not, therefore, be rightly treated as standing in an analogous position to that of the original suit itself; and further, that the same section had not the effect of making section 7 of the same Act applicable to cases where the Appellate Court had passed an order under sections 5 and 6 dismissing the appeal. *Semble*,—The word "powers" in section 37 of Act XXIII of 1861 was not synonymous with, and did not comprehend, "jurisdiction." KALIKRISHNA CHANDRA *v.* HARIHAR CHUCKERBUTTY

[1 B. L. R., A. C., 155 : 10 W. R., 160

22. ——————— *Power to separate suits misjoined.*—An Appellate Court has jurisdiction under section 37, Act XXIII of 1861, to separate misjoined suits, and to try them separately. SHOROOP CHUNDER PAUL *v.* MOTHOOR MOHUN PAUL CHOWDHRY . . . . . **4 W. R., 109**

23. ——————— *Withdrawal of suit on appeal.*—An Appellate Court has under this section power to allow a suit to be withdrawn. GREGORY *v.* DOOLEY CHAND

[14 W. R., O. C., 17

42. ——— **Arbitration, Reference to.**—*Act VIII of 1859, ss. 312 and 313.—Act XXIII of 1861, s. 37.*—An Appellate Court has no power, even by consent of parties, to refer a case to arbitration under the arbitration sections of Act VIII of 1859, which apply only to Courts of original jurisdiction; nor is such power conferred on an Appellate Court by section 37, Act XXIII of 1861. JUGGESSUR DEY *v.* KRITARTHOMOYEE DOSSEE

[12 B. L. R., F. B., 266
S. C. 21 W. R., 210

APPELLATE COURT—*continued.*

2. EXERCISE OF POWERS IN VARIOUS CASES—*continued.*

(*b*) SPECIAL CASES—*continued.*

Arbitration, Reference to—*continued.*

Contra, RUSSOOL BIBEE *v.* JAN ALI CHOWDHRY

[12 B. L. R., 267, note
17 W. R., 31

CHIRANJI LAL *v.* JAMNA DAS . **7 N. W., 243**

Quære,—Whether it can. HACHUN BANOO *v.* ABDUL HAKIM . . . . **19 W. R., 321**

25. ——————— *Civil Procedure Code, 1877, s. 582.*—Under section 582 of the Civil Procedure Code, a Court of Appeal has the power, with the consent of the parties, of referring to arbitration matters in dispute in an appeal. *Juggessur Dey* v. *Kritarthomoyee Dossee* dissented from. IN THE MATTER OF SANGARALINGAM PILLAI

[I. L. R., 3 Mad., 78

26 ——————— *Semble*,— An Appellate Court has the power to refer a case to arbitration at the instance of the parties under section 582 of the Code of Civil Proceedure, 1882. *In re Sangaralingam Pillai, I. L. R., 3 Mad., 78*, cited; *Juggessur Dey* v. *Kritarthomoyee Dossee, 12 B. L. R., 266*, cited and distinguished. BHUGWAN DASS MARWARI *v.* NUND LALL SEIN

[I. L. R., 12 Calc., 173

27. ——— **Attachment, Order of.**—*Setting aside order of attachment made by another Court.*—No Court other than a Court of Appeal or a High Court acting under section 622 of the Civil Procedure Code can discharge an order of attachment issued by another Court. KOLASHERRI ILLATH NARAINAN *v.* KOLASHERRI ILLATH NILAKANDAN NAMBUDRI . . . **I. L. R., 4 Mad., 131**

28.——— **Award of Ameen.**—*Power of Appellate Court as to Ameen's award of wasilat where it has been confirmed by lower Court.*—After obtaining a judgment for possession, the judgment-creditor sued for wasilat. After decree an enquiry was made into the amount of wasilat, and on the report of an Ameen, the decree-holder being present and the opposite party not appearing, the Court made an order for the payment of the sum therein mentioned. Subsequently the judgment-debtor appeared and petitioned that the award might be corrected by deductions to which he was entitled. On his application being refused, he appealed to the Judge, who remanded the case with a view to its being ascertained whether any and what amount should be deducted. *Held*, that the Judge should not have interfered with the award of wasilat, which was a final award so far as the Appellate Court was concerned. PUNCHANUN BOSE *v.* OOMANATH ROY CHOWDRY

[14 W. R., 160

29. ——— **Caste, Question of, evidence on.**—On questions of caste a lower Appellate Court has a right to come to a finding based on history or the custom of the country. ROGHOONATH DASS MOHAPATTUR *v.* BYDONATH DASS MAHABATHA

[14 W. R., 364

APPELLATE COURT—*continued.*

2. EXERCISE OF POWERS IN VARIOUS CASES—*continued.*

(*b*) SPECIAL CASES—*continued.*

30. ——— **Local investigation, Interference with result of.**—An Appellate Court should not interfere with the result of a local investigation or enquiry except upon very clearly defined and sufficient grounds. SARAT SUNDARI DEBI *v.* PROSONNO COOMAR TAGORE . **6 B. L. R., 677 [15 W. R., P. C., 20**

MONKEE DUMBER SAHEE *v.* MONKEE BHULLUNDER SAHEE . **15 W. R., 423**

31. ——— **Local investigation, Decree after.**—*Ground for reversal by Appeal Court.*—An Appellate Court ought not to reverse the decision of a first Court based upon very careful inspection of the land in dispute, except upon a very clear and strong opinion upon the evidence, and upon recording sufficient and satisfactory reasons for such opinion. BRINDABUN BHAROTEE *v.* DHUNUNJOY NARAIN BHUNJO DEO . . . . . **18 W. R., 452**

32. ——— **Parties, Addition of, on appeal.**—An Appellate Court has a discretionary power to substitute or add a new appellant or respondent after the period of limitation prescribed for an appeal. COURT OF WARDS *v.* GAYA PRASAD **[I. L. R., 2 All., 108**

See RANJIT SINGH *v.* SHEO PRASAD RAM. **[I. L. R., 2 All., 487**

33. ——— **Plaint, Amendment of.**—*Semble.*—A plaint cannot be amended in an Appellate Court. ABDUL GAFOOR *v.* NUR BANU **[1 B. L. R., A. C., 78 : 10 W. R., 111**

34. ——— *Objection for defect in plaint.*—An Appellate Court is competent at any stage to allow objections to be taken to an apparent defect in the plaint. COLVIN COWIE *v.* ELIAS **[2 B. L. R., A. C., 212 : 11 W. R., 40**

35. ——— *Striking names out of plaint and amending issues.—Merits of case, Error not affecting.—Act VIII of 1859, s. 350.*—Four plaintiffs sued as partners, but it was found during the trial that they were not all partners at the time the cause of action accrued; and the Judge thereupon amended the issue which had been raised on that point, and raised the question whether the plaintiffs were or were not partners; and it being decided in the negative, the Judge ordered two of the plaintiffs' names to be struck out of the plaint, and he gave a decree in favour of the other plaintiffs. *Held,* that the Judge acted rightly in amending the issue, but that he should have done so without striking the names of the plaintiffs out of the plaint. Such an error is "an error in an interlocutory order not affecting the merits of the case;" and therefore, under section 350, Act VIII of 1859, not a ground for reversing the decree on appeal. EAST INDIAN RAILWAY COMPANY *v.* JORDAN **[4 B. L. R., O. C., 97 : 14 W. R., O. C., 11**

36. ——— *Remand.—Civil Procedure Code, 1877, s. 562.*—An Appellate Court is

APPELLATE COURT—*continued.*

2. EXERCISE OF POWERS IN VARIOUS CASES—*continued.*

(*b*) SPECIAL CASES—*continued.*

Plaint, Amendment of—*continued.*

not empowered by Act X of 1877 to order or allow a plaint to be amended, or to remand a case under section 562 of that Act for the purpose of such amendment. FARZAND ALI *v.* YUSUF ALI **[I. L. R., 2 All., 669**

37. ——— *Waiver of defect in plaint in Court below.—Ground for dismissal.*—In a case in which, although the plaint mentioned no overt act justifying the plaintiff's request for a declaration of title, and still it appeared on the admitted facts of the case that there was a cause of action, and the Court of first instance adjudicated on the merits and passed a decree in favour of plaintiffs,—*Held,* that it was too late for the lower Appellate Court to dismiss the claim on the ground of the above defect in the plaint. SHOME DUTT CHOWDHRY *v.* SURB NARAIN CHOWDHRY . . . **24 W., R., 242**

38. ——— *Amendment of record on appeal.*—A second plaintiff was added in the Court below, but no amendment was made in the record, and the suit was dismissed with costs. An appeal being brought, the original plaintiff failed to pay the costs, was made insolvent, and the Official Assignee declined to proceed with the appeal. It was objected that the appeal ought to be dismissed, there being no appellant on the record; but the Court allowed the appeal to proceed, and the amendment ordered by the Court below to be effected. KEDARNATH DOSS *v.* PROTAB CHUNDER DOSS **[I. L. R., 6 Calc., 626 : 8 C. L. R., 238**

39. ——— *Dismissal or withdrawal of case.*—Where the Court of Appeal sets aside the whole of the previous proceedings in a suit, it cannot direct a new and amended plaint to be filed, but must give the plaintiff the alternative of having his suit dismissed or of withdrawing it with leave to bring a new action. LEDGARD *v.* BULL **[L. R., 13 I. A., 134 S. C. I. L. R., 9 All., 191**

3. EVIDENCE AND ADDITIONAL EVIDENCE ON APPEAL.

40. ——— **Evidence Act, 1855, s. 57.**—*Re-hearing of ex parte case on fresh evidence.*—Where a Court of first instance sets aside its own *ex parte* judgment, and after a new trial, in which it takes fresh evidence, as well as admits that originally recorded, again gives plaintiffs a decree, it is the duty of the lower Appellate Court to enquire, under section 57 of Act II of 1857, whether, independently of the evidence originally recorded, there was sufficient to justify the decree. ROSUL SINGH *v.* KISHOREE LALL . . . . **8 W. R., 499**

41. ——— **Evidence sufficient for judgment.**—*Civil Procedure Code, 1859, s. 353.*—When parties have had an opportunity of putting in such evidence as they consider sufficient to entitle them to a

APPELLATE COURT—*continued.*

3. EVIDENCE AND ADDITIONAL EVIDENCE ON APPEAL—*continued.*

Evidence sufficient for judgment—*continued.*

judgment upon the material issues of the case, the evidence ought to be held sufficient under section 353, Civil Procedure Code, to enable the Appellate Court to pronounce a satisfactory judgment. ZAHRAH *v.* BRUGWAN DASS . . . **16 W. R., 211**

42. ——— **Consideration of evidence in ex parte case.**—Where a party fails to file a memorandum of objections under section 354, Act VIII of 1859, the Appellate Court is not at liberty to decide the case *ex parte* without considering the evidence. WOOMESH CHUNDER ROY *v.* JONARDUN HAJRA . . . . . **15 W. R., 235**

43. ——— **Appeal against part of decree.**—*Duty of Judge.*—Where a plaintiff, dissatisfied with so much of the decision of the first Court as is adverse to him, appeals, making the party in whose favour the decree is made the sole respondent, the Judge of the Appellate Court has only to determine whether, as between the appellant and respondent, the order of the first Court is correct. KISHORE SINGH *v.* POOKHUN SINGH **[10 W. R., 432**

44. ——— **Adjudication on evidence.**—*Suit for contribution where shares were not specified.*—In a suit for contribution on account of Government revenue, which was decreed by the first Court but dismissed by the lower Appellate Court, because the plaint did not specify the shares of the different shareholders,—*Held*, that the lower Appellate Court was bound to adjudicate upon the evidence. BHONO BIBEE *v.* PALLAN GAZEE . **11 W. R., 131**

45. ——— **Evidence improperly admitted in lower Court.**—The lower Appellate Court was not competent to reject the documentary evidence which had been admitted by the Court of first instance merely because it had been admitted after the first hearing of the case, or after the date on which it had been ordered to be produced. HONOOMAN SINGH *v.* FELL . . **3 Agra, 148**

46. ——— **Decision in lower Court on merits.**—*N.-W. P. Rent Act, 1881, s. 207.*—In a suit instituted in the Court of an Assistant Collector under clause (*h*), section 93 of the N.-W. P. Rent Act, an objection was taken that the plaintiffs not being recorded shareholders, the suit was not maintainable in the Revenue Court. The objection was allowed, but the Court at the same time disposed of the case on the merits and dismissed the suit. On appeal, the lower Appellate Court affirmed the decree, on the ground that the Revenue Court had no jurisdiction in the matter. *Held*, that as there were materials on the record for the determination of the suit, the Judge should, with reference to section 207 of the Rent Act, have disposed of the appeal on the merits. *Debi Saran Lal* v. *Debi Saran Upadhya, I. L. R., 6 All., 278*, referred to. SHEO PRASAD *v.* ANRUDH SINGH . . **I. L. R., 6 All., 440**

APPELLATE COURT—*continued.*

3. EVIDENCE AND ADDITIONAL EVIDENCE ON APPEAL—*continued.*

47. ——— **Additional evidence on appeal.**—*Evidence excluded by lower Court because it had sufficient evidence.*—A Court of first instance ought not, because it is satisfied upon the evidence which one of the parties has given, to prevent him from putting upon the proceedings all the evidence that he wishes to give, so that he may have his case brought fairly before the Appellate Court. Where a party has thus been prevented in the first Court, and the evidence on the record is not deemed sufficient by the Appellate Court, the latter Court does wrong if it refuses to receive the evidence which has been excluded in the way indicated. BRIJ SOONDAR ROY v. KAIMOONNISSA . . . **23 W. R., 63**

48. ——— *Civil Procedure Code, 1859, s. 355, Court taking evidence under.*—A lower Court, in taking evidence ordered under section 355, Act VIII of 1859, acts in a ministerial capacity. RAM JOY SURMAH *v.* PRANKISHEN SINGH; BURODA DEBIA *v.* PRANKISHEN SINGH; PRONNODA DEBIA *v.* PRANKISHEN SINGH . **2 W. R., 80**

49. ——— *Time for making application.*—An application to give additional evidence should be made when the case first comes before the Appellate Court. It is too late to make such an application when the case has been remanded and has come back for final disposal *per* ARNOULD, *C. J.* ARDESHIR DHANJIBHAI v. COLLECTOR OF SURAT **[3 Bom., A. C., 116 at p. 123**

50. ——— *Power of Appellate Court.—Discretion of Court.*—It is within the discretion of a lower Appellate Court to allow the parties an opportunity to adduce fresh evidence, if it is satisfied that the interests of justice require that course. DAMOODUR DASS *v.* RITOO SINGH **[24 W. R., 325**

51. ——— *Evidence insufficient.*—Where the evidence upon the record is not sufficient to enable the Appellate Court to pronounce a judgment upon regular appeal, it may require the Court against whose decree the appeal is made to take additional evidence, defining the points to which such evidence is to be confined, in order to enable the Appellate Court finally to determine the case. NARASIMHARAV KRISHNARAV *v.* ANTAJI VIRUPAKSH . . . **2 Bom., 64, 2nd Ed., 61**

52. ——— *Civil Procedure Code, s. 355.—Evidence taken in lower Court insufficient.*—Where a Munsif, without framing issues or examining the plaintiff, passed a decree in his favour upon an admission made by the defendant, and upon inspection of a document that was upon the record of a former suit; but the Judge, on appeal, reversed the decree of the Munsif on account of the insufficiency of evidence, the document, in his opinion, not being admissible,—It was held that the Judge ought not to have reversed the Munsif's decree without first exercising his power of taking fresh evidence, under section 355 of the Code of Civil Procedure. APPA VALAD KASHINATH *v.* VITHOBA VALAD TUKARAM **[6 Bom., A. C., 88**

APPELLATE COURT—*continued.*

3. EVIDENCE AND ADDITIONAL EVIDENCE ON APPEAL—*continued.*

Additional evidence on appeal—*continued.*

53. ——————— *Civil Procedure Code, 1859, ss. 356, 357.*—Where defendant appealed in a suit to recover arrears of rent in which the genuineness of the kabuliat was in issue, and the defendant asked the Deputy Collector to summon certain witnesses to prove that he had been paying at a particular rate, the Judge ought, under section 356, Act VIII of 1859, to have directed the Deputy Collector to send up either the witnesses or their evidence, and, under section 357, to have directed the evidence to be confined to the rate and time of payment, and the rent to which the payment had been appropriated. MOHUN MUNDUR *v.* BRIJ BHOOKUN SINGH [9 W. R., 127

54. ——————— *Omission to call evidence in lower Court.*—A suit to recover money having been commenced against *P.* and others, an attachment was applied for, and certain goods, supposed to be the defendants', were attached by order of the Court. Two other persons coming forward and claiming the attached goods as their property, plaintiffs concluded them to be partners with the original defendants, and made them also defendants. The lower Court at the trial held that the proof of partnership failed. *Held*, on appeal, that the plaintiffs' case could not at this stage be supplemented by examining parties whom the plaintiffs did not think fit to call, or by books which they did not produce, in the Court below. VELAET ALI KHAN *v.* MATADEEN [10 W. R., 402

55. ——————— *Reversing decision without fresh evidence.*—Defendant having purchased a decree caused the judgment-debtor's (*P.'s*) rights and interest in certain property to be sold in execution, and bought them himself. Plaintiff, who had purchased one *B.'s* rights and interests in a 4-annas share of the property, intervened; but his intervention having been rejected in the summary department, he sued to set aside the summary order, and to establish his vendor's right in the property. The vendor having admitted the sale to the plaintiff, the first Court thought it unnecessary to examine the witnesses to, and the writer of, the deed of sale, and, finding the plaintiff in possession, decreed the suit. This decision was reversed on appeal. *Held*, that the lower Appellate Court did wrong in presuming collusion between *B.* and his vendee (the plaintiff), and ought not to have rejected the deed without examining the writer and witnesses; and that it should have decided whether plaintiff was in possession at any time under the deed of sale. RAM LALL JHA *v.* ISSUR CHUNDER DEY . . 10 W. R., 451

56. ——————— *Admission of fresh documentary evidence.*—The Appellate Court should not send for and admit fresh documentary evidence which has not been put in by either party in the lower Court. DWARKANATH SHAHA *v.* RAM LOCHUN BISWAS . . . . 10 W. R., 92

APPELLATE COURT—*continued.*

3. EVIDENCE AND ADDITIONAL EVIDENCE ON APPEAL—*continued.*

Additional evidence on appeal—*continued.*

57. ——————— *Civil Procedure Code, 1859, s. 355.—Additional evidence after review.*—Where a lower Appellate Court admitted a review with the object of taking into consideration a material issue which it had omitted to consider at the trial,—*Held*, that having admitted the review on grounds independent of fresh evidence, it was competent for the Court, under section 355, Act VIII of 1859, to admit fresh evidence, if required, to enable it to pronounce a satisfactory judgment, or for any substantial cause. BEHAREE LALL NUNDEE *v.* TROYLUCKHO MOYEE BURMONEE 12 W. R., 223

58. ——————— *Civil Procedure Code, 1859, s. 355.*—The true interpretation of section 355, Act VIII of 1859, is that, when a Court sees that by some inadvertence or mistake a party has not produced some evidence which he was capable of adducing, and that he is likely to be prejudiced by that omission or mistake, which was simply unintentional, undesigned, and accidental, the Court will allow such further evidence to be taken. GOWHUR ALI KHAN *v.* SAKHEENA KHANUM . 15 W. R., 507

59. ——————— *Civil Procedure Code, 1859, s. 355.—Appeal from ex parte decree.*—The Court declined, on appeal from an order rejecting an application under section 119, Act VIII of 1859, to set aside an *ex parte* decree, to receive an affidavit which had not been previously tendered, and held that section 355 was not meant to have application to such a case as this, but to empower the Court of Appeal at its discretion, to receive evidence upon issues of facts which had been tried in the Court of first instance. LESLIE *v.* ALLENDER [17 W. R., 390

60. ——————— *Civil Procedure Code, 1859, s. 355.—Error in law.*—In a suit for ejectment on the ground that defendant was holding over after the expiration of his lease, the defendant's vakil deposed on oath in the first Court that the defendant had no documents whatever, and that those he once had were burnt. When the case came before the Subordinate Judge on appeal, he permitted the defendant to file a new piece of evidence, *viz.*, a pottah which was alleged to have escaped the general destruction. *Held*, that the admission of the pottah on the mere *ipse dixit* of the defendant was a substantial error in law, even though plaintiff neither admitted nor denied the document; that the Subordinate Judge had no right to admit the pottah under the circumstances; and that if he had, he was wrong in deciding the case upon it without taking evidence as to its genuineness. SERAJOOL HUQ *v.* KERAMATOOLLAH . . . . [19 W. R., 88

61. ——————— *Civil Procedure Code, 1859, s. 355.—Evidence excluded by first Court.*—When the first Court was satisfied with the evidence produced, and therefore did not allow the plaintiff to produce all his evidence, and the Appellate Court does not think the evidence sufficient, it

APPELLATE COURT—*continued.*

3. EVIDENCE AND ADDITIONAL EVIDENCE ON APPEAL—*continued.*

Additional evidence on appeal—*continued.*

ought to allow the plaintiff on appeal to call the evidence excluded by the first Court. BRIJO SOONDAR ROY v. KAMROONNISSA [23 W. R., 63

62. ——————— *Improper reception of evidence.—Remand.*—When a lower Court disposes of a case upon the merits as proved by evidence not legally admissible against the defendants, and the Appellate Court considers it proper to allow the plaintiff to adduce further evidence, it may either take such further evidence itself or send the case back to the lower Court to take such evidence. RAMJOY SURMAH MOJOOMDAR v. PURAN KISHEN SINGH [W. R., F. B., 124

63. ——————— *Discovery of fresh evidence—Application for review.*—The High Court decided a case irrespective of certain documents brought forward by a party at the hearing of the appeal, and afterwards rejected an application for a review of that judgment. In an application to the Privy Council for special leave to bring in those documents,—*Held*, that further evidence ought not to be admitted under section 355, Act VIII of 1859; that there was great danger in the Court of ultimate appeal lightly introducing evidence which had not been under the consideration of the Courts below, and which the parties had had no means of testing. GOBIND SUNDARI DEBIA v. JAGADAMBA DEBIA . . . [3 B. L. R., P. C., 25

64. ——————— *Reasons, Record of.—Power to take fresh evidence.—Discretion of Court.*—The power given to the High Court by the Code of Civil Procedure, of taking, of its own motion, original evidence anew, should be exercised very sparingly; and when exercised, it is desirable that the reasons for exercising it should always be recorded or minuted by the Court in the proceedings. SREEMANCHUNDER DEY v. GOPAL CHUNDER CHUCKERBUTTY.

[7 W. R., P. C., 10: 11 Moore's I. A., 29

GUNGA GOBIND MUNDUL v. COLLECTOR OF 24-PERGUNNAHS . . 7 W. R., P. C., 21 [S. C. 11 Moore's I. A., 345

JUGGOBUNDHOO DEB v. GOLUCK CHUNDER HALDAR . . . 10 W. R., 228

JOOG MAYA DEBIA v. RAM CHUNDER CHATTERJEE . . . . 10 W. R., 378

65. ——————— *Reasons for taking fresh evidence.—Held*, that the lower Appellate Court should state most fully and clearly its reasons for calling for fresh evidence; but that in point of law it was sufficient if that Court considered the matter and stated that such reasons existed without mentioning what they were. SHIB CHUNDER MAHTOON v. KASHEENATH KURMOKAR . 12 W. R., 245

66. ——————— *Sufficiency of reasons for taking fresh evidence.*—Where an Appellate Court received additional evidence, recording only that the papers were material and important, there was held to be no sufficient compliance with the

APPELLATE COURT—*continued.*

3. EVIDENCE AND ADDITIONAL EVIDENCE ON APPEAL—*continued.*

Additional evidence on appeal—*continued.*

proviso of section 355, Civil Procedure Code, which requires the reason for admitting additional evidence to be stated. JUGGUT INDUR BUNWAREE v. BHUBO TARINEE DASSEE . . . 14 W. R., 19

67. ——————— *Reasons for taking fresh evidence.*—Additional evidence cannot be admitted in appeal without some substantial reason being recorded in the proceedings. SNADDEN v. TODD, FINLAY AND CO. . . . . 7 W. R., 313

68. ——————— *Reasons for taking fresh evidence.*—The provision in the Code of Civil Procedure which requires Judges who admit fresh evidence on an appeal to record their reasons, though not a condition precedent to the reception of the evidence, is yet one that ought at all times to be strictly complied with. GUNGA GOBIND MUNDUL v. THE COLLECTOR OF THE 24-PERGUNNAHS

[7 W. R., P. C., 21: 11 Moore's I. A., 345

SREEMAN CHUNDER DEY v. GOPAL CHUNDER CHUCKERBUTTY . 7 W. R., P. C., 10: 11 Moore's I. A., 28

HURPERSHAD v. SHEO DYAL [L. R., 3 I. A., 259: 26 W. R., 55

LOWA JHA v. BISSESHUR SINGH . 11 W. R., 6

CHARDON v. AJEET SINGH . 12 W. R., 52

BANEE PERSHAD v. LALLA JOGGESSUR DASS [11 W. R., 47

69 ——————— Where the evidence of a defendant has been taken by the Court of first instance so imperfectly that the lower Appellate Court cannot pass a satisfactory judgment between the parties, it is competent to the Judge of that Court, under the provisions of section 355, Civil Procedure Code, to have the defendant fully examined before himself, but not to remand the case for re-hearing and re-trial. If he examines the defendant, he is bound to record his reasons for so doing, in order that the High Court may be enabled on appeal to decide whether or not the new evidence has been rightly admitted. MOHESH CHUNDER DASS v. MADHUB CHUNDER SIRDAR . . 13 W. R., 85

70. ——————— *Civil Procedure Code, 1859, s. 355.—Reasons for sending for document on appeal.*— Where a Judge sends for a map or other document, he is bound to record his reasons for doing so, according to the provisions of the Civil Procedure Code, and the evidence so obtained must be taken and received by him in the presence of the parties in open Court and afterwards kept on the record. It is not competent to him under section 355 merely of his own discretion to send for a document for personal inspection irrespective of the parties to the suit. GUNPUT ROY v. RAM DEOUR ROY [21 W. R., 416

71. ——————— *Civil Procedure Code, 1859, s. 355.—Suit for arrears of rent.*— Where, in a suit for arrears of rent, tenancy was acknowledged, but the rate of rent questioned by tenant and the Subordinate Judge, not feeling satis-

APPELLATE COURT—*continued.*

3. EVIDENCE AND ADDITIONAL EVIDENCE ON APPEAL—*continued.*

Additional evidence on appeal—*continued.*

ied with the documents purporting to show the ents during three years, called for the documents elating to payment of rent during three earlier ears,—*Held*, that the Subordinate Judge was justied in requiring this further evidence, because, though uch evidence should rarely be called, it was within he discretion of an Appellate Court to do so, giving ts reasons for the course which it pursued. SHOOKRAH SHAIKH *v.* NUND COOMAR BANERJEE [25 W. R., 246

72. ——— *Civil Procedure Code, 1882, s. 568.*—Where the lower Appellate Court llows additional evidence to be taken, though it is ot satisfied that the evidence is necessary under clause (*a*) or clause (*b*) of section 568 of the Code of Civil Procedure, the High Court will interfere; but where this does not appear to be the case, and there is simply an omission on the part of the Appellate Court to record its reasons for allowing additional evidence to be taken, the High Court will not interfere. HAFIZ ABDUL KUREIM *v.* SRI KISSEN RAI [I. L. R., 11 Calc., 139

73. ——— *Civil Procedure Code, 1882, s. 568.*—The provision in section 568 of Act XIV of 1882 as to an Appellate Court recording its reasons for admitting additional evidence, is directory merely and not imperative. GOPAL SINGH *v.* JHAKRI RAI . . . I. L. R., 12 Calc., 37

74. ——— *Civil Procedure Code, 1859, s. 355.—Reasons for taking fresh evidence.*—Where the first Court refused the plaintiff's application to summon five of his witnesses, notwithstanding that it postponed the case for ten days although fifteen other of the witnesses were present, the High Court held that the first Court's omission to summon the witnesses was, under the circumstances, a sufficient reason within Act VIII of 1859, section 355, for the lower Appellate Court to send for them and take their evidence. ABELAKH ROY *v.* GUGGUN BHUGGUT . . . 22 W. R., 269

75. ——— *Record of reasons.*—In a suit for possession of certain lands under a howla tenure, khas possession of which for some generations was alleged, no special documentary title was set up in the plaint; but one of the plaintiffs in his deposition referred the title to a particular pottah, which he said had existed, and had been lost in the time of his grandfather. Two of the defendants were the zemindars of the talook in which the howla tenure was said to exist, and had transferred their proprietary right to the other two defendants. The zemindars did not defend the suit, and were not examined in the Court of first instance. The lower Appellate Court "considered it necessary, for the proper decision of the case," to examine the zemindars, and, relying mainly on their evidence, reversed the decision of the Munsif, and gave a decree in favour of the plaintiff. *Held*, on appeal, that the lower Appellate Court had sufficiently recorded its reasons within the meaning of section 355 of Act VIII of 1859 for requiring the additional evidence; that it was right in so doing; and that although no special title had been set up in the plaint, the decree which was given on the evidence in favour of the plaintiffs could not be reversed in special appeal. RADHANATH DHUBI *v.* RAMGOBIND PAL . 3 B. L. R., A. C., 218

S. C. RADHANATH DHOOPEE *v.* LUCKHEE KANT PAL . . . 12 W. R., 224, note

76. ——— *Reasons for taking fresh evidence.*—Where the plaintiff himself is present, the lower Appellate Court may in its discretion examine him if it considers his evidence material. The requirements of the law are sufficiently fulfilled if the Court records that it considers his examination necessary. HAFIZA *v.* AZHUR HOSSEIN [13 W. R., 328

77. ——— **Improper admission of evidence.**—*Evidence Act (II of 1855), s. 57.*—An Appellate Court should not receive evidence, though alleged to be material and important, which has not been produced in the lower Court, without substantial reason for its non-production. The High Court refused to reverse a decision on the ground of the improper admission of evidence. JAGADINDRA BANWARI GOBIND *v.* BHOBOTARINI DASI [5 B. L. R., Ap. 54

78. ——— *Omission to give reasons for admitting it.*—Where evidence has been taken by an Appellate Court in the presence of parties or their agents, it should not be rejected on appeal merely because the Court omitted to record its reason for admitting it. BHUGWAN CHUNDER GHOSE *v.* RAJCOOMAR GOHO [13 W. R., 303

79. ——— **Rejection of document in first Court on the ground of want of registration.**—*Subsequent registration and presentation to Appellate Court.*—The plaintiff, as purchaser at a Court's sale, sued in 1871 for possession of certain immoveable property, and tendered in evidence a sale certificate, dated 20th September 1865. The first Court decided against the plaintiff on the ground, among others, that the certificate was not registered, though registration of it was compulsory. On the 9th February 1875 the plaintiff filed an appeal in the High Court against that decree, and on the 26th July 1875 applied to that Court for permission to give in evidence a new certificate of sale, issued on the 1st February 1875, regarding the same property as that to which the certificate of the 20th September 1865 related. *Held* by the High Court that, as the new certificate was issued after the first Court had made its decree, the High Court ought not to receive it or to suggest or facilitate any application to the lower Court for a review of its decree on documentary evidence which had no existence when that Court made such decree. LALBHAI LAKHMIDAS *v.* KAMALUDIN HUSEN KHAN . . . . 12 Bom., 247

APPELLATE COURT—*continued.*

4. REJECTION OR ADMISSION OF EVIDENCE ADMITTED OR REJECTED BY COURT BELOW.

(*a*) UNSTAMPED DOCUMENTS.

80. ——— **Unstamped documents.**—*Admission of unstamped document in evidence.—Act X of 1862, ss. 15 and 17.—Objection made on appeal.—Act VIII of 1859, s. 350.*—When the Court of first instance admitted, without objection, unstamped receipts in evidence, but the Judge on appeal rejected the documents, and reversed the decision of the lower Court,—*Held*, that the documents once received without objection were wrongly rejected, and the decision below wrongly reversed on appeal, as the irregularity was not one affecting the merits of the case under section 350, Act VIII of 1859; and that the Court had no power to receive the documents on payment of the stamp duty and penalty under section 17, Act X of 1862. LALJI SINGH *v.* AKRAM SEN . **3 B. L. R., A. C., 235 : 12 W. R., 47**

CURNESS *v.* SHEOCHURN SAHOO **[W. R., 1864, 184**

81. ——— *Document admitted in Court below.*—An Appellate Court has no right to refuse to admit on technical grounds a document which has been received and read in the Court below without objection. AKBUR ALI *v.* BHYKA LAL JHA **[I. L. R., 6 Calc., 666 : 7 C. L. R., 497**

MOHABEER DOSS *v.* LALLA ROY . **1 W. R., 12**

GOUR SURN DBS *v.* KANHYA SINGH **[2 W. R., 237**

CRAWLEY *v.* MALING . . . **1 Agra, 63**

HUR CHUNDER GHOSE *v.* WOOMA SOONDUREE DOSSEE . . . . **23 W. R., 170**

ROY LUCHMEEPUT SINGH *v.* MOSHURUFF ALI **[25 W. R., 80**

KASHEE NATH MOOKERJEE *v.* MOHESH CHUNDER GOOPTO . . . . **25 W. R., 168**

NEM ROY *v.* LALMUN ROY . **25 W. R., 376**

82. ——— *Document admitted in Court below.*—Where a document was admitted in evidence by the Court of first instance without any objection by the parties, but the Assistant Judge on appeal held it inadmissible, because it was insufficiently stamped, although no objection was made to it in the memorandum of appeal,—*Held* that the Assistant Judge ought not to have excluded it from his consideration. KASTUR BHAVANI *v.* APPA **[I. L. R., 5 Bom., 621**

83. ——— *Document admitted or rejected in Court below.*—The decision of the Court of first instance as to the admissibility of a document subject to the payment of stamp duty is final, and cannot be reviewed by the Appellate Court. LAKSHMI NARAYANA AIYAR *v.* SUPPARA GAUNDAN **[2 Mad., 321**

84. ——— *Question of liability to stamp.*—It is open to an Appellate Court to consider the question whether a document which the Court of first instance has declared liable to be stamped under Act X of 1862 is properly so liable. SUBRAYA PILLAI *v.* SRINIVASA PILLAI; DURGA PILLAI *v.* SRINIVASA PILLAI; CHELLA PILLAI *v.* SRINIVASA PILLAI . . . . **3 Mad., 71**

APPELLATE COURT—*continued.*

4. REJECTION OR ADMISSION OF EVIDENCE ADMITTED OR REJECTED BY COURT BELOW—*continued.*

(*a*) UNSTAMPED DOCUMENTS—*continued.*

Unstamped documents—*continued.*

85. ——— The fact that the document was received in evidence without a stamp is no reason for reversing the decision in appeal. CURRIE *v.* MUTU RAMEN CHETTY **[3 B. L. R., A. C., 126 : S. C., 11 W. R., 520**

86. ——— Where title-deeds of land had been deposited by a debtor with the Bank of Bengal, and a letter was given authorizing the Bank to sell the land and apply the proceeds in liquidation of a debt then existing and due to the Bank, the Court declined to entertain the question whether the document relied on was one requiring a stamp, as being a matter not affecting the merits of the case or the jurisdiction of the Court. IBRAHIM AZIM *v.* CRUICKSHANK **[7 B. L. R., 653 : 16 W. R., 203**

87. ——— *Ground for reversal of decision.*—An Appellate Court has no power to reverse the judgment of a Court of first instance, merely on the ground that the document on which the suit was based did not bear a stamp at all. SRINATH SAHA *v.* SARODA GOBINDO CHOWDRY **[5 B. L. R., Ap. 10**

88. ——— *Improper admission in evidence of unstamped document.—Irregularity not affecting the merits of the case.—Civil Procedure Code, 1859, s. 350.*—Where a Court of first instance, treating an unstamped promissory note, the after-stamping of which was inadmissible, as a bond, received such instrument in evidence, on payment of the stamp duty chargeable on it as a bond and of the penalty,—*Held* that the reception of such instrument by such Court, being an irregularity not affecting the merits of the case, was no ground for reversing the decree of such Court when the same was appealed from. AFZAL-UN-NISSA *v.* TEJ BAN **[I. L. R., 1 All., 725**

89. ——— *Admission by first Court of document unstamped.*—The provisions of the Stamp Law, by which unstampted or insufficiently stamped documents are excluded, were framed primarily in the interests of the Government revenue, but were never intended to create or put an end to the rights of the parties. Where a document is admitted by the first Court as not requiring a stamp, its admissibility cannot be questioned in appeal. ENAYETOOLLAH *v.* MEAJAN . . . . **16 W. R., 6**

90. ——— *Admission of unstamped document on payment of penalty.*—A plea that a deed of sale filed had been originally unstamped,

APPELLATE COURT—*continued.*

4. REJECTION OR ADMISSION OF EVIDENCE ADMITTED OR REJECTED BY COURT BELOW—*continued.*

(*a*) UNSTAMPED DOCUMENTS—*continued.*

Unstamped documents—*continued.*

and that the lower Court was incompetent to supply the deficiency of the stamp by paying the penalty in the appellate stage of the case, was overruled. RAM SARUN SAHOO *v.* VERYAG MAHTON [25 W. R., 554

91. ——— *Stamp Act, s. 50.—Document admitted as duly stamped.*—Where a document has been admitted in evidence as duly stamped, such admission can only be called in question by the Appellate Court under section 50 of the Indian Stamp Act. REFERENCE UNDER STAMP ACT, 1879 [I. L. R., 8 Mad., 564

92. ——— *Civil Procedure Code, 1877, s. 578.—Unstamped hundi admitted in lower Court.*—Suit by payee against drawer upon a hundi drawn in British India upon a person at Colombo. The hundi was not stamped when drawn. Objection taken to its admission in evidence by defendant was allowed by the Munsif, but plaintiff was permitted to sue for the amount due upon the original consideration. The suit was dismissed on the ground that no consideration was proved. Upon appeal the District Judge held that the hundi did not require a stamp, as it was not intended to operate in British India, and admitted the hundi in evidence as a business letter admitting responsibility and found that there was consideration. *Held,* upon second appeal, that the hundi having been admitted in evidence, though contrary to law, by the District Judge, no objection could be taken to the decree in second appeal upon that account. RAMASAMI *v.* RAMASAMI . I. L. R., 5 Mad., 220

93. ——— *Question of stamp duty.*—Where the objection is taken for the first time in special appeal that a document which according to Act X of 1862 ought to have been stamped has been admitted by both the lower Courts unstamped, the High Court is bound to take notice of the objection (although not one of the grounds set forth in the petition of appeal), and to require payment of the stamp duty and penalty, or to reject the document. ADINARAYANA SETTI v. MINCHIN . 3 Mad., 297

94. ——— *Court Fees Act, s. 28.* If a document which ought to bear a stamp under the Court Fees Act has been used in the High Court, and the mistake or inadvertence which permitted its reception in a lower Court, without being properly stamped, comes to light in the High Court, any Judge of that Court may, under sections 28 of the Court Fees Act, direct that it should be properly stamped. CHEDI LAL v. KIRATH CHAND [I. L. R., 2 All., 682

95. ——— *Penalty.—Held* that an objection may properly be taken in a Court of first appeal to an unstamped document, and such Court is bound to entertain the objection and may

APPELLATE COURT—*continued.*

4. REJECTION OR ADMISSION OF EVIDENCE ADMITTED OR REJECTED BY COURT BELOW—*continued.*

(*a*) UNSTAMPED DOCUMENTS—*continued.*

Unstamped documents—*continued.*

direct that the document be stamped and the penalty imposed. SAFDAR ALI KHAN v. LACHMAN DASS [I. L. R., 2 All., 554

96. ——— *Stamp Act, 1869, s. 20, and Sch. II, Arts. 5 and 11.—Stamp duty.—Penalty, tender of.*—An Appellate Court has no authority to direct the reception of an unstamped document to which the provisions of section 20 of the Stamp Act (XVIII of 1869) apply, unless the amount of stamp duty and prescribed penalty was tendered when the document was first offered in evidence and rejected. CHAMPABATY *v.* BIBI JIBUN [I. L. R., 4 Calc., 213

GOUR PERSHAD LAL v. LALLA NUND LAL [7 W. R., 439

(*b*) VALUATION OF SUIT, ERROR IN—

97. ——— **Valuation of suit.**—*Error in valuation of suit.—Civil Procedure Code, 1859, s. 350.*—An error in the valuation of a claim is not an error, defect, or irregularity which affects the merits of the case, and an Appellate Court is restrained by section 350 of the Code of Civil Procedure from ordering the reversal of a decree on account of any such error, which does not also affect the jurisdiction of the Court which originally tried the suit. NANSA BIN BIBA *v.* BABA BIN BAHIRU . 1 Bom., 163

SUBAH ROY *v.* BALDEO SINGH 24 W. R., 225

98. ——— *Error in valuation.*—An error in a matter of stamp is no ground for appeal, and is no reason for interfering with the decision of the Court below, under section 350 of the Code of Civil Procedure. SHOWDAMINEE DOSSEE *v.* RAM ROODRO GANGOOLY . 8 W. R., 367

MAHOMED SHAHA *v.* LALL MAHOMED 15 W. R., 179

99. ——— *Under-valuation.—Dismissal.—Remand.*—If a lower Appellate Court finds a suit to have been undervalued, when its proper value would have placed it beyond the jurisdiction of the Court of first instance where it was instituted, it should dismiss the case, and not remand it with a view to the deficient stamp duty being made up. AUGOPURA CHOWDHRY *v.* MEAH BIBEE 10 W. R., 207

100. ——— *Supplemental plaint where suit was undervalued.—Irregularity.*—Where a suit was remanded to a Munsif's Court, and on the defendants objecting that the plaint had been undervalued, an order was made by the Court that the plaintiff should, in some shape or other, put in the additional amount of stamp duty, and a supplemental plaint with the required stamp was accordingly put in and received, the irregularity was not considered to have affected the merits of the

APPELLATE COURT—*continued.*

4. REJECTION OR ADMISSION OF EVIDENCE ADMITTED OR REJECTED BY COURT BELOW—*continued.*

(*b*) VALUATION OF SUIT, ERROR IN—*continued.*

Valuation of suit—*continued.*

case or to call for a reversal of the Munsif's decision. GUDDADHUR BANERJEE *v.* PREMOMOYEE DEBIA . . . . . **10 W. R., 286**

101. ——————— *Under-valuation.—Civil procedure Code, 1859, s. 350.*—In a suit in a Munsif's Court it was found, after issues had been fixed and some evidence recorded, that the claim had been undervalued, and that the proper valuation would carry it beyond the jurisdiction of the Munsif. The plaint was accordingly returned; and additional stamps having been filed, the case was tried by the Principal Sudder Ameen. The Judge, on appeal, held that the plaint had been illegally returned by the Munsif, and that the act of the Principal Sudder Ameen in proceeding to try the case was illegal. He accordingly dismissed the suit. *Held,* with reference to section 350, Act VIII of 1859, that the Judge was wrong in reversing the decree of the Principal Sudder Ameen. RAM GUTTY *v.* GOONO MONEE DEBIA . . **11 W. R., 177**

102. ——————— *Under-valuation.*—A lower Appellate Court was held to have done right in dismissing a suit on the ground of under-valuation, although the plaint had been admitted and acted on by the first Court without objection by the parties. MEWA LALL *v.* BEHAREE LALL **14 W. R., 195**

103. ——————— *Under-valuation—Civil Procedure Code, 1859, s. 350.*—Section 350 Act VIII of 1859, did not prohibit a Court of Appeal from modifying or reversing a decision of a lower Court, on the ground of under-valuation of the suit, if the proper valuation would have taken it beyond the jurisdiction of the Court. HUBER PANDEY *v.* BASSOO . . **11 W. R., 257**

104. ——————— *Civil Procedure Code, 1859, s. 350.*—An Appellate Court is restrained under section 350, Act VIII of 1859, from reversing a decree on account of any error in the valuation of a claim which does not also affect the jurisdiction of the Court which originally tried the suit. RAMESSUR DYAL SING *v.* RAJ KISHORE SINGH . . . . . **13 W. R., 325**

105. ——————— *Dismissal of suit for insufficient stamp.—Act VIII of 1859, ss. 31 and 350.*—Where a defendant, after the case had been gone into on the merits, set up that the suit had been undervalued, and the Court of first instance found in favour of the plaintiff on that issue, but the lower Appellate Court was of a contrary opinion, and dismissed the suit,—*Held,* that the lower Appellate Court should, before dismissing the suit on that ground, have allowed the plaintiff the option of supplying the necessary stamps, as the first Court would have done, under section 31, Act VIII of 1859. In any case, the order of the first Court was not

APPELLATE COURT—*continued.*

4. REJECTION OR ADMISSION OF EVIDENCE ADMITTED OR REJECTED BY COURT BELOW—*continued.*

(*b*) VALUATION OF SUIT, ERROR IN—*continued.*

Valuation of suit—*continued.*

one affecting the merits of the case or jurisdiction of the Court; and therefore, under section 350, Act VIII of 1859, the suit could not be dismissed on appeal upon that ground. WAJID ALI KHAN *v.* LALA HANUMAN PRASAD. **4 B. L. R., A. C., 139 [12 W. R., 484**

106. ——————— *Insufficient stamp.—Return of plaint—Act VIII of 1859, s. 30.—Jurisdiction.—Held,* on special appeal, that the lower Appellate Court was right in setting aside the proceedings of the Munsif, on the ground that the property in suit was valued at an amount beyond his jurisdiction; but the plaintiff was entitled to have the plaint returned to him, that he might present it with the proper additional stamp before the proper Court. JADU *v.* HIFAZAT HOSSEIN **[5 B. L. R., Ap., 15**

EDOO *v.* HIFAZAT HOSSEIN . **13 W. R., 358**

107. ——————— *Under-valuation.—Civil Procedure Code, 1859, s. 31.*—Where a petition of appeal had been filed, time allowed for the issue of notice, and a day fixed for hearing, it was held to be the duty of the Judge, under section 31, Act VIII of 1859, on finding that the petition was inadequately stamped, to give the appellant an opportunity of filing the proper stamp. NUSSERUT ALY CHOWDHRY *v* MAHOMED KANOO SIRDAR . . . . . **11 W. R., 145**

108. ——————— *Erroneous decision of Munsif as to valuation of suit.—Court Fees Act, 1870, s. 12, cl. 2.*—Where a Munsif ruled erroneously that a suit instituted in his Court had been correctly valued, and it appeared that, if the suit had been correctly valued, the Munsif would not have had jurisdiction to entertain it, the lower Appellate Court, having regard to clause 2, section 12 of the Court Fees Act, VII of 1870, ordered that the appeal should be decreed and the plaint retained until the plaintiff should pay the additional stamp duty, when the suit would be made over to the Subordinate Judge for re-trial. *Held,* that the order was a proper one BROJO COOMAR SEN *v.* ESHAN CHUNDER DAS **[3 C. L. R., 79**

109. ——————— *Civil Procedure Code, 1877, s. 578.—Error or irregularity.—Court fees.—Appeal.*—The refusal of a plaintiff-respondent to make good a deficiency in court fees in respect of his plaint when called upon to do so by the Appellate Court, is not a ground upon which the Appellate Court should reverse the decree of the Court of first instance and dismiss the suit. MEHDI HUSAIN *v.* MADAR BAKHSH . . **I. L. R., 2 All., 889**

110. ——————— *Plaint insufficiently stamped.—Court Fees Act (VII of 1870), s. 12.—Civil Procedure Code (Act X of 1877), s. 578.*—A suit was instituted and tried on the merits in the

APPELLATE COURT—*continued.*

4. REJECTION OR ADMISSION OF EVIDENCE ADMITTED OR REJECTED BY COURT BELOW—*continued.*

(*b*) VALUATION OF SUIT, ERROR IN—*continued.*

Valuation of suit—*continued.*

Court of a Subordinate Judge without any objection being taken, either by the defendants or by the Court, that the plaint was insufficiently stamped. The defendants appealed on the merits, and the District Judge, being of opinion that the stamp on the plaint was inadequate, called upon the plaintiff to pay the additional fee which would have been payable had the objection been taken and the question rightly decided in the Court of first instance. *Held*, on second appeal, that the order of the Judge was properly made under section 12, clause ii of the Court Fees Act, VII of 1870. *Kala Chand Sen* v. *Anundkristo Bose, 22 W. R., 433*, dissented from. Section 578 of the Civil Procedure Code explained. SHAMA SOONDARY *v.* HURRO SOONDARY

[I. L. R., 7 Calc., 348
8 C. L. R., 528

111. ——————— *Court Fees Act, 1870, s. 12.—Memorandum of appeal.—Stamp.—Suit for recovery of land and money.*—In deciding the amount of stamps to be borne by the memorandum of appeal, the High Court is not bound by the decision of the Court of first instance as to the stamp on the plaint. MOTIGAVRI *v.* PRANJIVANDAS

[I. L. R., 6 Bom., 302

112. ——————— *Court Fees Act, VII of 1870, s. 12.—Stamp.—Plaint.—Under-valuation.—Rejection.—Finality of decision.*—The decision of the Court of first instance, that a plaint is undervalued, is binding upon the Court of Appeal, reference or revision; but the Court of first instance is not justified in rejecting the plaint without giving to the plaintiff an opportunity of affixing the proper stamp. BAI ANOPE *v.* MULCHAND GIRDHAR

[I. L. R., 9 Bom., 355

113. ——————— *Court Fees Act, VII of 1870, ss. 10, 12, 28.—Order requiring additional Court fee on claim, passed subsequent to decree.—Decree prepared so as to give effect to subsequent order.—Civil Procedure Code, ss. 54, 55, 584.*—A Judge, after disposing of an appeal on the 1st March 1883, again took it up, and on the 21st March 1883 directed the appellant to pay additional Court fees on her memorandum of appeal. On the 2nd May 1883 the appellant paid the additional Court fees under protest, and a decree was then prepared, bearing date the 1st March 1883, but it referred to and carried into effect the subsequent order of the 21st March and the 2nd May. *Per* MAHMOOD, *J.*—That as soon as the Judge had passed the decree of the 1st March 1883, he ceased to have any power over it, and was not competent to introduce new matters not dealt with by the judgment; that the order of the 21st March and the deposit of the 2nd May, whether right or wrong, were not proceedings to which effect could be given in the antecedent decree of the 1st March 1883; and that the decree was *ultra vires* to that extent, and was therefore liable to correction in second appeal under section 584 of the Civil Procedure Code. The powers conferred by sections 54 (*a*) and (*c*) and 55, read with section 582 of the Civil Procedure Code, or by section 12 of the Court Fees Act (VII of 1870), read with clause (ii) of section 10, are intended to be exercised before the disposal of the case, and not after it has been decided finally so far as the Court is concerned. The powers conferred by section 28 of the Court Fees Act cannot be exercised by an order passed after the decision of the case to which the question of the payment of Court fees relates, and, even assuming that they can be so exercised, such an order, though it may be subject to such rules as to appeal or revision as the law may provide, cannot be given effect to by making insertions in an antecedent decree. *Per* OLDFIELD, *J.*—That the Court had power to make the order it did, inasmuch as the collection of Court fees was no part of a Judge's functions in the trial of a suit which could be said to have ceased with its determination; and the provisions of the Court Fees Act fixed no time within which the presiding Judge could exercise his power of ordering documents to be stamped, and seemed, on the other hand, to contemplate the exercise of that power at any time subsequent to the receipt, filing, or use of a document, and to make the validity of the document and the proceedings relative thereto dependent on the document being properly stamped. MAHADEI *v.* RAM KISHEN DAS . . . I. L. R., 7 All., 528

5. OTHER ERRORS AFFECTING MERITS OF SUIT.

114. ——— **Delivery of judgment out of Court.**—*Error in procedure.—Civil Procedure Code, 1859, s. 350.*—In a suit for possession of land, the Judge, after hearing the evidence and admitting the documents on both sides, intimated that he should examine the place to satisfy himself with respect to the boundaries. He did make such examination, the defendant attending but the plaintiff being absent; and he afterwards delivered his judgment in favour of the defendant out of Court. *Held*, that the mere circumstance that the judgment was delivered out of Court did not constitute error under section 350, Act VIII of 1859, and was no ground of appeal. NILMONEY SINGH DEO *v.* BHOBANY CHURN PANDA

[Marsh., 327: 2 Hay, 305

115. ——— **Omission to decide limitation.**—*Error or defect in decision of case.*—An omission to decide a question of limitation, though not raised in the grounds of appeal, is an error or defect in the decision of the case on the merits. SABUJI KESRAJI v. RAJSANGJI JALMSANGJI

[2 Bom., 169: 2nd Ed., 162

116. ——— **Admission of invalid document.**—*Civil Procedure Code, 1859, s. 350.—Bom. Reg. XVIII of 1827, s. 10.—Objection to validity of document unstamped.*—An objection to the

APPELLATE COURT—*continued.*

5. OTHER ERRORS AFFECTING MERITS OF SUIT—*continued.*

Admission of invalid document—*continued.*

validity of a document under Bombay Regulation XVIII of 1827, s. 10, as distinguished from its inadmissibility in evidence, or from a prohibition to Courts of Justice or public officers to act upon it, is an objection on the merits under Act VIII of 1859. GIRDHAR NAGJISHET *v.* GANPAT MOROBA [11 Bom., 129

117. ——— Order without jurisdiction.—*Civil Procedure Code, 1859, ss. 350, 351, 355.*—Every order passed by a Court is not void for want of jurisdiction simply because it is illegal,—*e.g.*, where a Court remands a case under section 351, Act VIII of 1859, instead of following the provisions of section 355. Such an order is not necessarily an error affecting the decision on the merits. JOWAD ALI *v.* HOSSEIN BIBEE . . 8 W. R., 207

118. ——— Decree passed without jurisdiction.—*Reversal or modification of decree.—Civil Procedure Code, 1859, s. 350.*—Where the proceedings and the decree passed by a lower Court were without jurisdiction,—*Held* (SPANKIE, *J.*, dissenting), that section 350 of the Code of Civil Procedure did not apply, as the judgment of the High Court could not be for reversing or modifying the decree of the lower Court, there being no decree to reverse or modify. BIJEE KOOER *v.* DAMODHUR DASS . . . . . 5 N. W., 55

119. ——— Trial on different issue and reversal in Appellate Court.—A suit having been decreed in favour of plaintiff in the Court of first instance, where it was tried on a certain issue, the decree was reversed in the Appellate Court, where it was tried on a different issue. Plaintiff upon this objected in special appeal that he had been misled by the issue framed in the first Court, and, but for it, would have adduced evidence to prove his case. *Held*, that if plaintiff had any evidence to offer upon the issue tried in the Appellate Court, he should have moved the Judge to allow him the opportunity of offering it, and that there was no error of law in the proceedings of the lower Appellate Court. ESHAN CHUNDRA SEIN *v.* DHONAYE . . 11 W. R., 61

120. ——— Admission of illegal evidence.—*Civil Procedure Code, 1859, s. 350.*—The objection that papers were admitted as evidence which were not legally admissible, is not ground sufficient, under section 350 of the Code of Civil Procedure, to warrant a decree being reversed or modified, or a case being remanded, when it is admitted that there was other evidence to support the lower Court's finding, and the insufficiency of such other evidence is not alleged in the grounds of appeal. KENARAM SHAMUNT *v.* GOPEENATH GEEREE . 10 W. R., 130

121. ——— Splitting cause of action.—Where the lower Courts allowed a plaintiff erroneously to bring separate suits where he ought to have brought only one,—*Held* that, as the separate suits against the co-proprietor were instituted simultaneously, the error in splitting up the claim against him

APPELLATE COURT—*continued.*

5. OTHER ERRORS AFFECTING MERITS OF SUIT—*continued.*

Splitting cause of action—*continued.*

did not affect the merits; and accordingly the decree was affirmed. VITHU *v.* NARAYAN DABHUL RAR [5 Bom., A. C., 30

122. ——— Multifariousness.—*Causes of action over some of which lower Court had jurisdiction.—Duty of Judge to try these.*—A suit was brought against six defendants, the cause of action against five of them being unconnected with the cause of action against the sixth. The Assistant Judge, in whose Court the suit was brought, tried one of the causes of action, over which he had jurisdiction, but refused to try the other, over which he had no jurisdiction. In appeal, the District Judge refused to enter into the merits of either, on the ground of the misjoinder of the causes of action. *Held*, that the District Judge was bound to enter into the merits of the claim over which the Court of first instance had jurisdiction, it not being affected by the error in the misjoinder of the two claims. SAMSUDDIN PIRJADE *v.* GUNPATRA JAGANNATH [7 Bom., A. C., 19

See RUKMINI BURMONIA *v.* FOODUN KOOMAREE BURMONIA . . . . 23 W. R., 408

123. ——— Misjoinder of plaintiffs.—*Error of Procedure.*—The misjoinder of plaintiffs which does not produce error in the decision of the case on its merits, is not a ground for the reversal of a decree on special appeal. *Semble,*—That such misjoinder is not a ground for the reversal of a decree in regular appeal. Where the widow of *H.*, a Mahommedan, and his two daughters, brought a joint suit for their respective shares of the estate of *H.*, which were awarded to them jointly,—*Held*, that this was an error of procedure which did not affect the merits of the case. MIYA GULAM NABI *v.* KHARANBIBI [6 Bom., A. C., 177

124. ——— Misjoinder.—*Objection to declaratory decree.—Civil Procedure Code, 1859, s. 350.*—A lower Appellate Court has no power to reverse the decree of a Court of first instance on the ground of misjoinder of parties. After a Court of competent jurisdiction has exercised its discretion under section 15, Act VIII of 1859, and passed a declaratory decree, it does not lie within the power of a Court of Appeal, under section 350 of that Act, to set aside the decree upon an objection which does not affect the merits, and which was not taken at the time when the decree of the first Court was passed. RAM KANAYE CHUCKERBUTTY *v.* PROSSUNO COOMAR SEIN [13 W. R., 176

125. ——— Order adding party to suit.—*Civil Procedure Code, 1859, s. 363.*—An order adding a party to a case is not one affecting the merits in the sense of section 363; but where such order is made without postponing the case (section 73) for a reasonable time, it is a very important matter. KOOMARA OOPENDRA KRISHNA DEB *v.* NOBIN KRISHNA BOSE . 17 W. R., 370, note

UPENDRA KRISHNA DEB *v.* NOBIN KRISHNA BOSE . . . 3 B. L. R., O. C., 113

APPELLATE COURT—*continued.*

5. OTHER ERRORS AFFECTING MERITS OF SUIT—*continued.*

126. ——— Rescission of order on same day as made without notice to one of the parties.—*Adjournment.—Civil Procedure Code, 1859, s. 146.*—Where an order was regularly made by a Munsif under Act VIII of 1859, section 146, granting time to the parties, adjourning the hearing, and fixing a day for the further hearing, but was rescinded on the same day on the application of the defendant, and the case tried on the following day, when all the evidence which the plaintiff was entitled to produce was not before the Court,—*Held*, that as it was not shown that the rescinding order was regularly and properly made, there was a defect in the procedure and a defect in law, which might most materially have affected the decision on the merits. BISHEN PERKASH SINGH *v.* RUTTUN GEER CHELA **[20 W. R., 3**

127. ——— Decree against agent instead of principal.—*Suit brought in name of agent instead of corporate body.—Civil Procedure Code, 1859, s. 350.*—Where a decree makes a party liable who is not liable (*e.g.*, an agent instead of the corporate body whose agent he is), the error is one affecting the merits within the meaning of section 350, Civil Procedure Code. NUBEEN CHUNDER PAUL *v.* STEPHENSON . . . **15 W. R., 534**

128. ——— Technical error.—*Ground for reversing judgment.*—The lower Appellate Court is not justified in reversing a decision of the Court of first instance for a technical error, unless that error has affected the decision of the case on the merits. The best test to ascertain whether an erroneous interlocutory order has affected the ultimate decision on the merits, is to see whether the Court would have come to the same decision had the erroneous order not been passed. PRAN NATH BHADOORY *v.* SREE KANT LAHOREE . . . . **2 C. L. R., 257**

129. ——— Filing appeal without copy of decree.—*Cure of irregularity.*—The appellant filed an appeal against the judgment of the Court of first instance without a copy of the decree. Subsequently the decree of the Court of first instance was filed within the time allowed for appeal and accepted by the Judge. *Held*, that the irregularity was cured, and the appeal should not have been dismissed on the ground of such irregularity. LULLEE *v.* RAM PERSHAD . . . . . **2 Agra, 34**

130. ——— Improper exercise of discretion in granting declaratory decrees.—*Civil Procedure Code, 1882, s. 578.*—The awarding of declaratory relief as regulated by section 42 of the Specific Relief Act, is a discretionary power which Courts of equity are empowered to exercise with reference to the circumstances of each case and the nature of the facts stated in the plaint, and the prayer of the plaintiff; that so long as a Court of first instance possesses jurisdiction to entertain a declaratory suit, and entering into the merits of the case arrives at right conclusions and awards a declaratory decree, such a decree cannot be reversed in appeal simply because the discretion has been improperly exercised; and that

APPELLATE COURT—*continued.*

5. OTHER ERRORS AFFECTING MERITS OF SUIT—*continued.*

Improper exercise of discretion in granting declaratory decrees—*continued.*

such improper exercise of discretion under section 42 of the Specific Relief Act has no higher footing than that of an error, defect, or irregularity, not affecting the merits of the case or the jurisdiction of the Court, within the meaning of section 578 of the Civil Procedure Code. This does not imply that, even in cases where the discretionary power to award declaratory relief has been exercised wholly arbitrarily, and in a manner grossly inconsistent with judicial principles, the Court of Appeal would have no power to interfere. *Ram Kanaye Chuckerbutty* v. *Prosunno Coomar Sein, 13 W. R., 175; Sadut Ali Khan* v. *Khajeh Abdool Gunnee, 11 B. L. R., 203; Sheo Singh Rai* v. *Dakho, I. L. R., 1 All., 688; and Damoodar Surmah* v. *Mohee Kant Surmah, 21 W. R., 54*, referred to. SANT KUMAR *v.* DEO SARAN . **I. L. R., 8 All., 365**

131. ——— Error in allowing wrong party to begin.—*Suit on bond.—Right to begin.—Civil Procedure Code, 1877, s. 578.*—The defendants in a suit on a bond admitted the execution of the bond, but denied that they had received, as the bond recited they had done at the time of execution, the consideration for it. The Court of first instance irregularly allowed the plaintiff to call witnesses to prove that the consideration had been paid at the time of the execution of the bond. They proved, however, that it had not been paid at the time of the execution, but, if paid at all, at some subsequent time. The plaintiff gave no further evidence of payment, and the Court of first instance, without calling on the defendants, dismissed the suit. The lower Appellate Court held that the defendants should have been required to begin under the circumstances, and reversed the decree of the Court of first instance, and gave the plaintiff a decree. *Held* that it was doubtful, having regard to the provisions of section 578 of Act X of 1877, whether it was competent for the lower Appellate Court to reverse the decision of the Court of first instance; but even if it were, the lower Appellate Court should have not ignored what had taken place, but should have dealt with the case on appeal in the shape it came before it. MAKUND *v.* BAHORI LAL . . . . . **I. L. R., 3 All., 824**

132. ——— Omission to state reasons for decision.—*Civil Procedure Code, 1877, s. 578.*—In a suit to recover possession of certain immoveable property alleged to have been purchased by the plaintiff from a Hindu widow who claimed to have held the same as heir of her husband, the defendant, who was the mother of the husband, contended, *inter alia*, that the alleged purchase and sale were invalid by reason that she herself was entitled to maintenance out of the property. The first Court gave the plaintiff a decree, and this decree was affirmed on appeal by the District Judge, who, however, gave no reasons of his own for his judgment, but merely adopted those of the lower Court. *Held* that, having regard to the nature of the case and the simplicity of the point for determination, the fact of the District Judge having

APPELLATE COURT—*continued.*

5. OTHER ERRORS AFFECTING MERITS OF SUIT—*continued.*

Omission to state reasons for decision—*continued.*

omitted to state his reasons did not amount to such an error of law within the meaning of section 857 of the Code of Civil Procedure as affected the merits of the case or the jurisdiction of the Court. ROHIMONI DABI *v.* ZAMIRUDDIN . . 8 C. L. R., 597

133. ——— **Objection by one of several parties.**—*Civil Procedure Code, 1877, s. 578.—Irregularity not affecting the merits or jurisdiction.—Misjoinder.*—Where one party alone objected to the frame of the suit and the defect (of misjoinder and multifariousness) did not affect the merits of the case or the jurisdiction of the Court, the lower Appellate Court ought not, regard being had to section 578 of Act X of 1877, to have reversed the decree of the Court of first instance by reason of such defect. KALLIAN SINGH *v.* GUR DAYAL [I. L. R., 4 All., 163

134. ——— **Error in frame and valuation of suit.**—*Civil Procedure Code, 1877, s. 578.—Co-sharers, Suit by some of several.—Error not affecting jurisdiction or merits.*—The plaintiffs in this suit, alleging that they were co-sharers of a certain village; that certain land situate in such village was the property of the co-sharers; and that such land had been improperly sold by the persons occupying it to one of the co-sharers, sued the vendors and the purchaser and the other co-sharers for possession of their share of such land and the setting aside of the sale so far as their share was concerned, and valued the suit according to their share. *Held,* that the error in the frame and valuation of the suit, inasmuch as it did not affect the jurisdiction of the Court in which the suit was instituted or the merits of the case, was not, under section 578 of the Civil Procedure Code, a ground on which the Appellate Court should have reversed the decree of the Court of first instance. *Unnoda Persad Roy v. Erskine, 12 B. L. R., 370,* distinguished. PARAM *v.* ACHAL [I. L. R., 4 All., 289

135. ——— **Dismissal of suit for undervaluation.**—*Civil Procedure Code, 1877, s. 578.—Irregularity affecting merits.*—A Munsif, after hearing the evidence on both sides, found that the suit had been undervalued, but instead of returning the plaint under section 57, he dismissed the suit. *Held,* that such dismissal was a matter affecting the merits of the case and which the Appellate Court could deal with under section 578. BHUDESWAR CHOWDHRY, *v.* GAURI KANT NATH . I. L. R., 8 Calc., 834

136. ——— **Institution of suit in wrong Court.**—*Civil Procedure Code, 1882, s. 578.—Per* MAHMOOD, *J.*—The institution of a suit in a Court of higher grade than the Court which is competent to try it, is not a question either as to the jurisdiction or affecting the merits of the case. It is a question of the kind provided for by section 578 of the Civil Procedure Code, and the irregularity is not one which affects "the merits of the case or the

APPELLATE COURT—*continued.*

5. OTHER ERRORS AFFECTING MERITS OF SUIT—*continued.*

Institution of suit in wrong Court—*continued.*

jurisdiction of the Court" within the meaning of that section. NIDHI LAL *v.* MAZHAR HUSAIN [I. L. R., 7 All., 230

137. ——— **Exclusion of evidence.**—*Ground for reversal of decision.—Civil Procedure Code, 1882, s. 578.*—The exclusion of evidence in the lower Court is not sufficient ground for reversing that Court's decree, unless the Appeal Court comes to the conclusion that the evidence refused, if it had been received, ought to have varied the decision. DESOUZA *v.* PESTANJI DHANJIBHAI [I. L. R., 8 Bom., 408

138. ——— **Misjoinder of parties and causes of action.**—*Error not affecting merits.—Civil Procedure Code, 1882, s. 578.—Held, per* MITTER, *J.* (PIGOT, *J.*, dissenting), that, as regards the objection to the suit for misjoinder and under section 44 of the Code of Civil Procedure, the Appeal Court was precluded by section 578 of the Code from reversing the decree of the lower Court, as the error (if an error at all) could not affect the merits of the decision. MOKUND LALL *v.* CHOBAY LALL [I. L. R., 10 Calc., 1061

6. INTERFERENCE WITH AND POWER TO VARY ORDER OF LOWER COURT.

139. ——— **Power of, on appeal ex parte.**—*Act XXIII of 1861, s. 37.—Power to remand.*—An Appellate Court hearing an appeal *exparte* in the absence of the respondent cannot *suo motu* raise points in favour of the respondent, but must confine its decision to the question raised by the appellant. DURGA PRASAD *v.* KHAIRATI [I. L. R., 1 All., 545

140. ——— **Making different case for appellant from that which he makes for himself in first Court.**—*Practice.*—A Judge is not permitted to make, on appeal, a different case for the appellant from that which he alleged for himself in the Court of first instance, KACHUBHAI *v.* KRISHNABAI . . I. L. R., 2 Bom., 635

141. ——— **Travelling beyond record.**—An Appellate Court should not ordinarily travel beyond the record, or take up points which are not the subject of appeal before it. KASHINATH ROY CHOWDHRY *v.* ROY DWARKANATH CHUCKERBUTTY [7 W. R., 61

142. ——— **Decision of case on issue not raised in Court below.**—A lower Appellate Court is not justified in determining an appeal on an issue which was not raised between the parties in the Court of first instance. USTOORUN *v.* MOHUN LALL [21 W. R., 333

PRANKISHORE DEB *v.* MAHOMED AMEER [21 W. R., 338

RUKMINI BURMONIA *v.* FOODUN KOOMAREE BURMONIA . . 23 W. R., 406

APPELLATE COURT—*continued.*

6. INTERFERENCE WITH AND POWER TO VARY ORDER OF LOWER COURT—*continued.*

143. ——— **Decision on issue not taken in Court below.**—*Want of evidence for decision.*—No issue was taken in the Court of first instance on the question whether an agreement was void for champerty. An issue was raised on this question by the Appellate Court, and (no evidence being taken) was decided in favour of the defendant. *Held*, on special appeal, that unless it was manifestly apparent on the face of the proceedings that the agreement was against morality or public policy, the Appellate Court ought not to have held it void. RAMRAV KHANDERAV *v.* GOVIND PANDSHET
[6 Bom., A. C., 63

144. ——— **Raising issue without cross-appeal.**—*Appeal from decree partly in favour of appellant.*—When a decree gives title to land to defendant and right of way to plaintiff, and plaintiff alone appeals, the Appellate Court must not raise an issue as to right of way without cross-appeal from defendant. SOOKHANUNDAMOYEE DEBIA *v.* BANEY MADHUB MOOKERJEE . . 1 W. R., 73

145. ——— **Giving relief not asked for.**—*Civil Procedure Code, 1859, s. 334.*—An Appellate Court exceeds its authority in giving a plaintiff relief for which he does not ask, although under Act VIII of 1859, section 334, the Court may decide an appeal before it on other grounds than those stated in the memorandum of appeal. That section does not entitle the Court to go beyond the subject-matter of appeal. SHARODA SOONDUREE DABEE *v.* GOBIND MONEE *alias* BROJO SOONDUREE DABEE
[24 W. R., 179

146. ——— **Alteration of decree on appeal.**—*Defendant not objecting to decree on appeal.*—Where the defendant does not appeal against or object to the amount awarded by the first Court to the plaintiff, it is not open to the Appellate Court to reduce it. NAYANCHANDRA *v.* NARAYAN
[I. L. R., 4 Bom., 293

147. ——— **Improper procedure.**—*Suit by ryot for rent.*—In a suit by a ryot against a zemindar for rent, the Court of first instance gave the plaintiff a decree for a part of his claim. The plaintiff appealed against the disallowance of the residue. The Judge on appeal reversed the decree and dismissed the suit, although no objection was made by the defendant to the judgment of the Court below, merely saying that a claim for rent by a ryot against a zemindar was absurd. On appeal to the High Court, the decree of the Judge was reversed, and the original decree established. HEM CHUNDER *v.* AHMED REZA . Marsh., 332: 2 Hay, 429

148. ——— **Rejection of appeal.**—*Quære,*—Whether, after registering and admitting an appeal, and causing notice to be served, an Appellate Court can reject the appeal as not being filed within the prescribed time. SECRETARY OF STATE FOR INDIA IN COUNCIL *v.* MUTU SWAMY
[4 B. L. R., Ap., 84: 13 W. R., 245

APPELLATE COURT—*continued.*

6. INTERFERENCE WITH AND POWER TO VARY ORDER OF LOWER COURT—*continued.*

149. ——— **Raising questions on second appeal.**—The question of due diligence on the part of a judgment-creditor can be gone into on a second appeal. KADUMBINI DABYA *v.* KOYLASH CHUNDER PAL CHOWDHRY
[I. L. R., 6 Calc., 554: 8 C. L. R., 19

150. ——— **Ex parte decree passed when summons had not been served in sufficient time.**—Where an *ex parte* decree was passed against the defendant, and it appeared that the writ of summons had not been served upon him in sufficient time to enable him to appear and answer, the Appellate Court, reversing the order of the Court of first instance, directed the *ex parte* decree to be set aside and ordered a new trial. CHANBASAPPA BIN SANGAPPA *v.* MAINBA BIN MAHADSHET
[7 Bom., A. C., 138

151. ——— **Grounds of appeal.**—*Contention abandoned in lower Court.*—An appellant in regular appeal may not, at the hearing, raise a contention of law expressly abandoned by him in the Court below, and not contained in the memorandum of appeal. PABITRA DASI *v.* DAMUDAR JANA
[7 B. L. R., 697: 24 W. R., 397, note

152. ——— **Finding of Court not appealed against.**—A finding of the first Court not appealed against cannot be interfered with by the Appellate Court. KALEE DASS ROY *v.* KHIRODA SOONDUREE DEBIA . . 16 W. R., 300

153. ——— **Presumption of correctness of judgment of lower Court.**—*Grounds for interference with.*—An Appellate Court ought not to interfere with the judgment of the lower Court until perfectly satisfied that the conclusion arrived at by the Court below is erroneous. It is a presumption of law that the judgment appealed against is right until the contrary is shown; and when there is a doubt about it, the benefit of that doubt should be given by the Appellate Court to the respondent. TAYUBUNNISSA BIBI *v.* KUWAR SHAM KISHORE ROY
[7 B. L. R., 621: 15 W. R., 228

154. ——— **Judgment of lower Court.**—*Grounds for reversal of.*—*Defect in investigation.*—*Insufficient finding.*—An Appellate Court should find some sufficient and significant facts before it reverses a judgment of the lower Court, and should show a proper basis for its conclusions. ANISUL FUTWA *v.* CHANDO . . 8 B. L. R., Ap. 3

155. ——— *Grounds for reversal.*—An Appellate Court is bound to state its reasons for reversing the decision of a lower Court. MAHADEO OJHA *v.* PARMESWAR PANDAY
[2 B. L. R., Ap., 20

LALLA SOOKLALL SING *v.* BUSSOODHUN; NOOR ALLY *v.* LALLA SOOKLALL SING
[W. R., 1864, 347

APPELLATE COURT—*continued.*

6. INTERFERENCE WITH AND POWER TO VARY ORDER OF LOWER COURT —*continued.*

156. ——— Want of cause of action.—*Grounds for rejecting plaint.—Civil Procedure Code (Act X of 1877), s. 53.*—In a suit for confirmation of possession and declaration of title in respect of land, where the plaint did not disclose any facts from which it could be said that the defendants denied the plaintiff's title, but from the proceedings in the original cause it was established that, before the suit was brought, there was a dispute existing between the parties as regards the title, and that a decree in favour of the plaintiffs had been passed by the original Court on the merits of the case. *Held* that, though the plaint might have been rejected in the first instance under section 53 of the Civil Procedure Code, on the ground that it did not disclose any cause of action, it was too late for an Appellate Court to reverse the decree solely on that ground, without being satisfied that no such cause of action was established on the evidence. SHAH AHMED SUJAD *v.* TAREE RAI . **I. L. R., 7 Calc., 343**

157. ——— Power of the Court of Appeal to vary decrees appealed from in consequence of circumstances occurring subsequently to the date of such decrees.—*Partition suit.—Death of a co-parcener* pendente lite.—When the decree of a Subordinate Court is under appeal to the High Court, it is open to the High Court to vary it either in points in which it is erroneous or in respect of matters occurring subsequently to the date of such decree which are admitted. The plaintiff obtained a decree in a partition suit in the Subordinate Judge's Court for his share in certain joint family property in the possession of the defendants (his co-parceners). The decree was affirmed on appeal. The defendants filed a second appeal in the High Court, but before it was decided one of the defendants died. The plaintiff at the hearing of the second appeal claimed a larger share in the family property than he had been awarded by the decree of the Courts below. *Held*, that he (plaintiff) was entitled to a share in that of the co-parcener who died *pendente lite*, and that the decree appealed from ought to be varied accordingly. SAKHARAM MAHADEV DANGE *v.* HARI KRISHNA DANGE **[I. L. R., 6 Bom., 113**

158. ——— Power to vary decree as made in the lower Court.—*Decree confined to rights in issue between parties.—Section 565 of the Code of Civil Procedure, 1877.*—After the trial of issues raising the question whether the plaintiff was, or the defendants were, entitled to zemindari rights in certain mehals, a decree was made affirming the title of the plaintiff, the evidence in support of the defendant's case being discredited, and the latter were declared by the decree to be the "plaintiff's under-tenure-holders of the said mehals." This was modified on appeal by the declaration that "the defendants are putnidars of the same mouzahs." *Held*, that it was unnecessary on this appeal to consider whether the Appellate Court was right in its conclusion that the defendants were putnidars; because,

APPELLATE COURT—*continued.*

6. INTERFERENCE WITH AND POWER TO VARY ORDER OF LOWER COURT —*continued.*

Power to vary decree as made in the lower Court—*continued.*

upon the case which had been set up for the defendants, and upon the issues framed and tried in the lower Court, the Appellate Court could not properly make such a declaration: the defendants could not be in a better position than they would have been in had they claimed to be putnidars, in which case an issue as to that title would have been framed and tried. Section 565 of Act X of 1877 does not enable an Appellate Court to declare a right in favour of one of the parties, where no issue has been fixed on the point, and the right has not been set up in the lower Court. OFFICIAL TRUSTEE OF BENGAL *v.* KRISHNA CHANDRA MOZUMDAR **[I. L. R., 12 Calc., 239: L. R. 12 I. A., 166**

7. OBJECTION TAKEN FOR FIRST TIME ON APPEAL.

(*a*) GENERAL CASES.

159. ——— Objection allowed to be raised and overruled.—As a general rule, objections not taken in the lower Court ought not to be allowed to be set up in the Appellate Court; but where the Judge in appeal had allowed such an objection to be taken and had overruled it, the High Court allowed it to be raised in special appeal, and being of opinion that it was a valid objection, reversed the decision of the Court below. DINDAYAL PARAMANIK *v.* SURENDRANATH ROY **[3 B. L. R., A. C. 78, note: 10 W. R., 77**

160. ——— Objection to procedure.—The errors of procedure of the Court of first instance are not to be remedied when they have not been made a ground of complaint before the lower Appellate Court. ANURUP CHANDRA MUKHOPADHYA *v.* HIRAMANI DASI . . . **3 B. L. R., Ap., 38**

S. C. ONOOROOP CHUNDER MOOKERJEE *v.* HEERA MONEE DOSSEE . . **11 W. R., 418**

161. ——— Objection based on Full Bench ruling.—An objection that the judgment of the Court of first instance is erroneous under a ruling of the Full Bench of the High Court not taken before the lower Appellate Court, will not be allowed to be taken in special appeal. NARATTAM DASS CHOWDHRY *v.* ROSOPYARI CHOWDHRAIN **[3 B. L. R., A. C., 271**

162. ——— *Held*, that a fresh ground could not be taken in appeal which had not been taken below, though based upon a Full Bench ruling. KASIMUDDI KHANDKAR *v.* NADIR ALI . **2 B. L. R., A. C., 265: 11 W. R., 164**

But *see* HYES *v.* MONEEROODDEEN AHUNG **[24 W. R., 6**

BONOMALEE BAGADAR *v.* KYLASH CHUNDER MOJOOMDAR . . . **24 W. R., 72**

APPELLATE COURT—*continued.*

7. OBJECTION TAKEN FOR FIRST TIME ON APPEAL—*continued.*

(*a*) GENERAL CASES—*continued.*

163. ——— Objection which, if taken, might have been cured.—An objection which, if taken, might have been cured, and which has not been taken in the Court below, cannot be taken in the Court of Appeal. DHURM DASS PANDEY *v.* SHAMA SOONDERY DEBIA
[6 W. R., P. C., 43: 3 Moore's I. A., 229

164. ——— Objection taken too late.—A point not taken in either of the lower Courts was disallowed as being too late when taken for the first time at the hearing of the special appeal. MAHADAJI *v.* VYANKAJI GOVIND . I. L. R., 1 Bom., 197

RAMABAI SAHEB PATVARDDHAN *v.* APPA
[12 Bom., 13

CHUNDEE CHURN ROY *v.* RAM COOMAR DUTT
7 W. R., 413

BUNSEE LALL *v.* AOLADH AHSAN
[22 W. R., 552

165. ——— Allowing objections.—The High Court allowed objections to be taken by a defendant which had not been taken in either of the lower Courts. BHUBAN CHANDRA SHOME *v.* RAMDYAL SHAMANTA
5 B. L. R., Ap., 62: 14 W. R., 55

RAMTARAK KARATI *v.* DINANATH MANDAL
[7 B. L. R., 184
S. C. 24 W. R., 414, note

166. ——— Objection apparent on pleadings.—The High Court can raise and adjudicate upon certain points in special appeal, when they are apparent on the face of the pleadings, even though the parties to the suit are silent. ENAET HOSSEIN *v.* KUREEMOONISSA . . 3 W. R., 40

167. ——— Objection involving point of mixed law and fact.—*Second appeal.*—An objection involving a point of law as well as of fact, if not taken in the Court below, cannot be entertained in second appeal. VASANJI HARIBHAI *v.* LALLU AKHU . . . . I. L. R., 9 Bom., 285

168. ——— Objection not taken on cross-appeal.—*Remand.*—An objection not taken in cross-appeal before the lower Appellate Court, cannot be taken in special appeal; but if the case be remanded for new trial, such objection may then be taken before the Court of first instance. DURGARAM ROY *v.* NARSING DEB . . 2 B. L. R., A. C., 254

S. C. DOORGARAM ROY *v.* NUROSINGH DEB
[11 W. R., 134

169. ——— Omission to prefer appeal against remand order.—*Objection to its legality on special appeal.*—The omission of a party to prefer an appeal against an order of remand does not preclude him from questioning its legality when it comes up in special appeal from the subsequent decision passed after remand. MAGARAM OJHA *v.* NILMONEE SINGH DEO . . . . 13 B. L. R., 198
[21 W. R., 326

APPELLATE COURT—*continued.*

7. OBJECTION TAKEN FOR FIRST TIME ON APPEAL—*continued.*

(*a*) GENERAL CASES—*continued.*

170. ——— Objection taken but not pressed.—Where an objection taken in the grounds of appeal is not pressed at the hearing of the case, it cannot be raised again in special appeal. NOBOKRISTO SIRCAR *v.* KALACHAND DOSS
[12 W. R., 470

SOORJO KANT BANERJEE *v.* KRISTO KISHORE PODDAR . . . 14 W. R., 423

171. ——— Want of opportunity to raise objection.—A defendant is entitled to take in the Appellate Court an objection which he had no opportunity of taking until the case was heard in appeal. LOWA JHA *v.* BISSESHUR SINGH
[11 W. R., 6

172. ——— Objection by pro forma defendant.—A *pro formâ* defendant cannot be allowed to raise in appeal objections which he neglected to raise in the suit. DEOKEENUNDUN ROY *v.* KALEE PRESHAD . W. R., 1864, Mis., 34

As to taking objections for the first time, see also MANIRUDDEEN AHMED *v.* RAM CHAND
[2 B. L. R., A. C., 341

NAIMUDDA JOWARDAR *v.* SCOTT MONCRIEFF
[3 B. L. R., A. C., 283

S. C. NYEMODDEE JOWARDAR *v.* MONCRIEFF
[12 W. R., 140

NANOO ROY *v.* JHOOMUCK LALL DASS
[12 B. L. R., 292, note: 18 W. R., 376

GOUR KISHORE DUTT *v.* AKBUR
[22 W. R., 489

SHEO GOBIND RAWUT *v.* ABHAY NARAIN SINGH . . . 5 B. L. R., Ap., 17

(*b*) SPECIAL CASES.

173. ——— Adoption.—*Objection to invalid adoption.*—An objection (that an adoption was invalid, because the party adopted was the eldest son of his natural father) was rejected in special appeal, because not urged in the lower Courts at any stage of the trial, and not specifically taken in the petition of special appeal. JOY TARA DOSSEE CHOWDRAIN *v.* ROY-CHUNDER GHOSE . . 1 W. R., 136

174. ——— *Omission of performance of ceremonies.*—*Held*, that as no objection to the omission of any of the usual ceremonies of adoption or to the age of the adopted son was taken before the lower Court, its decision was not open to those objections when taken on appeal. DURYAO SINGH *v.* KARUN SINGH . 1 Agra, 31

175. ——— Alienation.—*Alienation by member of Mitakshara family.—Invalidity of alienation.—Proof of consideration.*—A father having executed a deed conveying certain ancestral property to two persons (*D.* and *B.*), who alienated it to several others, his son sued to have the conveyances by *D.* and *B.* set aside, on the ground that the deed given by the father was *benamee*, and that *D.* and *B.*

APPELLATE COURT—*continued.*

7. OBJECTION TAKEN FOR FIRST TIME ON APPEAL—*continued.*

(*b*) SPECIAL CASES—*continued.*

Alienation—*continued.*

never had possession. The suit was dismissed by both the lower Courts. *Held* that, as plaintiff went to trial in the Courts below upon one issue only, *viz.*, whether *D.* and *B.* were ever really in occupation, he was not entitled in special appeal to complain that evidence had not been taken as to the passing of consideration-money. *Held* that, as no issue was raised in the lower Courts which could have been the foundation for a declaration of right, the non-decision of a claim to such a declaration could not be made a ground of special appeal. *Held* that, where the question whether the alienation of certain property by the father without the son's consent was valid under the Mitakshara law was not raised in the lower Courts, such invalidity could not be admitted as a ground of objection in special appeal, for it necessarily involved an issue of fact. PURIAG DUTT *v.* BROJO KOONWAR . . . **9 W. R., 503**

BENODE PATNAIK *v.* DOYANIDHEE BULLIOR SINGH . . . . **9 W. R., 493**

176. ——— **Appeal.**—*Objection that no appeal lies.*—The High Court refused to entertain an objection (not taken till the close of the appellant's argument) that the amount in appeal being less than R5,000 no appeal would lie. CHUNDER NATH MISSER *v.* SIRDAR KHAN . . **18 W. R., 218**

177. ——— **Attachment.**—*Invalidity of attachment.*—An objection that an attachment under section 240 of Act VIII of 1859 was invalid, because the formalities required by section 239 had not been complied with, was not allowed to be taken on appeal, it not having been raised in the Courts below. RAMKRISHNA DAS SUROWJI *v.* SURFUNNISSA BEGUM . . . **I. L. R., 6 Calc., 129**

178. ——— **Award.**—*Objection that arbitrators had no power to administer other than usual oath.*—Where on a reference to arbitration, the arbitrators had made an award founded on the evidence of the defendant after he had by agreement been sworn on the Koran, and an objection was taken that the arbitrators had no power to administer such oath, and that the award was invalid,—*Per* PEARSON, *J.* (SPANKIE, *J.*, doubting), that as the objection was one which vitally affected the procedure of the arbitrators, it could not be ignored, although it was not preferred in the lower Courts and was not to be found in the memorandum of special appeal. WALIULLA *v.* GHULAM ALI . . **I. L. R., 1 All., 535**

179. ——— *Objection to validity of award.*—Where objection to the validity of the award, on the ground that it was made beyond the time allowed, was not taken by the defendant in the first Court,—*Held*, that he was not thereby estopped from raising the objection for the first time in appeal, inasmuch as it was not shown that in the first Court he was aware of the defect, or

APPELLATE COURT—*continued.*

7. OBJECTION TAKEN FOR FIRST TIME ON APPEAL—*continued.*

(*b*) SPECIAL CASES—*continued.*

Award—*continued.*

had done anything to imply consent to extension of the time. CHUHA MAL *v.* HARI RAM **[I. L. R., 8 All., 548**

180. ——— **Coverture.**—*Plea of coverture.*—*Execution of decree.*—The plea of coverture not allowed to be raised against a decree-holder, because not taken when she first sought to execute the decree. KIRKBY *v.* DILLON **[1 N. W., Ed. 1873, 243**

181. ——— **Custom.**—*Objection as to custom against inheritance.*—In a suit by a Hindu widow for possession and declaration of title,—*Held*, that defendant could not be allowed to come in and urge for the first time on appeal that, by a family custom or *koolachar*, females were excluded from inheriting. DOORGA PERSHAD SINGH *v.* DOORGA KOONWAREE **[13 W. R., 10: 9 B. L. R., 306, note**

182. ——— **Damages, Measure of.**—*Mode of calculation of damages.*—*Held*, that as the defendant had made no objection to the manner in which the plaintiff had calculated damages in the Courts below, the question could not be gone into on special appeal. MCDONALD *v.* RAJARAM ROY **[3 B. L. R., Ap., 28: 11 W. R., 371**

183. ——— **Decree, Form of.**—An objection as to the form of a decree not allowed to be taken in the first time on special appeal. MOHESSUR BUKSH SINGH *v.* MUTHOORAPERSHAD **[8 W. R., 515**

184. ——— **Enhancement.**—*Waiver of objection.*—In a suit for enhancement of rent, where defendant pleaded Bengal Act VIII of 1869, section 4, plaintiff referred in both the lower Courts to a *chittee* to prove variation of rent; but it was found that the terms of the *chittee* barred enhancement. *Held*, that it was not open to plaintiff in special appeal to object that the *chittee* had not been proved. LALLA BANEE PERSHAD *v.* LALLA DABEE PERSHAD . . . **24 W. R., 435**

185. ——— *Service of notice.*—In a suit for enhancement of rent, it was objected on behalf of the defendant in special appeal that service of notice had not been proved. *Held*, the question was one of fact, and the objection ought, therefore, to have been taken in the Court of first instance. DUMAINE *v.* UTTAM SINGH **[5 B. L. R., Ap., 44 13 W. R., 462**

186. ——— *Objection to want of notice of enhancement.*—An objection that no notice of enhancement had been served, though not taken in the Court below, was allowed to be taken on appeal. THEEMEE BELDAR *v.* RAM KISHEN LALL . . . . . **15 W. R., 71**

APPELLATE COURT—*continued.*

7. OBJECTION TAKEN FOR FIRST TIME ON APPEAL—*continued.*

(*b*) SPECIAL CASES—*continued.*

Enhancement—*continued.*

but not a technical objection to the form of notice. SEEE GOPAUL MULLICK *v.* DWARKANATH SEIN [15 W. R., 520

SHAMA SOONDUREE DEBIA *v.* DEGUMBUREE DEBIA . . . . 21 W. R., 368

though *see* WOOMA CHURN DUTT *v.* GRISH CHUNDER BOSE . . 17 W. R., 32

RAM RUTTUN GHOSE *v.* PROSUNNO NATH BHUTTACHARJEE . . . 20 W. R., 203

187. ——————— *Informality of notice of enhancement.*—Where a notice of enhancement, though informal, was sufficient to inform the ryot of the landlord's intention to increase the rent to the rates paid for similar lands in places adjacent, and the notice was accepted by the ryot, and treated by him in the lower Court as a notice under clause 1, section 17, Act X of 1859, it was held that the informality could not be objected to for the first time in the High Court in special appeal. KASHEENATH DEB *v.* SHIBESSUREE DEBIA [8 W. R., 503

188. ——————— *Suit to contest enhancement.—Irrigation expenses.—Held,* that in a suit for enhancement the plea of increased expense on account of irrigation cannot be admitted for the first time in special appeal. KUNCHUN SINGH *v.* SHEORAJ . . . . . 1 Agra, Rev., 7

189. ——————— *Objection not taken before as being unnecessary.*—A suit for enhancement of rent was defended on two grounds, the first of which was overruled, but the second succeeded, and the suit was dismissed. Plaintiff appealed, and the second ground having been overruled in appeal, the respondent (defendant) again put forward the objection which had been overruled by the first Court. *Held* that, under the circumstances, it was not too late for him to take that objection. TAREE MAHTOON *v.* RAM SAHOY SINGH [25 W. R., 110

190. ——————— **Evidence.**—*Time for objection to evidence.*—It is the duty of the party who wishes to object to evidence to object in the first instance, and not to delay doing so until the case is before the High Court in special appeal. SEETUL PERSHAD MITTER *v.* JUNMEJOY MULLICK [12 W. R., 244

191. ——————— *Objections to evidence as not being the best.*—Objections to evidence as not being the best evidence should not be allowed to be taken on special appeal. AVUDH BEHAREE SINGH *v.* RAM RAJ TEWAREE [18 W. R., 105

LOCHUN SINGH *v.* HET NARAIN SINGH [24 W. R., 232

192. ——————— *Objection to mode of recording evidence.*—The objection that the depositions of the witnesses were not taken in the manner prescribed by the Code of Civil Procedure, but only notes of the evidence, is not one which can be taken in special appeal. LALL MAHOMED *v.* PEER NUZUR . . . . . 18 W. R., 112

APPELLATE COURT—*continued.*

7. OBJECTION TAKEN FOR FIRST TIME ON APPEAL—*continued.*

(*b*) SPECIAL CASES—*continued.*

Evidence—*continued.*

193. ——————— *Objection as to admissibility of evidence.*—It being objected in special appeal that the decision of the lower Appellate Court was based on documents which were neither admissible as legal evidence nor had any bearing on the point to be decided,—*Held,* that though the objection to the admissibility of the evidence ought to have been taken in the Court in which the evidence was tendered, yet coming in such a shape as it did it could not be got over. *Held* also (MITTER, *J.*, *dissentiente*), that as defendant has succeeded in special appeal on an objection which he should have taken before, he ought to pay his own costs in this appeal, even should he succeed ultimately (the case being remanded); and that it is not the exclusive duty of a Court, but that of pleaders also, to see whether evidence tendered is legally admissible. MUNRAKHUN ROY *v.* JUGGUT DOSS [10 W. R., 124

194. ——————— *Objection as to admissibility of evidence.*—The reception of papers and documents by the lower Appellate Court, unless objected to at the time, cannot be made a ground of special appeal. RASH BEHARI SINGH *v.* NABAYI PODDAR . . . 3 B. L. R., A. C., 99 [11 W. R., 465

195. ——————— *Objection as to admissibility of evidence.*—Where no objection had been taken as to the admissibility of documentary evidence,—*viz.*, a decree and other proceedings in regard to that decree, which had been made use of by the opposite party,—an Appellate Court has no jurisdiction to exclude it. Where a defendant allows, without objection, a purchaser of a plaintiff's interest in the suit to substitute his name on the record under an order of Court, he cannot afterwards contend that the suit is thereby abated. BIR CHANDRA ROY MAHAPATTER *v.* BANSI DHAR ROY MAHAPATTER 3 B. L. R., A. C., 214

196. ——————— *Evidence received without objection.*—Where a deposition made in another suit, to which special appellant was not a party, was admitted and used by the first Court without any objection on the part of the special appellant, it was held that he could not be allowed to object to it in special appeal. Where the lower Appellate Court's judgment is good, and its adjudication of a plaintiff's right has been based on a sound principle, the High Court will not allow a new point to be taken in special appeal which was not taken in either of the Courts below. WAZEER JEMADAR *v.* NOOR ALI . . . . . 12 W. R., 33

APPELLATE COURT—*continued.*

7. OBJECTION TAKEN FOR FIRST TIME ON APPEAL—*continued.*

(*b*) SPECIAL CASES—*continued.*

Evidence—*continued.*

197. ——— *Objection to validity of document.*—Before an objection to the validity of a document filed as evidence in a case can be admitted as a ground of special appeal, it must be shown to have been made at every stage in the Courts below. JOYKISHEN MOOKERJEE *v.* RAJKISHEN MOOKERJEE . . 12 W. R., 315

198. ——— *Objection to evidence wrongly received.*—An objection to the effect that the Court of first instance had given judgment on the strength of a document which ought to have been registered, was not admitted in special appeal, as it had not been raised either in the first Court or in the lower Appellate Court. JOYGOPAL MOZOOMDAR *v.* THAKOMONEE DABEE . . 11 W. R., 381

199. ——— *Evidence wrongly received without objection.*—Objection as to reception of evidence not before objected to disallowed on special appeal. GODAYI JOARDAR *v.* MEARS [10 W. R., 50

RUGHOONATH PERSHAD *v.* HUREE MOHUNT [10 W. R., 37

CHADEE SINGH *v.* BEHAREE TEWAREE [10 W. R., 91

MUKDOOMUNNISSA *v.* NOKHY SINGH [24 W. R., 296

ANAR MOLLAH *v.* HILLS . 10 W. R., 139

KISSEN KAMINEE DOSSEE *v.* RAM CHUNDER MITTER . . . . 12 W. R., 13

PROTAP CHUNDER BOROOAH *v.* COLLECTOR OF GOWALPARA . . 22 W. R., 216

200. ——— *Objection to unregistered document.—Regular appeal.—Held,* that the Court is bound in regular appeal to entertain an objection that a document is invalid for want of registration, even though no objection may have been raised to its admissibility in the Court below. BASAWA GURBASAWA *v.* KALKAPA [I. L. R., 2 Bom., 489

201. ——— *Objection to unregistered document.—Held,* that as the plea as to the inadmissibility of a document as evidence for want of registration was not specially taken in the Court below, it could not be allowed in a special appeal. GRISH CHANDRA ROY CHOWDRY *v.* AMINA KHATUN . . . 3. B. L. R., Ap., 121

202. ——— *Objection to unregistered document.—Costs.*—Whether the lower Appellate Court wrongly gave effect to an unregistered bond which by reason of its being unregistered was not admissible in evidence, no objection being taken by the parties to its being admitted,—*Held,* that the objection must prevail when taken for the first time in special appeal, but the party taking it was not entitled to the costs of the appeal. OOMATOOL FATIMA *v.* GHUNNOO SINGH [19 W. R., 22

APPELLATE COURT—*continued.*

7. OBJECTION TAKEN FOR FIRST TIME ON APPEAL—*continued.*

(*b*) SPECIAL CASES—*continued.*

Evidence—*continued.*

203. ——— *Objection that document is improperly stamped.*—The plaintiff appealed to the Judge against a dismissal of his suit, who reversed the decision of the Court below, and gave the plaintiff a decree. The defendant thereupon appealed to the High Court, on the ground that a document had been admitted in evidence in support of the plaintiff's case which did not bear a proper stamp. *Held* that the defendant, having omitted to take the objection before the Judge, could not appeal on this ground. RAMBREM LALL *v.* ABLUCKH SINGH . . . Marsh., 267 : 2 Hay, 148

204. ——— *Refusal to examine witnesses.*—A Court of first instance, being satisfied that plaintiff's case could not be established, refused to examine defendant's witnesses. The lower Appellate Court, differing from the Munsif, gave plaintiff a decree. *Held* that, although the Munsif had committed a great irregularity, still as that point was not raised in the lower Appellate Court it could not be taken in special appeal. GOOROO DASS AKHOOLEE *v.* PORAN MUNDLE . . 12 W. R., 363

205. ——— *Refusal to examine witnesses.*—An objection that the Court had refused to examine witnesses, if not brought before the Appeal Court, cannot be raised on special appeal. OSMAN SINGH *v.* CHUMMUN MAHTOO [15 W. R., 87

206. ——— *Refusal to examine witnesses.*—It is too late to make an objection, for the first time in second appeal, that a certain witness, for whose evidence no application had been made in the Courts below, ought to have been examined by the Appellate Court. SOMASHEKHARA *v.* SUBHADRAMAJI . . I. L. R., 6 Bom., 524

207. ——— *Refusal to take evidence.*—Where the Court refuses to take evidence offered, that fact should be made the ground of regular appeal, and not first set up in special appeal. LALLA DEBEEDEN *v.* SHEO GHOOLAM SINGH [2 N. W., 206

208. ——— **Execution of decree.**—*Mode of execution.—Discretion of Court.*—When the mode of execution has not been specifically objected to in the Court below, the High Court will not interfere. DWARKANATH DASS BISWAS *v.* UNNODA CHURN DASS . . . . . 8 W. R., 318

209. ——— *Objection that decree cannot be executed in portions.*—A decree cannot be executed in aliquot parts, but where it was objected for the first time in second appeal that a person seeking execution of a portion of decree was not entitled to execution, the High Court refused to allow the objection. GOODUR SAHOY *v.* DHUNNESHUR KOER . . . 7 C. L. R., 117

APPELLATE COURT—*continued.*

7. OBJECTION TAKEN FOR FIRST TIME ON APPEAL—*continued.*

(*b*) SPECIAL CASES—*continued.*

210. ——— **Fraud.**—*Omission to allege fraud.*—*Held*, that defendant could not be allowed in special appeal to object that the lower Court had not determined the *bona fides* of plaintiff's purchase, unless he (defendant) had not only alleged fraud, but shown the way in which the fraud was intended to be carried out. BOIKUNTO NATH SETT *v.* RUSSICK LALL BURMONO . . . **10 W. R., 231**

211. ——— **Guardian.**—*Objection as to due appointment of guardian.*—Where plaintiff claimed as his inheritance what had been sold to defendants by his mother to liquidate debts due by his late father, it was held, first, that it was too late in special appeal to raise doubts as to his mother having been plaintiff's guardian when the objection had not been taken below at any stage of the proceedings. KOOL CHUNDER SURMAH *v.* RAMJOY SURMONA . . . . . **10 W. R., 8**

212. ——— *Want of certificate.*—*Maxim "Omnia præsumuntur rite esse acta."*—On a suggestion taken for the first time in special appeal that a guardian has not obtained a certificate, it will not be assumed for the purpose of reversing the decree that such is the case. It will be presumed rather that the proceedings in the Court below have been regularly conducted until irregularity be shown. THUMMUN *v.* GOLAB RAE . . **2 N. W., 89**

213. ——— **Issues.**—*Omission to raise issues.*—Where appellant satisfies the Court that he has been substantially injured by no issues being framed by the Judge previous to his decision, effect will be given to such objection. SAH KOONDUN LALL *v.* MAKHUN LALL

[1 N. W., 168, Ed. 1873, 247

214. ——— **Jurisdiction.**—The defendant objected to the jurisdiction of the first Court, but took no objection to the jurisdiction before the lower Appellate Court. *Held*, that objection to the jurisdiction was waived. MAHOMED HOSSEIN *v.* AKAYA NARAYAN PAL

[2 B. L. R., Ap., 42 : 18 W. R., 37, note

HURISH CHUNDER ROY *v.* POORNA SOONDUREE DEBEE . . . . **18 W. R., 35**

215. ——— *Suit brought in Court without jurisdiction.*—*N.-W. P. Rent Act, XVIII of 1873, s. 206.*—As the plaintiff's claim, instituted in the Civil Court to eject the defendant, a quondam tenant, and to recover mesne profits, could not be entertained in any suit in any Court, the provisions of section 206 of Act XVIII of 1873 that the objection that a suit was instituted in the wrong Court shall not be entertained by the Appellate Court, unless such objection was taken in the Court of first instance, were not applicable. RAM AUTAR RAI *v.* TALIMUNDI KUAR . . . **7 N. W., 49**

216. ——— *Summary suit for possession.*—*A.* and *B.* obtained a decree for possession of land against *C.* On their proceeding to execute their decree, *D.*, who was in possession, presented a petition to the Munsif, complaining that they were thereby attempting unlawfully to interfere with his possession. The case was tried, on remand from the Judge, as a suit under the provisions of section 229 of Act VIII of 1859. *Held, per* JACKSON, *J.*, that as the decree-holder had not complained that the officer of the Court had been obstructed or resisted by the claimant, the case did not fall within section 229 of Act VIII of 1859; and, therefore, the Court had not jurisdiction to take summary cognizance of the case. *Per* MITTER, *J.*—This objection, taken for the first time on special appeal, did not affect the merits of the case or the jurisdiction of the Court. BUHAL SINGH CHOWDRY *v.* BEHARI LALL

[1 B. L. R., A. C., 206 : 10 W. R., 318

217. ——— **Kabuliat, Suit for.**—*Failure to prove case.*—Where, in answer to a suit for a kabuliat at a specified rent, defendant pleaded in the Court below, not that plaintiff was not entitled to any kabuliat at all, but that he was not entitled to a kabuliat at the rates he claimed,—*Held*, that defendant could not be allowed in special appeal to take advantage of the Full Bench ruling in *Gholam Mahomed* v. *Asmut Ali Khan, B. L. R., Sup. Vol., 974; 10 W. R., F. B., 14*, and ask for the suit to be dismissed. GHOLAM ALI *v.* ADGUR ALI

[11 W. R., 105

218. ——— *Failure to prove case.*—In a suit for a kabuliat at an enhanced rate, the Court of first instance gave a decree for an amount less than that of the claim. No objection was taken before the lower Appellate Court, that, under the Full Bench ruling in *Gholam Mahomed* v. *Asmut Ali Khan Chowdry*, the suit was liable to be dismissed. This objection was taken for the first time in special appeal. *Held*, that the objection could not be entertained. NIZAMUT ALI *v.* ROMESH CHANDRA ROY

[3 B. L. R., A. C., 78 : 11 W. R., 430

But *see* HAMED ALI *v.* AFFEEOODDEN

[1 B. L. R., S. N., 14 : 10 W. R., 213

219. ——— *Omission to tender pottah.*—The lower Appellate Court ought not to have entertained the objection of the defendant that no pottah had been tendered before the institution of the suit, as the objection had not been taken before the first Court. That issue was not essential to the right determination of the suit upon the merits. RAMANATH RAKHIT *v.* CHAND HARI BHUYA . . . . . **6 B. L. R., 356**

220. ——— *Omission to tender pottah.*—In a suit for a kabuliat an objection cannot be raised on appeal for the first time that a pottah had not been tendered. DOORGA KANT MOZOOMDAR *v.* BISHESHUR DUTT CHOWDHRY

[W. R., 1864, Act X, 44

APPELLATE COURT—*continued.*

7. OBJECTION TAKEN FOR FIRST TIME ON APPEAL—*continued.*

(*b*) SPECIAL CASES—*continued.*

221. ——— **Landlord and tenant.**—*Suit to have pottah cancelled.*—Where a plaintiff sued to have the defendants' pottah cancelled on the ground of fraud, to restrain them from felling trees, and for a declaration that a certain *shola* was Government property,—*Held* that, having failed to establish the grounds upon which relief was claimed, the plaintiff was not entitled to object on appeal, for the first time, that the defendants were merely tenants from year to year. SECRETARY OF STATE FOR INDIA *v.* NUNJA . . . . **I. L. R., 5 Mad., 163**

222. ——— **Limitation.**—*Possession.*—Where a defendant in the lower Court pleaded limitation, but placed that issue upon the simple fact that he himself had possession for twelve years and upwards, which issue was found against him,—*Held*, that it was too late for the defendant in special appeal to object that that finding did not dispose of the issue of limitation. KISTO MOHUN KURMOKAR *v.* NOYAN TARA DOSSEE . . **10 W. R., 389**

223. ——— *Minority.*—*Right of member of family to alienate.*—A plaintiff obtained a decree to set aside an alienation of ancestral property effected by his father during his minority. Defendant objected in special appeal, first, that the suit was barred by lapse of time since plaintiff attained his majority; and secondly, that, under the Mitakshara law, the father had a right to alienate a share of the property. *Held*, that as the first of these objections was entirely a matter of fact, and as the second, though essentially a matter of law, went to the substance of the plaintiff's claim, they should have been urged in the lower Courts, and could not be admitted for the first time in special appeal. BENODE PUTNAIK *v.* DOYANIDHEE BULLIOR SINGH **[9 W. R., 493**

224. ——— *Settlement.*—In the first Court an issue was raised whether or not the hearing of this suit was barred by the law of limitation. One of the grounds of appeal to the Judge was, that the Principal Sudder Ameen ought to have held the suit barred as regards the diaras under the special limitation of three years from the date of the Collector's settlement. The Judge did not notice this ground in his judgment. The same ground of appeal was repeated in the special appeal to the High Court, but that Court refused to entertain it, for the reason that it did not appear to have been raised in argument before the Judge or in the first Court. RAJ KUNWAR *alias* SHEOMURAT KUNWAR *v.* INDERJIT KUNWAR **[5 B. L. R., 585: 13 W. R., 52**

225. ——— *Guardian and Ward.*—*Minority.*—*A.* sued *B.* to recover possession of a hereditary jote, of which he alleged he had been dispossessed by *B.* during his minority. *B.* raised the defence of limitation and relinquishment by *A.'s* grandmother and guardian. The Munsif held that the suit was not barred on the ground that it had

APPELLATE COURT—*continued.*

7. OBJECTION TAKEN FOR FIRST TIME ON APPEAL—*continued.*

(*b*) SPECIAL CASES—*continued.*

Limitation—*continued.*

been brought within three years from the date on which *A.* had attained his majority, but decided against *A.* on the merits. On appeal the question of limitation was not raised, but on the merits the Judge also found against *A.* On special appeal by *A.*, *B.* took an objection under section 348 of Act VIII of 1859 that *A.'s* suit was barred. *Held*, that *B.* could not take the objection at that stage. KEDERNATH MOOKERJEE *v.* MATHURANATH DUTT **[1 B. L. R., A. C., 17: 10 W. R., 59**

226. ——— Where an objection that the suit was barred by limitation was not taken into consideration by the lower Appellate Court, and in special appeal the facts necessary to support the plea of limitation were stated in the ground of appeal, but for another reason and in another form than those for which it was raised before, the High Court allowed the objection to be taken and to prevail, and dismissed the suit. BISSONATH SURMA *v.* SHOODAMOOKEE **[11 B. L. R., Ap., 1: 20 W. R., 1**

227. ——— *Setting aside ex parte case.*—A Munsif entertained a petition by a defendant under section 119 of the Civil Procedure Code, and set aside his former judgment given *ex parte* in favour of the plaintiff, and dismissed the plaintiff's suit. The plaintiff, on appeal before the Judge, did not raise the objection that the Munsif ought not to have entertained the petition of the defendant, as it had not been presented in due time. It was held to be too late to raise the objection on special appeal. BORO KHASIA *v.* JATA SIRDAR **[8 B. L. R., 78: 15 W. R., 315**

228. ——— **Merger.**—*Plea of merger.*—A plea of merger cannot be raised for the first time in special appeal. RUSHTON *v.* ATKINSON **[11 W. R., 485**

229. ——— **Misjoinder.**—*Misjoinder of causes of action.*—*Suit for arrears of rent.*—*Separate leases.*—The Court refused to admit in special appeal the plea that the lessor should have instituted separate suits to recover the arrears of rent due on each lease, as it allowed the objection that the leases could not be declared forfeited for the aggregate of the arrears of rent and cesses due on both leases, but that the forfeiture of each lease was incurred in respect of the arrears due on it, and that the lower Courts should have therefore determined and declared in their decrees what was the amount of arrear due in respect of rent and cesses on each lease separately. GULABI SINGH *v.* RAI NORMAL CHAND **6 N. W., 342**

230. ——— *Misjoinder of causes of action.*—An objection that the plaintiff has joined together causes of action which, by section 44 of the Civil Procedure Code, may not be joined together without leave first obtained, is taken too late for the first time in the Court of Appeal after the

APPELLATE COURT—*continued.*

7. OBJECTION TAKEN FOR FIRST TIME ON APPEAL—*continued.*

(*b*) SPECIAL CASES—*continued.*

Misjoinder—*continued.*

case has been already heard on its merits. DHONDIBA KRISHNAJI PATEL *v.* RAMCHANDRA BHAGVAT [I. L. R., 5 Bom., 554

GUNESH PERSAD *v.* WILSON [W. R., 1864, Act X, 86

231. ——— *Misjoinder of parties.*—Misjoinder of parties is not an objection which can be allowed to be taken in special appeal. TILUCK CHUNDER CHUCKERBUTTY *v.* MUDDUN MOHUN JOOGEE . . . . . 12 W. R., 504

LALL MAHOMED v. PEER NUZUR [18 W. R., 112

LUCHMEE DHUR PATTUCK *v.* RUGHOOBUR SINGH . . . . . 24 W. R., 286

232. ——— *Held,* that even if there had been a misjoinder, the plea could not be allowed in second appeal, as the defendants had not been prejudiced. MALAGURI GARUDIAH *v.* NARAYANA RUNGIAH . . I. L. R., 3 Mad., 359

NUJMOODDEEN AHMED *v.* ZUHOORUN [10 W. R., 45

RAM DOYAL DUTT *v.* RAM DOOLAL DEB [11 W. R., 273

TULSHA *v.* GOPAL RAI . I. L. R., 6 All., 632

Contra, SREEKANT ROY CHOWDHRY *v.* KITABOODDEEN SIRDAR . . 10 W. R., 49

233. ——— *Misjoinder of causes of action.*—As a general rule, if an objection on the ground of misjoinder of causes is pressed and carried to a decision in the first Court, the High Court will, even upon special appeal, upon its being shown to be well founded, give the objector the benefit of it; but if it is not pressed and carried to a decision in the first Court, and if the parties go to trial as if the objection had not been made, then the objection will not be given effect to at a later stage, unless it appears clearly that there was a defect in the original trial in consequence of the misjoinder. TARINEE CHURN GHOSE *v.* HUNSMAN JHA [20 W. R., 240

234. ——— *Objection to defendant being made plaintiff.*—Where a defendant was made one of the plaintiffs by the consent of the first Court and appealed as one of the plaintiffs, and took no objection until the case came up on special appeal, the objection was not allowed to be taken. RAKHAL DOSS MUNDLE *v.* PROTAP CHUNDER HAZRAH. . . . . 12 W. R., 455

235. ——— **Notice of enquiry.**—*Want of notice of enquiry by Ameen.*—A judgment-debtor who, while objecting before the Judge as to what had been done by the Ameen in the enquiry as to the mesne profits, raised no objection as to the want of notice of the Ameen's enquiry, was not allowed to raise the latter objection on appeal. SHARODA MOYEE BURMONEE *v.* WOOMA MOYEE BURMONEE [8 W. R., 9

APPELLATE COURT—*continued.*

7. OBJECTION TAKEN FOR FIRST TIME ON APPEAL—*continued.*

(*b*) SPECIAL CASES—*continued.*

236. ——— **Notice of suit.**—*Omission to give notice of action under s. 42, Police Act, V of 1861.*—In a suit against a police officer, the objection under section 42, Act V of 1861, that one month's notice has not been given, must be taken in the lower Court: if not taken then, it cannot be made a ground of appeal. NARAIN DEEN TEWAREE *v.* RAM DASS [8 W. R., 425

237. ——— *Notice of suit against Municipal Commissioners.—Non-joinder of party.—Special appeal.—Act XV of 1873, ss. 28, 43.*—The plea that no notice was given as required by section 43 cannot be taken for the first time in special appeal. *Quære,*—Whether a plea that the local Government had not been made a party to a suit against a Municipal Committee in accordance with section 28 can be taken for the first time in special appeal. MUNICIPAL COMMITTEE OF MORADABAD *v.* CHATRI SINGH . I. L. R., 1 All., 269

238. ——— **Notice to quit.**—*Suit for ejectment.*—Where notice to quit is a necessary part of plaintiff's title to eject, and when the issues raised the question of plaintiff's right to eject, and no proof was given of notice by plaintiff, but no objection was taken to the want of notice by the defendant until second appeal,—*Held,* that it was competent to the Court to entertain the objection in second appeal, but that the plaintiff should have liberty to meet the objection upon the trial of an issue referred to the lower Court upon that point. ABDULLA RAWUTAN *v.* SUBBARAYYAR . . I. L. R., 2 Mad., 346

239. ——— *Denial of landlord's title throughout case.—Objection on special appeal that no notice to quit has been given.*—Where a tenant denied his landlord's title and persists throughout in a vexatious and aggressive course of conduct towards him, he will not, in a suit for ejectment, be allowed in special appeal to assert that he has not been served with a notice to quit, that objection not having been taken in the Courts below. RAM NUFFER BHATTACHARJEA *v.* DHOL GOBIND THAKOOR . . 1 C. L. R., 421

240. ——— **Parties.**—*Suit by Receiver in his own name.—Error in frame of suit.*—Where the receiver of an estate, appointed by the High Court on its Original Side, received permission to bring a suit on behalf of the parties interested in the estate, and brought the suit in his own name, it was held that, though the frame of the suit was erroneous, yet the error being one of form only, and no objection on the ground of that error having been taken in the Court below, such objection could not be allowed to prevail in the Court of Appeal, which might amend the proceedings without consent of the parties interested, or further notice of appeal. JUGGUNNATH PERSHAD DUTT *v.* HOGG . . 12 W. R., 117

241. ——— *Defect of parties, Objection as to.*—Where a decree for wasilat was given against the manager of an unregistered

APPELLATE COURT—*continued.*

7. OBJECTION TAKEN FOR FIRST TIME ON APPEAL—*continued.*

(*b*) SPECIAL CASES—*continued.*

Parties—*continued.*

trading company, and the plea that the company was not a corporate body, and therefore not liable without a disclosure of the names of the parties constituting the company, was not taken until the execution stage,—*Held*, that the plea was a technical one, and taken too late to be of any weight in a Court of equity. TRIPP v. NURSING CHUNDER MITTER [W. R., 1864, Mis., 7

242. ——————— *Defect of parties, Objection as to.*—*Per* PRINSEP, *J.*—The objection as to defect of parties after the case had passed through two Courts is not one affecting the merits of the case so as to be a ground of special appeal. BOYDONATH BAG *v.* GRISH CHUNDER ROY [I. L. R., 3 Calc., 26

243. ——————— *Technical objection.*—In a suit for possession by right of foreclosed mortgage, plaintiff having obtained a decree which was *ex parte* against one of the defendants, the lower Appellate Court found as a fact, on the appeal of the defendants, that the mortgage transaction was *benamee* and collusive (the defendant *A.* having been a sharer in the fraud), and dismissed the claim. *Held*, that plaintiff could not in special appeal be allowed, under the finding of the lower Appellate Court, to urge that his suit should not have been dismissed as against the share of *A.*, on the technical ground that *A.* had not appealed. RAMLOCHUN SOOR *v.* NITTYA KALLEE DEDAI . . . . 12 W. R., 210

244. ——— **Partition.**—*Objection to report of Ameen as to partition.—Waiver of objection.*—In a suit for partition, the Subordinate Judge appointed an Ameen under section 396 of the Civil Procedure Code to effect a partition. The Ameen made his report, which was objected to on the merits by the defendant, but ultimately the report was confirmed, the defendant having acquiesced in the proceedings. On appeal to the District Judge, the defendant took an objection that the appointment of the Ameen was irregular. *Held*, that having acquiesced in the proceedings so far, it was too late for the defendant to take the objection. GYAN CHUNDER SEN *v.* DURGA CHURN SEN . . . . [I. L. R., 7 Calc., 318
8 C. L. R., 415

245. ——— **Policy of insurance.**—*Jettison.*—Where the plaintiffs could not recover on a policy for a partial loss, except as for jettison, and that point was not taken in the Court below, the point could not be raised in appeal. MACKINNON *v.* DUNDAS . . . Bourke, A. O. C., 155

246. ——— **Purchase.**—*Suit to enforce sale of religious office.*—In a suit to enforce a right by purchase of a priest's office, no objection was taken to the legality of the transaction until second appeal. *Held*, that the objection must be allowed. KUPPA *v.* DORASAMI . . . I. L. R., 6 Mad., 76

247. ——————— *Suit on bond as asset purchased.*—A plaintiff who had purchased a factory from the Official Assignee, sued for the recovery of money on a bond alleged to have been an asset of his purchase, and obtained a decree. In appeal it was objected for the first time that plaintiff had not filed any evidence to prove that the bond formed part of the assets of the factory, and his suit was dismissed. *Held*, that the objection ought not to have been allowed to prevail so far as to dismiss the suit, but the plaintiff ought to have an opportunity given him of adducing the requisite proof. CHUNDER COOMAR ROY *v.* KUBEEROODEEN . . . 10 W. R., 332

248. ——— **Rent, Suit for.**—*Rate of arrears of rent.*—Where a landlord's claim for arrears of rent at enhanced rates was dismissed *in toto* by the first Court, and in his appeal to the Judge he advanced no claim for arrears at the old rates, he cannot in special appeal object to the Judge's decision on the ground that such arrears were not decreed to him. BEEJOY GOBIND BURAL *v.* JANNOBEE BURMONYA [8 W. R., 252

249. ——————— *Raising new plea on special appeal.*—In a suit for enhancement of rent which was dismissed in the lower Court, where the sole issue raised was the genuineness of a pottah pleaded by the defendant,—*Held*, that an entirely new plea of misconstruction of the terms of the lease could not be admitted in special appeal, when the facts on which alone it could be supported had not been found in the lower Court. SATOORAM MOJOOMDAR *v.* PREONATH BANERJEE . . 10 W. R., 424

250. ——— **Res judicata.**—*Act X of 1872 (Civil Procedure Code), s. 542.—Raising new plea in special appeal.*—*Held*, that not only may the plea of *res judicata*, though not taken in the memorandum of appeal, be entertained in second appeal, under the provisions of section 542 of Act X of 1877, but that even when such plea has not been urged in either of the lower Courts, or in the memorandum of appeal, if raised in the second appeal, it must be considered and determined either upon the record as it stands, or after a remand for findings of fact. MUHAMMAD ISMAIL *v.* CHATTAR SINGH . I. L. R., 4 All., 69

KOYLASHNATH CHUND *v.* MONMOHINEY DOSSEE [Marsh., 276

S. C. MONMOHINEY DOSSEE *v.* KOYLASHNATH CHUND . . . . 2 Hay, 154

See MUGNO MOYE DEBIA *v.* HUR CHUNDER RADOT . . 3 W. R., Act X, 146

251. ——— **Right of suit.**—An appellant cannot defeat the suit by an objection to the plaintiff's right to sue brought forward for the first time on appeal. PAREYASAMI *alias* KOTTAI TEVAR *v.* SALUCKAI TEVAR *alias* OYYA TEVAR [8 Mad., 157

252. ——————— *Objection to competency to sue.*—Incompetency to sue is a defect

APPELLATE COURT—*continued.*

7. OBJECTION TAKEN FOR FIRST TIME ON APPEAL—*continued.*

(*b*) SPECIAL CASES—*continued.*

Right of suit—*continued.*

not admitting of cure or palliation, but that plea being of a material preliminary nature, and involving the plaintiff's *locus standi* in Court, was held to be admissible though pleaded orally for the first time on appeal. RADHA KISHEN *v.* BUKHTAWUR LALL [1 Agra, 1

253. ——————— *Absence of tender before suit.*—Where a party has a good objection, such as an absence of tender before suit, to urge to the prosecution of a suit, his omission to do so in the first instance is fatal to his availing himself of it as an objection on appeal. MAHOMED AMEEN-OODDEEN KHAN *v.* MOZUFFUR HOSSEIN KHAN [5 B. L. R., 570: 14 W. R., P. C., 5

254. ——————— *Suit not brought on agreement.*—In a suit for maintenance, the amount of which had been fixed by agreement, an objection taken on appeal that the suit should have been brought on that agreement, held taken too late; the defendant having been made aware of the agreement at the hearing, and not having objected on this ground in the first Appellate Court. AHMAD HOSSEIN KHAN *v.* NIHAL-UD-DIN KHAN [I. L. R., 9 Calc., 945: 13 C. L. R., 330

255. ——————— *Partnership.*—*Contract Act, s. 342.*—An objection taken for the first time in special appeal that the plaintiff had no right as a partner and no right to sue, under section 342 of the Contract Act, was not allowed. BUDDUN SAHU *v.* RAMPERTAB SAHU . 25 W. R., 511

256. ——————— *Jurisdiction of Civil Court.*—A party who applied to a Magistrate for the removal of an obstruction, having been referred to the Civil Court, brought a suit there and obtained a decree declaratory of his right of way. In special appeal it was objected that the suit was not cognizable in the Civil Court. *Held*, that after decree it ought to be presumed that plaintiff had a right to bring the suit in the Civil Court, and the objection was not allowed to prevail. TRILOCHUN DOSS *v.* GUGUN CHUNDER DEY . . . 24 W. R., 413

257. ——————— *Competency of agent to sue.*—The question of competency of an agent to sue, if not raised in the initial stage of a suit, cannot be permitted to be raised in special appeal. SOOREENDRONATH ROY *v.* RUGHOOBUR DYAL AWUSTEE [15 W. R., 392

258. ——————— *Insolvency.*—Where the defendants for the first time in second appeal objected to the plaintiff's right to sue on the ground of his having taken the benefit of the Insolvency Act, the objection was entertained by the High Court upon admission, by the plaintiff, of the fact of his insolvency. SADODIN *v.* SPIERS [I. L. R., 3 Bom., 437

APPELLATE COURT—*continued.*

7. OBJECTION TAKEN FOR FIRST TIME ON APPEAL—*continued.*

(*b*) SPECIAL CASES—*continued.*

Right of suit—*continued.*

259. ——————— *Suit for declaratory decree.*—An objection urged by the respondents for the first time in special appeal, that inasmuch as it was the plaintiff's own fault that he did not appear before the Collector and make his objection in time, his suit, which was one merely for declaration of title, and therefore was in the discretion vested in the Court by the 15th section of Act VIII of 1859, ought not to be entertained, was not allowed. SPENCER *v.* PUHUL CHOWDRY; SPENCER *v.* KADIR BUKSH [6 B. L. R., 658: 15 W. R., 471

Contra, SOODHUKHINA CHOWDHRANI *v.* ISSUR CHUNDER MOJOOMDAR . 12 W. R., 24

260. ——————— *Suit for declaratory decree.*—*Wrongful distraint.*—A suit was brought against the plaintiff by his tenants for an illegal distress in attaching crops raised by them on the land let to them by him. The present defendant, in the course of that suit, presented a petition to the Court, in which he stated that he was the owner of the land on which the crops attached had been raised. The plaintiff brought the present suit for a declaration of his title and confirmation of possession, alleging that the defendant's statement affected his (plaintiff's) title by throwing a cloud over it. On special appeal it was objected for the first time that the plaint disclosed no cause of action, and the objection was admitted and prevailed. JAN ALI *v.* KHONKAR ABDUR KUHMA . 6 B. L. R., 154: 14 W. R., 420

261. ——————— *Suit for declaratory decree.*—*Possession.*—In a suit merely for a declaration of right in respect of certain property, the lower Appellate Court, considering that the suit was really one for the possession of such property, allowed the plaintiff to make up the full amount of Court fees required for a suit for possession. The plaint in the suit was not amended, and the lower Appellate Court eventually gave the plaintiff a declaratory decree. *Held*, on second appeal by the defendant, who objected that a suit merely for a declaratory decree could not be maintained, that such objection ought not to be allowed under the circumstances. SARASUTI *v.* MANNU [I. L. R., 2 All., 134

262. ——————— *Cause of action.*—An objection as to the plaintiff having no cause of action may be taken at any stage of the suit. PARBATI CHARAN MUKHOPADHYA *v.* KALI NATH MUKHOPADHYA . . . 6 B. L. R., Ap., 73

Contra, KALICOOMAR SIRCAR *v.* BROMOMOYEE DOSSEE . . . . 1 W. R., 23

SUDAKHINA CHOWDHRAIN *v.* RAJMOHAN BOSE [11 W. R., 350

263. ——————— *Cause of action.*—In a suit by a purchaser of an estate to have his name registered in the Collectorate and his possession confirmed, which failed in the Court of first

APPELLATE COURT—*continued.*

7. OBJECTION TAKEN FOR FIRST TIME ON APPEAL—*continued.*

(*b*) SPECIAL CASES—*continued.*

Right of suit—*continued.*

instance, but was decreed in the lower Appellate Court, it was held to be too late for the defendant, after contesting the suit in two Courts, to urge in special appeal that the plaint disclosed no cause of action. BUKSH ALY SOWDAGUR *v.* JOYANUT KHAN [11 W. R., 248

SOODUKHINA CHOWDHRANI *v.* RAJ MOHAN BOSE . . . . 11 W. R., 350

264. ——————— *Cause of action.*—*Per* PEARSON, *J.*, and STRAIGHT, *J.* (SPANKIE, *J.*, dissenting),—That in disposing of a second appeal the High Court is competent, under section 542 of Act X of 1877, to consider the question whether the plaintiff has any cause of action or not, although such question has not been raised by the defendant-appellant in the Courts below or in his memorandum of second appeal, but is raised for the first time at the hearing of such appeal. LACHMAN PRASAD *v.* BAHADUR SINGH . . . I. L. R., 2 All., 884

265. ——————— *Cause of action.*—*Premature suit.*—*K.* sued *N.* (his uncle) for partition of the estate of *V.* (the father of *N.*), in the lifetime of *V.*, who was alleged to be of unsound mind. *N.* objected to the suit being entertained on the ground that *V.* was alive. Before issues were settled, *V.* died, and the suit was tried and *K.* obtained a decree. On appeal by *N.* on the ground that, when the plaint was filed, *K.* had no cause of action.,—*Held*, that the decree could not on this ground be set aside. NARAYANA *v.* KRISHNA . . . I. L. R., 8 Mad., 214

266. ——————— *Suit for partition of portion of property.*—A case is not to be decided in special appeal upon a question which was not raised or tried or considered by the lower Courts: the objection that a suit for a partition of portion of joint property will not be taken for the first time on special appeal was therefore not allowed to prevail. SHIB SAHAYE SINGH *v.* NURSINGH LALL [22 W. R., 352

267. ——————— *Separate suit for question determinable in execution of decree.*—Where a question such as is provided for by Act XXIII of 1861, section 11, instead of being determined by order of the Court executing the decree, was made the subject of a separate suit in that Court, it was held that though the form of procedure was wrong, there was not a want of jurisdiction which could be made a ground of objection in appeal. PURMESSURRE PERSHAD NARAIN SINGH *v.* JANKEE KOOER [19 W. R., 90

268. ——————— *Delay in bringing suit.*—An objection that there had been such delay that the Court in its discretion under section 27 of the Specific Relief Act would not give relief in a suit for specific performance not allowed to prevail in second appeal. MOKUND LALL *v.* CHOTAY LALL [I. L. R., 10 Calc., 1061

APPELLATE COURT—*continued.*

7. OBJECTION TAKEN FOR FIRST TIME ON APPEAL—*continued.*

(*b*) SPECIAL CASES—*continued.*

269. ——————— **Service of summons.**—*Objection that suit ought to have been dismissed for non-service of summons on non-payment of costs.*—Where the Court did not dismiss the suit under section 5 of Act XXIII of 1861 as it should have done, but proceeded with the suit, and passed a decree from which the original defendant appealed on the merits to the Assistant Judge, without taking the objection that the suit ought to have been dismissed, it was held that he could not raise the objection for the first time in special appeal. ABAS *v.* IBRAHIMJI [5 Bom., A. C., 119

270. ——————— **Settlement.**—*Suit for possession.*—In a suit to recover possession, the plaintiff alleging that the land in dispute from which he had been ousted had been settled with him by Government in 1833 as part of his zemindary, and the defendant alleging that the land was part of his lakhiraj garden land, which had been released by Government from assessment, the Courts below found that the lands in dispute were part of those which had been settled with the plaintiff. On appeal to the Privy Council, the defendant attempted to show that assuming the lands in question to have been part of those settled with the plaintiff, that settlement had been improperly made. *Held*, that this contention was not open to the defendant upon the record, never having been taken in the Courts below. SRIMATI DASI *v.* LALANMANI [2 B. L. R., P. C., 64: 11 W. R., P. C., 27

271. ——————— **Transfer of case.**—*Objection to transfer of case for execution of decree.*—An objection on special appeal that the transfer of the suit for execution had been made without jurisdiction was allowed to be taken in special appeal. HAMIDOODDEEN *v.* BHADOO SAHAE . 18 W. R., 345

272. ——————— *Objection to transfer from Munsif to Judge.*—Although the transfer by the Judge of a case from the file of the Munsif to that of his own Court, and the decision of it upon issues framed by and evidence taken before the Munsif, is improper, yet if no objection be taken to it at the time, it must be presumed that the parties consented to the action of the superior Court, and they are not at liberty to await its decision and on finding it adverse to them to take exception for the first time to the Court's proceedings on appeal. YAKOOB ALI *v.* LUCHMUN DASS . 6 N. W., 80

273 ——————— **Valuation of suit.**—*Objection as to valuation of suit.*—An objection to the decree of a subordinate Court, founded on the improper valuation of the suit, is not such an objection as may be entertained when raised for the first time in special appeal. KALADDIN GURU BAKUS *v.* RAGHOOJI . . . . . 1 Bom., 62

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274. ——————— *Objection to valuation of suit.*—Where no question of valuation

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7. OBJECTION TAKEN FOR FIRST TIME ON APPEAL—*continued.*

(*b*) SPECIAL CASES—*continued.*

Valuation of suit—*continued.*

for the purpose of determining the amount of institution-fee payable on a suit, has been raised, either in the Court of first instance or in the grounds of appeal, the Appellate Court is not competent to raise such question. KALA CHAND SEN *v.* ANUND KRISTO BOSE . . . . . **22 W. R., 433**

275. ——— **Will.**—*Transaction treated as gift.—Objection to it as an invalid will.*—In a suit to recover certain property left by one *R.*, both the lower Courts found that it had been left by *R.* before his death to defendants by way of gift. In special appeal, the plaintiffs raised the objection that under the Hindu Wills Act a verbal will of this kind was not legal. *Held*, that after two Courts had decided unfavourably to plaintiff the only case raised by him there, he could not now turn round and throw out the defendant's case on a technical ground that the alleged gift was really a will. RADHA BULLUBH CHUCKERBUTTY *v.* BANEE MADHUB CHUCKERBUTTY **[23 W. R., 230**

276. ——— **Withdrawal of suit.**—*Plea taken for the first time at the hearing of second appeal.*—The plea that the plaintiff had improperly been permitted to withdraw from a former suit with liberty to bring the present one, which had not been taken in the lower Courts, and was not taken in the memorandum of second appeal, was not permitted to be urged at the hearing of the second appeal. ZAHURUNNISSA *v.* KHUDA YAR KHAN **[I. L. R., 3 All., 528**

"APPLICATION."

See LIMITATION ACT, 1877, s. 4.
[I. L. R., 2 Mad., 230
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APPLICATION FOR EXECUTION OF DECREE.

See CASES UNDER LIMITATION ACT, 1877, ART. 179 (1871, ART. 167; 1859, s. 20).

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[15 B. L. R., 306: 24 W. R., 163: L. R., 2 I. A., 235

See CASES UNDER PAUPER SUIT.

APPROPRIATION OF PAYMENTS.

See GUARANTEE.
[I. L. R., 4 Calc., 560: 3 C. L. R., 361

1. ——— **Payment of rent.**—A general payment made in one year, without proof that it was in satisfaction of the rents of that year, may be applied in satisfaction of the arrears of the previous years. AHMUTY *v.* BRODIE **[W. R., 1864, Act X, 15**

APPROPRIATION OF PAYMENTS.—Payment of rent—*continued.*

2. ——— The payments in each year must be presumed to be for the current year, and surplus payments to be for the past, not subsequent years. TARAMONEE DOSSEE *v.* KALLY CHURN SURMAH . **W. R., 1864, Act X, 14**

3. ——— Where a tenant pays money to his landlord on account of rent, without any specification whether the payment was for old or enhanced rent, the landlord is at liberty to credit the payment as he thinks fit. SHURNO MOYEE *v.* KASHEE KANT BHUTTACHARJEE . . **7 W. R., 511**

4. ——— **Payment of debts.**—*Debt barred by limitation.*—An unappropriated payment is to be applied to the earliest debt, although the debt is barred by the Act of Limitation, where the facts do not raise any question which might affect such priority. MOONEAPPAH *v.* VENCATARAYADOO **[6 Mad., 32**

MULCHAND GULABCHAND *v.* GIRDHAR MADHAV **[8 Bom., A. C., 6**

5. ——— Payments unapplied by either the debtor or the creditor should be appropriated to the earlier items making up the debt due. This rule is not impaired by the decisions in the cases of *Mills* v. *Fowkes* (*5 Bing., N. C., 455*) and *Nash* v. *Hodgson* (*6 De G. M. and G., 474*). HIRADA KARIBASAPPAH *v.* GADIGI MUDDAPPA **[6 Mad., 197**

6. ——— *Contract Act, ss. 60, 74.*—In consideration of an advance of R118, the defendant executed in favour of the plaintiff a mortgage-bond, dated 3rd November 1879, by which it was stipulated that the amount should be repaid "in kind by delivery of half the amount of the rubbi crops of every description produced at the first-class rates; and in case the same is not paid in kind, it will be paid principal with interest from the date of execution at one anna per cent. per mensem in cash in the month of Baisakh 1287 F.S. (April 1880)." The defendants admitted execution of the bond, and pleaded payments in grain to the amount of R136, which they failed to prove. It was found that the plaintiff had received payments in grain to the extent of R71, more than half of which, however, he claimed to be entitled to appropriate to the payment of other antecedent debts which were due to him by the defendants. It was not stated at the time of payment towards which debt the payments were to be applied; but all the payments were admittedly made in kind. *Held*, that the plaintiff was not entitled to appropriate the payments to the antecedent debts, inasmuch as within the meaning of section 60 of the Contract Act, there were "other circumstances" indicating that the payments were made in liquidation of the amount of the bond. SUNGUT LAL *v.* BAIJNATH ROY . . . . **I. L. R., 13 Calc., 164**

APPOINTMENT, EXECUTION OF POWER OF—

See WILL—CONSTRUCTION.
[I. L. R., 4 Calc., 514

APPOINTMENT BY WILL.

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APPROVERS.

See CASES UNDER ACCOMPLICE.

1. ——— **Mode of dealing with evidence of approvers.**—The evidence of persons who are themselves liable to punishment should be carefully sifted and tested before they can be relied on in a court of law. QUEEN *v.* REAJ ALI *alias* DULLOO KHAN . . . 6 W. R., Cr., 77

2. ——— **Uncorroborated evidence.**—The evidence of an approver is not sufficient to convict a person charged with an offence. QUEEN v. TULSI DOSAD. . 3 B. L. R., A., Cr., 66
QUEEN *v.* ISSEN MUNDLE 3 W. R., Cr., 8
QUEEN *v.* NAWAB JAN . 8 W. R., Cr., 19
QUEEN *v.* RAM SAGOR . 8 W. R., Cr., 57
QUEEN *v.* CHIRAG ALI . 12 W. R., Cr., 5

3. ——— Where a prisoner had been found guilty by the jury on the uncorroborated evidence of an approver, after the Judge in his summing up had pointed out to them the desirability, under the circumstances, of such corroboration, the High Court, on appeal, refused to set aside the conviction. QUEEN *v.* MAHIMA CHANDRA DAS
[6 B. L. R., Ap., 108: 15 W. R., Cr., 37
See QUEEN *v.* ELAHI BUKSH.
[B. L. R., Sup. Vol., 459: 5 W. R., Cr., 80

4. ——— *Illegal conviction.*—A conviction based on the testimony of approvers, uncorroborated as to the identity of the accused person, cannot be sustained, and confessions of co-prisoners, implicating him, cannot be accepted as sufficient corroboration of such testimony. REG. *v.* BUDHU NANKU . I. L. R., 1 Bom., 475

5. ——— When evidence is given by an approver, it is not important to consider whether a story told by the accused to him tallies with that made to another person. QUEEN *v.* NYTARAM MYTEE . . 1 Ind. Jur., N. S., 171

6. ——— **Direction to Jury.**—A Sessions Judge should not permit the evidence of an approver who was examined as a witness before the committing Magistrate to be laid before the jury by whom the prisoners were tried. ANONYMOUS
[4 Mad., Ap., 22

7. ——— In a case in which the principal evidence against an accused is the evidence of an approver, a Sessions Judge should carefully warn the jury of the infirmity which attaches to that evidence, and he should also tell them (if the fact be so) that the approver is speaking under the influence of an offer of conditional pardon.

APPROVERS—*continued.*

8. ——— **Corroboration.**—*Dacoity.*—Rule as to corroboration of the evidence of an approver laid down in case of dacoity under section 400, Penal Code. QUEEN *v.* KALLA CHAND DOSS
[11 W. R., Cr., 21

9. ——— The corroboration of the evidence of an approver should arise from other evidence relative to facts which implicate the prisoner in the same way as the story of the approver does. QUEEN *v.* BYKUNT NATH BANERJEE
[10 W. R., Cr., 17

10. ——— *Accomplice of accused person.*—There is no rule of law which prevents the admission without corroboration of the evidence of a witness who says he committed breaches of the law with the accused, if the witness is not open to the same charge as the accused. IN THE MATTER OF ROJONI KANT PORAMANICK
[13 W. R., Cr., 24

11. ——— *Confessions of co-prisoners when others were absent.*—Exact correspondence in details of several statements made by an approver in the course of a trial is not corroborative evidence such as is ordinarily required to make it safe to convict a particular prisoner. Confessions of prisoners are not, as against their fellow-prisoners who were not present when the confessions were made, such corroborative evidence of the statement of an approver as would justify the conviction of the other prisoners thereon. QUEEN-EMPRESS *v.* BEPIN BISWAS . . I. L. R., 10 Calc., 970

12. ——— *Dacoity.—Possession of stolen property.*—Criminal Courts dealing with an approver's evidence in a case where several persons are charged should require corroboration of his statements in respect of the identity of each of the individuals accused. *Queen-Empress v. Ram Saran, I. L. R., 8 All., 306; Queen-Empress* v. *Kure, Weekly Notes, All., 1886, p. 65;* and *Reg.* v. *Mullins, 3 Cox, C. C., 526,* referred to. *A., B., M., R.,* and *N.* were tried together on a charge under section 460 of the Penal Code. The principal evidence against all of them was that of an approver. Against *A., B.,* and *M.* there was the further evidence that they produced certain portions of the property stolen on the night of the crime from the house where the crime was committed. With regard to *R.,* it was proved that he was present when *B.* pointed out the place where some of the property was dug up, but he did not appear to have said anything or given any directions about it. *Held,* with reference to *A., B.,* and *M.,* that it could not be said that their recent possession of part of the stolen property, so soon after it had been stolen, was not such corroboration of the approver's evidence of their participation in the crime as entitled the Court to act upon his story in regard to those particular persons. *Held* that, inasmuch as there was no sufficient material to warrant the inference of guilty knowledge on *R.'s* part, and with regard to *N.,* no property was found with him or produced through his instrumentality, both *R.* and *N.* ought to have been acquitted. QUEEN-EMPRESS *v.* BALDEO . I. L. R., 8 All., 509

APPROVERS—*continued.*

13. ——— Conditional pardon.—*Withdrawal of pardon.—Jurisdiction of Magistrate.—Criminal Procedure Code, 1872, s. 349.*—A party, charged along with others with murder, having had a conditional pardon granted to him by the Deputy Magistrate, retracted before the Sessions Judge the statements he had made before the Deputy Magistrate. On being sent back to the Deputy Magistrate, that officer committed him for trial on a charge of giving false evidence. The Sessions Judge considered that the Deputy Magistrate was bound under section 349, Code of Criminal Procedure, to commit on the original charge of murder, and not on that of giving false evidence, and he recommended that the order of commitment should be quashed and the Deputy Magistrate directed to commit on the charge of murder. The High Court declined to interfere, as there was evidence on the record tending to support the charge for giving false evidence, and as section 349 did not have the effect of taking away from Magistrates the power to entertain a charge of this kind. QUEEN *v.* MULLICK JEECHOO [23 W. R., Cr., 12

14. ——— *Criminal Procedure Code, 1872, s. 349.—Withdrawal of pardon.—Procedure.—Per* FIELD, *J.*—There is a grave doubt whether the deposition of an approver, taken before the committing Magistrate, may be used as evidence against his accomplices on their trial before the Sessions Court, the conditional pardon of the approver having been withdrawn. Where a conditional pardon granted to an approver is withdrawn under section 349 of the Criminal Procedure Code by the Sessions Court, the Judge ought to wait till the conclusion of the trial of the accomplices, and then, before passing judgment on them, if found guilty, proceed against the approver. IN THE MATTER OF JOYUDEE PARAMANICK . . 7 C. L. R., 66

15. ——— *Admissibility of, after withdrawal of pardon.*—Where the depositions of an approver taken before the committing Magistrate may be used in the Session Court as evidence against accomplices, the approver having retracted his former statement and the conditional pardon having in consequence been withdrawn. *See Joyudee Paramanick, 7 C. L. R., 66.* NANHA MALLA *v.* EMPRESS . . . . . 13 C. L. R., 326

16. ——— *Criminal Procedure Code, 1872, s. 349.—Acquittal of prisoner.—Withdrawal of pardon granted to approver after judgment of acquittal.—Conviction on trial improperly originated, Power of High Court to set aside.*—At a Sessions trial the Judge, after acquitting the prisoner, passed an order withdrawing a pardon already granted to an approver, who had given his evidence as such approver before the Sessions Court, and ordered his commitment. The approver was charged, tried, and found guilty.—*Held* by MITTER, *J.*, that the order withdrawing the pardon and committing the approver was contrary to the provisions of section 349 of the Criminal Procedure Code, the words "before judgment has been passed" being words inserted in the section to put a limit to the time within which the power of withdrawal of the pardon conferred in the Court of Sessions may be actually exercised; and that therefore the trial of the approver was illegal. The power of directing commitments conferred upon the Sessions Court by section 349 of the Criminal Procedure Code can be exercised only before judgment has been passed. *Held* by MACLEAN, *J.*, that is not necessary that the order should be made before judgment is passed, but that it must appear to the Judge before he passes judgment that the conditions of the pardon have not been complied with; and that in the present case it was impossible to hold that, because the actual order of commitment of the accused was written (although in the judgment) after the acquittal, therefore it did not appear to the Judge before passing judgment that there were grounds for his order. IN THE MATTER OF THE PETITION OF NOBIN CHUNDER BANIKYA. THE EMPRESS *v.* NOBIN CHUNDER BANIKYA [I. L. R., 8 Calc., 560 : 10 C. L. R., 369

17. ——— *Criminal Procedure Code, 1882, s. 338.—Tender of pardon to accomplice who has pleaded guilty.—Accomplice.—Evidence.—Corroboration.*—A Court of Session, under section 338 of the Criminal Procedure Code, tendered a pardon to an accused person charged jointly with two others for the same offence, who had pleaded guilty. The tender was accepted, and such person was examined as a witness against the other accused. *Held*, that the tender of pardon was not improperly made and the evidence of the approver was admissible. *Per* DUTHOIT, *J.*—The word "supposed" in section 338 must be taken merely as intended to exclude the case of a man who has actually been convicted of the crime, and not the case of a man who, although admitted to be a party to the crime, is unconvicted. QUEEN-EMPRESS *v.* KALLU [1 I. L. R., 7, All., 160

18. ——— *Criminal Procedure Code, 1872, s. 349.—Withdrawal of pardon granted under s. 349.*—A pardon granted under section 349 of Act X of 1872 was withdrawn by the Sessions Judge before the hearing of the whole of the evidence, without proof that the statement made by the person pardoned was inconsistent, except upon most immaterial points, with previous statements by him or contradicted by the evidence, and before any evidence affecting his veracity had been given. *Held*, that the pardon had been improperly withdrawn. SRINOP *v.* EMPRESS . . 12 C. L. R., 226

ARBITRATION.

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[I. L. R., 1 Calc., 42, 466

1. ARBITRATION UNDER SPECIAL ACTS AND REGULATIONS.

(*a*) ACT VI OF 1857.

1. ——— Act VI of 1857.—*Land acquisition.—Appointment of third arbitrator.—Non-attendance of umpire.—Waiver.*—Where one of two arbitrators, appointed under section 10 of Act VI of 1857, by letter and also verbally authorized his co-arbitrator to appoint a certain person as third arbitrator, and the co-arbitrator wrote to the proposed third arbitrator informing him that he had been so appointed, *Semble,*—That there was a good appointment "by writing" of the third arbitrator within the meaning of section 12 of Act VI of 1857. Where a third arbitrator appointed under section 12 of Act VI of 1857, considering that his services were required merely as an umpire, though he had due notice of the first meeting, neglected to attend that or any subsequent meetings of the arbitrators and took no part in the making of the award,—It was held that such non-attendance of the third arbitrator did not

1. ARBITRATION UNDER SPECIAL ACTS AND REGULATIONS—*continued.*

(*a*) ACT VI OF 1857—*continued.*

Act VI of 1857— *ntinued.*

render the award a nullity, but was only a ground for setting it aside on the ground of irregularity. Where an officer, appointed under Act VI of 1857 to conduct arbitration proceedings on behalf of Government, attended the first two meetings of the arbitrators and did not object to two of the arbitrators proceeding with the reference in the absence of the third arbitrator, and did not attend the subsequent meetings of the arbitrators,—It was held that the Government had thereby waived their right to insist on the non-attendance of the third arbitrator as a ground for setting aside the award. ARDESAR HORMASJI WADIA *v.* THE SECRETARY OF STATE FOR INDIA IN COUNCIL
[9 Bom., 177

2. ——— *Land acquisition.—Judgments of arbitrators separately given.*—The separately recorded opinions, on different dates, of arbitrators (appointed, under Act VI of 1857, to assess the value of land taken for a public purpose) who have never met or consulted together, do not constitute an award under the Act. An award to be good must contain the joint judgment of the arbitrators up to the latest period previous to the execution of the award. FATMA BIBEE *v.* COLLECTOR OF SURAT . . . 8 Bom., A. C., 79

3. ——— s. 32.—*Waiver of irregularity.—Well in mill compound.—Manufactory.*—By a Government notification of the 3rd of June 1863, published in the Gazette, it was declared, under the provisions of Act VI of 1857, that a certain strip of land passing by the mill of the defendants was required for a public purpose,—the Bombay, Baroda, and Central India Railway,—a plan of which land was to be seen in the Collector's office. On the 4th of November following, the secretary of the defendants' company received a notice signed by the Collector, requiring the owner of the mill to call at the Collector's office to signify his acceptance or otherwise of the compensation for the land required. The secretary went to the Collector's office, and there saw a plan, from which it appeared that an adjoining well from which the engine of the mill was supplied with water was intended to be taken, but no compensation for the well or land required was then agreed upon. On the 28th November a notice signed by the Collector was served on the defendants, stating that he had appointed an arbitrator on behalf of Government, and requiring the defendants to appoint an arbitrator also; the defendants in reply stated that they had already appointed an arbitrator. *Held,* that the defendants had, by appointing their arbitrator to determine the compensation for the land required, waived any irregularity in the previous proceedings, and precluded themselves from claiming to have the whole manufactory taken under section 32, Act VI of 1857, though no proceedings were taken in the arbitration for nearly twelve months subsequently, and the defendants had shortly before such proceedings made such a claim. KHARSHEDJI NASARVANJI *v.* SECRETARY OF STATE FOR INDIA . 5 Bom., O. C., 97

ARBITRATION—*continued.*

1. ARBITRATION UNDER SPECIAL ACTS AND REGULATIONS—*continued.*

(b) ACT X OF 1859.

Act X of 1859, Suit under.

——— Whether Act X of 1859 empowered a [illegible] case to arbitration. GAZEE *v.* HAMEED [illegible] . . **16 W. R., 160**

——— *Civil Procedure Code (Act X of 1877), Chap. XXXVII.—Kabuliat, Suit for.*—Notwithstanding that Chapter XXXVII of Act X of 1877 (in reference to arbitration) does not refer specially to suits brought under Act X of 1859, yet if both parties to a suit for a kabuliat brought under the latter Act agree to refer the matters in dispute between them to certain arbitrators named by them and file a joint petition in the Court of the Deputy Collector, stating that they had so agreed, and praying that the case may be referred to such arbitrators, neither of them will be afterwards at liberty to object to a decree made, embodying the award of the arbitrators, on the ground that the reference to arbitration was irregular, and not warranted by any of the provisions of Act X of 1877. When a case has been so referred, the arbitrators are at liberty to determine what appears to them to be a fair and equitable rate of rent, and notwithstanding the amount so found is less than that demanded by the plaintiff in his plaint, the Court out of which the reference issued is not at liberty on that ground to dismiss the suit, but is bound to order the defendant (with the alternative of eviction) to execute a kabuliat in favour of the plaintiff, engaging himself to pay rent to the plaintiff at the rate determined by the arbitrators to be fair and equitable. KHEMNA GOWALA *v.* BUDOLOO KHAN

[I. L. R., 6 Calc., 251 : 7 C. L. R., 92

(c) ACT XX OF 1863.

6. ——— Act XX of 1863.—*Award.—Decision by majority without such provision in the award.*—Plaintiff brought this suit to obtain a decree dismissing defendants, committee and manager of a certain pagoda, from their offices, on the ground of malversation. The Court made an order expressed to be by consent of the parties concerned, and in exercise of the Court's discretionary power under section 16 of Act XX of 1863, referring the matters in difference to three arbitrators for final determination, the said arbitrators "to make their award in writing and submit the same" within a certain period. Each arbitrator delivered a separate award in writing, two arbitrators finding for the plaintiff. The Civil Judge made a decree in accordance with the award of the majority of the arbitrators. The first defendant appealed on the grounds, (1) that he had not consented to the arbitration, and (2) that there being no provision in the order of reference to the effect that the finding of a majority of the arbitrators should prevail, there was no valid award. *Held* that, in this case, the order of the Judge was valid without the assent of the persons to be bound; that he might, when he made the order, have inserted as a provision that the decision of the majority should

ARBITRATION—*continued.*

1. ARBITRATION UNDER SPECIAL ACTS AND REGULATIONS—*continued.*

(c) ACT XX OF 1863—*continued.*

Act XX of 1863—*continued.*

be that of the body; and that there was no reason why his ratification of that mode of decision, wholly within his discretion, should not be equivalent to a previous command. IMMEDY KANUGA RAMAYA GAUNDAN *v.* RAMASWAMI AMBALAM

7 Mad., 173

(d) BOMBAY REGULATION VII OF 1827.

7. ——— Bom. Reg. VII of 1827.—*Award, Validity of.*—Where an award was held to be bad on the ground that the deed of submission to arbitration did not contain all the conditions required by the law (Bombay Regulation VII of 1827), as it made no provision as to the "time within which the award was to be given,"—*Held*, that the parol consent of the parties to the deed of submission before the arbitrator to waive such omission will not cure the defect. NUSSERWANJEE PESTONJEE *v.* MYNOODEEN KHAN . . . **6 Moore's I. A., 134**

(e) DEKKHAN AGRICULTURISTS' RELIEF ACT, 1879.

8. ——— Dekkhan Agriculturists' Relief Act, XVII of 1879, s. 47.—*The Code of Civil Procedure (XIV of 1882), s. 525.—Construction.—Conciliator's certificate.*—Where a matter has been referred to arbitration, without the intervention of a court of justice, by parties one of whom is an agriculturist, and an award has been made thereon, any person interested in the award may, without obtaining the conciliator's certificate, apply for the filing of the award under section 525 of the Code of Civil Procedure, the provisions of which are not superseded by section 47 of the Dekkhan Agriculturists' Relief Act, 1879. GANGADHAR SAKHARAM *v.* MAHADU SANTAJI . . **I. L. R., 8 Bom., 20**

(f) NORTH-WESTERN PROVINCES RENT ACT, 1873.

9. ——— N.-W. P. Rent Act (XVIII of 1873).—Under the general law, parties to suits may, if they are so minded, before issue joined, refer the matters in dispute between them to arbitration, and after issuej oined, with the leave of the Court. Act XVIII of 1873 does not prohibit the parties to the suits mentioned therein from referring the matters in dispute between them in such suits to arbitration. Where, therefore, the parties to a suit under that Act agreed to refer the matters in dispute between them to arbitration, after issues had been framed and evidence recorded, and applied to the Court to sanction such reference,—*Held* (STUART, *C. J.*, dissenting) that the Court was competent to grant such sanction, and on receiving the award to act on it. GOSHAIN GIRDHARIJI *v.* DURGA DEVI . **I. L. R., 2 All., 119**

ARBITRATION—*continued.*

2. REFERENCE OR SUBMISSION TO ARBITRATION.

10. ——— Power of Court to refer.—*Remand under Civil Procedure Code, s. 566, for trial of issues.—Reference by first Court of whole case to arbitration.—Refusal of arbitrator to act.—Award by remaining arbitrators.—Illegality of award.—Civil Procedure Code, s. 510.*—A Court of first instance to which issues have been remitted under section 566 of the Civil Procedure Code by the Appellate Court has only jurisdiction to try the issues remitted and is *functus officio* in other respects, and cannot make a reference of the case to arbitration, which is only within the jurisdiction of the Appellate Court. *Gossain Dowlat Geer* v. *Bissessur Geer, 22 W. R., 207,* referred to. NAND RAM *v.* FAKIR CHAND . . . . **I. L. R., 7 All., 523**

11. ——— Power of parties to refer.—*Civil Procedure Code, 1859, ss. 312, 325.—Mode of reference to arbitration.*—Sections 312 and 325 of the Code of Civil Procedure (VIII of 1859) were enabling, and were not intended to be restrictive or exclusive. Parties who are *sui juris* are competent, before decree, to make any agreement as to the settlement of the suit. JOGESSUR BANERJEE *v.* KULYANEE CHURN DEO . . . . . **24 W. R., 41**

12. ——— *Matters for arbitration.*—Whatever matters parties to a suit may agree to refer to arbitration, they can refer such matters, or any of such matters as are in difference between them in the suit. TRUNATH CHOWDHRY *v.* MANICK CHUNDER DOSS . . **14 W. R., 469**

13. ——— Application for reference.—*Parties to application.—Act VIII of 1859, s. 313.*—An application for arbitration, as provided by section 313 of Act VIII of 1859, must be made by all the parties who are materially interested, otherwise it is liable to be declared invalid by the Court, and to be set aside. BAIKANTHANATH CHATTERJEE *v.* NAZIRUDDIN **[1 B. L. R., S. N., 11; 10 W. R., 171**

14. ——— *Mode of application.*—The application for a reference to arbitration must be made in Court by an instrument in writing by the parties in person, or their pleaders specially authorized in that behalf. BHRIGOO ROY *v.* BHAGRUTH UPADHYA . **W. R., 1864, Act X, 41**

GAZEE *v.* HAMID BUKSH . **16 W. R., 160**

15. ——— *Absent plaintiff.*—*Special authority.*—An application for arbitration on behalf of an absent plaintiff is not allowable without special authority. GOOR CHUNDER PUTEETUNDO *v.* JOOGUL CHUNDER *alias* SHAMA CHURN GHOSE **[1 W. R., 80**

16. ——— *Unauthorized reference.—Civil Procedure Code, 1859, s. 313.—Mooktears without special authority.*—Where reference to arbitration was made by mooktears of the parties without holding special authority for that purpose as provided by law [illegible] 1859) from their clients [illegible] such reference to arbitrati[illegible] illegal, and not sufficient t[illegible] tation. SHUNKER *v.* HUR [illegible] **[1 Agra, Rev., 46**

RAM PERSHAD *v.* NAZ[illegible] **[1 Agra, Rev., 63**

17. ——— *Application made during hearing.—Civil Procedure Code, 1859, s. 313.*—When an application for reference to arbitration is made in open Court at or during the final hearing of a suit, in the presence of all parties, and they consent thereto, a written authority, such as that referred to in section 313 of Act VIII of 1859, seems not to be required. AKBER BEG *v.* B[illegible] **[2 N. W., 199**

JEYASANKIRA DEVI *v.* NAGANADA DEVI **[1 Mad., 106: 1 Ind. Jur., O. S., 135**

18. ——— *Civil Procedure Code, 1859, s. 326.—Submission in writing.*—Section 326 of the Civil Procedure Code made all submission to arbitration by an instrument in writing practically a rule of Court. PESTONJEE NUSERWANJEE *v.* MANOCKJEE & Co. . **1 Ind. Jur., N. S., 69**

19. ——— Ineffectual reference.—*Refusal of arbitrator to act.—Act VIII of 1859, ss. 319 and 326.*—Where parties had executed a deed, agreeing to refer all matters in dispute to the arbitration of three persons, and one of the arbitrators refused to continue to act, and the other two consequently refused to proceed with the reference, the Court refused to order the agreement to be filed in Court. BROOKE *v.* SURDIAL . **12 B. L. R., Ap., 13**

20. ——— *Want of express consent.*—The Judge intimated that he should refer the suit to arbitration, and allowed a certain time to the parties to object to that course. No objection was made within such time, and thereupon the Judge referred the cause to arbitrators named by him. After the day fixed the defendants objected. *Held,* that the reference was not warranted, there having been no express consent by the parties. DEGUMBUR CHATTERJEE *v.* RAM PREA DABEA **[Marsh., 517: 2 Hay, 583**

21. ——— Refusal to consent to arbitation.—*Presumption.*—Nothing which passes between the parties to a suit in any attempt at arbitration or compromise should be allowed to effect the slightest prejudice to the merits of their case as it eventually comes to be tried before the Court. No presumption can be raised against a party to a suit from his refusal to withdraw from the determination and submit to arbitration. MOHABEER SINGH *v.* DHUJJOO SINGH . . . **20 W. R., 172**

ARBITRATION—*continued.*

3. APPOINTMENT OF ARBITRATORS AND UMPIRES.

22. ——— Power of Judge to appoint. —*Consent of nominees.—Fresh appointment after refusal to act.*—Before a Judge refers a case for arbitration, he should ascertain whether the persons nominated are willing to accept the office, and till he has done so any nomination of an arbitrator by him, without the application or consent of the parties, is illegal. But when a case has once been referred to arbitration, after the preliminary steps have been properly taken, the Judge has the sole power of appointing fresh arbitrators in the room of such as refuse to act. TROYLUCKHONATH ROY *v.* THE COLLECTOR OF BEERBHOOM; LOCKENATH ROY *v.* THE COLLECTOR OF BEERBHOOM; HURONATH ROY *v.* KASHEENATH ROY . **W. R., 1864, 338**

23. ——— Nomination by Judge.—*Civil Procedure Code, 1859, s. 314.—Validity of appointment of arbitrator.*—Where both parties could not agree in nominating an arbitrator, and the Judge nominated one under section 314, Act VIII of 1859, and one of the parties, six weeks after the nomination, objected to the Judge's nominee, but could not show on appeal that he did not request the Judge to nominate some one, the appointment was held good and binding upon both parties. SUROOP RAM DEB *v.* GOBIND RAM DEB . . . . **7 W. R., 13**

24. ——— Arbitrators not consented to by parties.—*Invalid award.*—The Code gives no power to a Court to enforce arbitrators on an unwilling suitor. The award of arbitrators so appointed will not be enforced. SHEONATH *alias* BURRAY KAKA *v.* RAMNATH *alias* CHOTAY KAKA **[1 Ind. Jur., N. S., 161: 5 W. R., P. C., 21 S. C. 10 Moore's I. A., 413**

25. ——— Appointment of sole arbitrator in place of four.—*Civil Procedure Code, 1859, ss. 315, 318, 319.—Recall of reference.—Consent.—Appointment of substitute for arbitrator.*—In a suit for a partnership account, the matters in dispute were by an order dated the 19th April 1877 referred by consent to four persons and an umpire, the award to be made within five months. Some steps were taken in the reference, but the arbitrators failed to make their award within the time limited, and meanwhile the umpire died. After negotiations for appointment of a fresh arbitrator and enlargement of the time had failed, the plaintiff moved that "the order of the 9th April 1877" might be recalled, and that the matters in dispute might be referred to the arbitration of such person or persons as the Court might be pleased to admit, or be tried and determined by the Court. The defendant opposed the application. An order was, however, made on the 29th May 1878 that the order of the 19th April 1877 should be recalled, and that all matters in difference between the parties should be referred to *C. D.*, who should make his award in writing within three months, or within such further time as the said *C. D.* might think necessary. Certain provisions as to the payment of costs were also made. *Held*, that the order of the 19th May was not an order recalling the reference under section 318, and then referring it afresh under section 315 of Act VIII of 1859, but an order under section 319 appointing a new arbitrator in the place of the old ones, for which the consent of all parties was not necessary. Under section 319 of Act VIII of 1859, the Court has power to appoint an arbitrator or arbitrators either in the place of an arbitrator or in the place of arbitrators. RAMPERSAD *v.* JUGGERNAUTH . **6 C. L. R., 1**

ARBITRATION—*continued.*

3. APPOINTMENT OF ARBITRATORS AND UMPIRES—*continued.*

Appointment of sole arbitrator in place of four—*continued.*

26. ——— Umpire, Appointment of.—*Act VIII of 1859, s. 316.—Difference of opinion.*—Where a case has been referred to arbitration, but no provision has been made in the reference for any difference of opinion among them as directed by section 316, Act VIII of 1859,—*Held* that the Court, on the case coming before it, and objection being taken to the award, should have ordered that the arbitrators should appoint an umpire; or should have declared that the decision of the majority should prevail; or should have appointed an umpire; or should have made such arrangement as the parties would have consented to; or if they could not agree, such arrangement as it thought fit. Where this was not done, and the case came up in special appeal to the High Court, the case was sent down that it might be submitted to arbitrators again with a distinct order under section 316. HARADHAN DATT *v.* RADHANATH SHAHA **[2 B. L. R., S. N., 14: 10 W. R., 398**

27. ——— *Act VIII of 1859, s. 319.—Incapacity to act.—Absence from the country.* - When a person goes away from the country and remains away, and there is no evidence to show an intention to return, that person becomes incapable of acting as umpire within the meaning of section 319 of Act VIII of 1859. GADADHAR MOITRY *v.* GANGA PRASAD MOITRY . . **4 B. L. R., O. C., 89**

4. DUTIES AND POWERS OF ARBITRATORS.

28. ——— Ascertainment of points at issue.—*Decision on issues.*—"All matters in difference in the suit, including all dealings and transactions between the parties," having been referred to the arbitration and award of certain persons, the arbitrators should ascertain upon what points the parties are at issue and upon each of these points come to a finding. LUCHMEE NARAIN *v.* PYLE . **2 N. W., 150**

29. ——— Delegation of authority.—*Absent arbitrators.*—Arbitrators have no power to delegate their authority to others. Thus, if some of the arbitrators are absent, those present cannot appoint others in their stead. SURUBJEET NARAIN SINGH *v.* GOUREE PERSHAD NARAIN SINGH . **7 W. R., 269**

30. ——— Procedure of arbitrators.—*Technical rules.*—Arbitrators are not bound by the technical rules of Court. REEDOY KRISTO MOZOOMDAR *v.* PUDDO LOCHUN MOZOOMDAR . **1 W. R., 12**

ARBITRATION *continued.*

4 DUTIES AND POWERS OF ARBITRATORS —*continued*

Procedure of arbitrators—*continued.*

31 — ——— *Evidence.*—Arbitrators ought only to take such evidence as is required by the terms of the agreement referring the question in dispute to arbitration. KRISHNAKANTA PARAMANIK *v.* BIDYA SUNDAREE DASI [2 B. L. R., Ap., 25

32. ——— **Matters referred by Court, also by parties.**—*Separate awards.*—Arbitrators should give separate awards in a case referred to them by the Judge, and on other matters referred to them by the parties, instead of mixing them all up and giving a general award ROGHOO NUNDUN LALL SAHOO *v.* BUNWAREE LALL SAHOO [3 W. R., Mis., 27

33. ——— **Decision on matters not referred.**—The decision of arbitrators in a matter not in difference between the parties, nor referred to them, is null and void for want of jurisdiction. MOSHAHEL SINGH *v.* KONOMUTTY BEWA . 15 W. R., 172

34. ——— **Power to order payment of fees to be condition precedent to hearing of reference.**—There is nothing in the Civil Procedure Code which authorizes arbitrators to apply to the Court for confirmation of an order passed by them making payment of their fees a condition precedent to the hearing of a reference. STEEL *v.* ROBERTS [I. L. R., 6 Calc., 809: 8 C. L. R., 439

35 ——— **Interest after date of submission.**—*Costs of reference.—Act VIII of 1859, ss. 312—322.*—Where all matters in difference between the parties in the suit were referred to arbitration under an order of Court,—*Held,* that the arbitrators had power to award interest after the date of the submission, and to deal with the costs of the reference and award. MOHAN LALL *v.* NATHU RAM [1 B. L. R., O. C., 144

36. ——— **Costs.**—*Omission to fix scale of costs.*—An award directed that the defendant should pay the costs of the suit, and of the reference, and of the award, without fixing the scale. On application to the Court to do so, the case was sent back to the arbitrator for that purpose. *Held* that, when the order of reference gives the arbitrator full discretion over costs, he alone can fix the scale. BARRUT CHUNDER DOSS *v.* DAMJEE PITTUMBER [Bourke, O. C., 7; Cor., 150

37 ——— *Civil Procedure Code, 1859, ss. 317 et seqq.*—Where by an order of reference made pending a suit, all matters in difference between the parties are referred to an arbitrator by the Court under Act VIII of 1859, section 317 *et seqq.*, the arbitrator has power to deal with the costs of the suit. MUDDOOSOODUN CHOWDRY *v.* KOYLAS CHUNDER SHAW; KOYLAS CHUNDER SHAW *v.* MUDDOOSOODUN CHOWDRY . 2 Ind. Jur., N. S., 12

38. ——— *Power of arbitrators to deal with question of costs.—Excess in award.*—The parties to a suit having referred the matters in dispute between them to arbitration, the arbitrators, without being specially authorized to decide the question of costs, included in the award a direction that the defendant should pay the costs of the plaintiff On the application of the plaintiff the Subordinate Judge under section 526 of the Civil Procedure Code (Act XIV of 1882) ordered the award to be filed, holding that the arbitrators had, as such, an implied power to deal with the costs. The defendant applied to the High Court, under its extraordinary jurisdiction, praying that the record of the case might be sent for, and the order of the Subordinate Judge set aside. *Held,* that the arbitrators had no implied power to deal with the question of costs, and that on the defendant's objection the Subordinate Judge should have refused to file the award. Under the circumstances, the High Court, instead of setting aside the order to file the award, directed the award to stand good, except so far as it awarded costs, and that the decree should be drawn in accordance with it, as it would be if it contained no direction as to costs DAGDUSA TILAKCHAND *v.* BHUKAN GOVIND SHET [I. L. R., 9 Bom., 82

5. SUBMISSION OF AWARD.

39 ——— **Extension of period for submission of award.**—*Practice.*—Applications for the extension of the period for the submission of an award and orders thereon should be made in writing and recorded. MONJI PREMJI SETT *v.* MALIYAKEL KOYASSAN KOYA HAJI [I. L. R., 3 Mad., 59

40 ——— **Extension of period for submission.**—*Umpire.—Civil Procedure Code, 1882, s. 509.*—As in the case of an arbitrator, so in the case of an umpire a Court has power to extend the period within which the award is to be submitted. The Court can extend the time allowed to an umpire under section 509 of the Code. KUPU RAU *v.* VEN KATARAMAYYAR . . I. L. R., 4 Mad., 311

41 ——— **Award leaving point at issue undecided.**—*Omission from reference of a point in dispute.—Decision by Court after submission.*—Where matters in dispute are referred to arbitration, and it is found that one question at issue is omitted from the reference, and that the award returned by the arbitrators contains no decision thereon, the party interested should bring the omission to the notice of the Court. If he fails to do so, the Court is not wrong in not passing any order or coming to any decision on that point. RAJ NARAIN ROY *v.* JUGGESSUR MOOKERJEE . . . 14 W. R., 247

42 ——— **Delivery of award to party.**—*Completion of arbitration.—Act VIII of 1859, ss. 315, 318, and 320.—Record of proceedings*
By an order of Court of January 17th, 1867, a suit was referred to two arbitrators, under section 312,

ARBITRATION—*continued.*

5. SUBMISSION OF AWARD—*continued.*

Delivery of award to party—*continued.*

Act VIII of 1859, who were to make their award in writing, and submit the same to the Court within three months. No order for enlarging that time was made. The first meeting of the arbitrators was held on May 22nd, 1867, and four subsequent meetings were held, at which all the parties attended, and evidence was taken; at the last of which meetings, namely, on 27th July, an objection for the first time was taken on behalf of the defendant that the time limited by the order of reference had expired, but the arbitrators proceeded with the reference. The award was made on 12th August 1867, and remained with one of the arbitrators until his death in August 1868. Subsequently it was produced by the other arbitrator, on the application of the parties to the suit, and delivered to the successful party, by whom it was brought into Court on the 10th May 1870, and judgment was moved for in accordance therewith. *Held*, that the arbitrators had authority to make the award. The award was properly submitted to the Court. Section 320, Act VIII of 1859, does not make it necessary for the arbitrators to submit the award to the Court personally. Submission to the Court, under section 320, is not necessary to the completion of an award under sections 315 and 318. Although an arbitrator may deliver his award to one of the parties, he ought not to hand over with it the proceedings, depositions, and exhibits. JAGAT SUNDERI DASI *v.* SANATAN BYSAK [5 B. L. R., 357

6. REMISSION TO ARBITRATORS.

43. ——— **Defective and illegal award.**—An award, defective and illegal on the face of it, should be at once remitted to the arbitrators. LUCHMEE NARAIN *v.* PYLE . . . 2 N. W., 150

44. ——— **Award containing mistakes, omissions, or defects.**—*Civil Procedure Code, 1859, ss. 322, 323, 324.*—Section 323, Act VIII of 1859, authorizes a Court which refers a case to arbitrators to remand it to them for reconsideration when their award contains mistakes, omissions, or defects which cannot be amended by the Court under section 322. Such award on the refusal of the arbitrators to reconsider it, becomes null and void, without proof of corruption or misconduct under section 324. MOHUN KISHEN *v.* BHOOBUN SHYAM [7 W. R., 406

45. ——— **Application to remit award to arbitrators.**—*Time for remission.—Civil Procedure Code, 1859, s. 320.*—An application that an award be remitted to the arbitrators, in order that the proceedings, depositions, and exhibits in the suit which have not been submitted with it to the Court under Act VIII of 1859, section 320, should be so submitted, ought to be made within ten days after the award has been originally submitted; otherwise, if the award be good on the face of it, the Court will give judgment upon it. BANEY MADHUB ROY *v* HURRY MOHUN ROY 2 Ind. Jur., N. S., 16

ARBITRATION—*continued.*

6. REMISSION TO ARBITRATORS—*continued.*

46. ——— **Judgment passed on award within time allowed for remission.**—*Civil Procedure Code, 1859, ss. 324, 325.—Remission after judgment.*—A judgment given according to an award under section 325 of Act VIII of 1859, without waiting the ten days prescribed by section 324 of that Act, is illegal, and will be set aside. After passing judgment according to an award, such award cannot be resubmitted to the arbitrator for reconsideration and correction. PORKAR PERSHAD *v.* PUNCHUM RAE . . . . 2 N. W., 235

47. ——— **Remission to arbitrators after decision on special appeal.**—A case having been referred to arbitration without provision being made for a difference of opinion, and the arbitrators having given in differing awards, the Court of first instance tried the case anew, and dismissed the suit. This decision was confirmed on appeal. In special appeal the plaintiff asked that the case might be sent back to the arbitrators with a provision for difference of opinion, and that they might submit their award a second time. *Held*, that it was too late at this stage to allow such a course. THAKOOR DASS CHUCKERBUTTY *v.* RAM JEEBUN CHUCKERBUTTY . . . . . 14 W. R., 150

48. ——— **Refusal of arbitrator to reconsider award.**—The plaintiff in this suit sued the defendants to recover certain moneys presented to him on his marriage, which he alleged the defendants had received and appropriated to their own use. The defendants denied that they had received such moneys, but admitted that such moneys had been credited by the plaintiff's father to the firm in which they, the plaintiff, and the plaintiff's father, were jointly interested, against a larger amount of moneys belonging to the firm which had been expended on the plaintiff's marriage. The parties agreed to refer the matter in dispute between them to arbitration, and to abide by the decision of the arbitrator. The arbitrator decided that the plaintiff could not recover the money he sued for, and which had been credited to the firm of which he was a partner, as a larger sum had been expended on his marriage out of the funds of the firm. The plaintiff obtained the opinions of certain *pandits* to the effect that, under Hindu law, gifts on marriage are regarded as separate acquisitions, and prayed that the Munsif would remit the award with these opinions to the arbitrator. The Munsif remitted the award with the opinions, requesting the arbitrator to consider them, and to return his opinion in writing within a certain period. The arbitrator having refused to act further, the Munsif proceeded to determine the suit, and gave the plaintiff a decree, on the ground that, in a joint Hindu family, presents received on marriage do not fall into the common fund. *Held* (PEARSON, *J.*, dissenting) that, there being no illegality apparent on the face of the award, the Munsif was not justified in remitting the award, or in setting the award aside and proceeding to determine the suit himself, but that he should have passed judgment in accordance with the award. NANAK CHAND *v.* RAM NARAYAN [I. L. R., 2 All., 181

ARBITRATION—*continued.*

6. REMISSION TO ARBITRATORS—*continued.*

Refusal of arbitrator to reconsider award—*continued.*

49. ——— *Civil Procedure Code, 1877, s. 520.—Appeal impugning propriety of order of remission.*—An award was remitted under section 520 of Act X of 1877. The arbitrators refused to reconsider it, and the Court thereupon proceeded with the suit, and gave the plaintiffs a decree. The defendants appealed from such decree on the ground, amongst others, that the award had been improperly remitted under section 520. *Held*, that the question whether the award had been properly remitted under section 520 or not could be entertained in such appeal. ABDUL RAHMAN *v.* YAR MAHAMMAD

[I. L. R., 3 All., 636

50. ——— **Omission of arbitrator to carry out terms of reference.**—*Suit for partition and to take accounts.—Civil Procedure Code, 1877, ss. 2, 520, 522, 523.—Filing agreement to refer to arbitration in Court.—"Decree."*—The sharers of a joint undivided estate agreed in writing that such estate should be partitioned, and the accounts thereof settled by arbitration, and named one of such sharers as arbitrator, and agreed that he should settle all the accounts, show the surplus at each sharer's credit, and prepare lots, after partition of the lands and houses comprehended in such estate, and have them drawn within one year from the completion of the partition. Subsequently one of such sharers applied, under section 523 of Act X of 1877, to have such agreement filed in Court. The other sharers not objecting to this course, such agreement was filed accordingly, and the case was referred to such arbitrator. The arbitrator made an award whereby he partitioned such estate into lots, assigning some only of such lots by name, and wherein he stated that he had not been able to settle the accounts owing to the default of the parties; and that, considering that the partition should take effect without any delay, he did not ask for further time. He further stated that "all the parties state that they will adjust the accounts after renewing the agreement," and he requested that the unassigned lots might be drawn in Court. The Court made an order confirming the award, and, it being objected that the settlement of the accounts should not be postponed, but that they should be settled as agreed, directed that the arbitrator should settle the accounts, and gave him a year's time for that purpose; and, some of the parties not being willing to draw the unassigned lots, directed the distribution of such lots "in reference to the age and number" of the sharers. *Held*, that such order was a "decree" within the meaning of sections 2 and 522 of Act X of 1877: that the arbitrator should himself have drawn such lots, or he should have made the parties draw them; but, inasmuch as it would not have strained the agreement to have had such lots drawn in Court, and no objection had been taken to the arbitrator not having himself drawn them, it was not incumbent on the Court to have remitted the award in order that the arbitrator might have drawn them: that the Court, however, should not have distributed such lots

ARBITRATION—*continued.*

6. REMISSION TO ARBITRATORS—*continued.*

Omission of arbitrator to carry out terms of reference—*continued.*

in the manner it had done, but should have drawn a lot for each person; and in acting as it had done, it had acted contrary to the award, and for that reason its decree could not be maintained: and that, in confirming the award before the accounts had been settled and an award made in respect thereof, the Court had acted erroneously, inasmuch as the award had left undetermined a very important matter, *viz.*, the settlement of the accounts; and the Court should, under section 520 of Act X of 1877, have remitted the award for the reconsideration of the arbitrator; and, as it had the power to remit it upon such terms as it thought fit, the Court could have allowed one year, if necessary, for the settlement of the accounts; and on this account, and also because the Court had made an order postponing the settlement of the accounts, and thereby made an order contrary to, and in excess of, the award, its decree must be reversed. SADIK ALI KHAN *v.* IMDAD ALI KHAN

[I. L. R., 3 All., 286

7. REVOCATION OF, OR WITHDRAWAL FROM, ARBITRATION.

51. ——— **Revocation of agreement to refer.**—It is almost a universal rule that a submission to arbitration is revocable before award made. SURUBJEET NARAIN SINGH *v.* GOUREE PERSHAD NARAIN SINGH . . 7 W. R., 269

52. ——— **Mode of revocation.**—A revocation by deed can set aside a deed by which a person binds himself to abide by the decision of arbitrators. Revocation by parol may set aside a parol agreement. Notice is not necessary. ALLA AYAPPA *v.* NUNDULA PERAIYA *alias* PERAMBOTLU

[3 Mad., 82

But *see* NAGASAWMY NAIK *v.* RUNGAYAMY NAIK . . . . . 8 Mad., 46

53. ——— *Telegram staying proceedings.*—In the course of arbitration proceedings in Calcutta one of the arbitrators received two telegrams purporting to be sent by the plaintiff and defendant in Darjeeling to the arbitrators, the terms of which were "stay further proceedings; arrange matters here." *Held*, that the telegrams sent to the arbitrators did not amount to a revocation of of their authority. KELLIE *v.* FRASER

[I. L. R., 2 Calc., 445

54. ——— *Lapse of time, Presumption of revocation from.—Suit to enforce agreement to refer.*—Where some months had elapsed without either party taking action to carry out an agreement to refer a dispute to arbitration, the plaintiff was held not to be debarred from considering the agreement revoked and prosecuting his suit. JROKAKHUN LOLL *v.* MUTTRA PERSHAD

[1 N. W., Ed. 1873, 252

55. ——— **Ground for revocation.**—*Sufficient cause.*—An agreement to refer an existing dispute to arbitration is as binding and capable of

ARBITRATION—*continued.*

7. REVOCATION OF, OR WITHDRAWAL FROM, ARBITRATION—*continued.*

Ground for revocation—*continued.*

enforcement as any other lawful contract; and a submission of such a dispute to arbitration once made is not, without just and sufficient cause, revocable. *Alla Ayappa* v. *Nundala Peraiya, 3 Mad., 82,* overruled. *Pestonjee Nusserwanjee v. Maneckjee, 3 Mad., 183;* and *Santaiya v. Ramaraya, 7 Mad., 257,* followed. NAGASAWMY NAIK v. RUNGAVAMY NAIK . . . . . **8 Mad., 46**

56. ——————— *Omission to fix time within which award should be made.—Notice.*—According to the proper construction of the Code of Civil Procedure (that is to say, construing it with reference to the constitution of the Civil Courts of India and the abiding direction to them to proceed in all cases according to equity and good conscience), when persons have agreed to submit the matter in difference between them to the arbitration of one or more specified persons, no party to the agreement can revoke the submission to arbitration, unless for good cause, and a mere arbitrary revocation of the authority is not permitted. Where no time was originally fixed within which the award was to be made, it is open to either party to hasten the proceedings by giving notice to the arbitrators that the award must be made, and an umpire appointed, within a reasonable time; but where the time elapsing after the notice has been actively employed by the arbitrators, and the delay has been owing to necessity which they could not control, the parties cannot recede from their submission by reason of the notice. PESTONJEE NUSSERWANJEE *v.* MANOCKJEE AND CO.

[10 W. R., P. C., 51: 12 Moore's I. A., 112

ABLAKHEE KOOER *v.* OODUN SINGH

[15 W. R., 331

57. ——————— After the parties to a suit have agreed to refer it to arbitration and the order of reference has been made by the Court under section 508 of the Civil Procedure Code, neither of them can arbitrarily and on no sufficient ground withdraw from the agreement. *Pestonjee Nusserwanjee* v. *Manockjee and Co., 12 Moore's I. A., 112,* followed. NAINSUKH RAI v. UMADAI . **I. L. R., 7 All., 273**

58. ——————— *Appointment of new arbitrator, Power of.—Civil Procedure Code (Act XIV of 1882), secs. 506, 508, 510, 521.*—On 19th June 1884, an application for an order of reference was made, under section 506 of the Civil Procedure Code (XIV of 1882) by both parties to a suit. It was signed by both defendants and by the plaintiffs' pleader. As the plaintiffs' pleader had not been "specially authorized in writing" to join in the application, the Court postponed making any order on the application till the 23rd idem. On that day the first defendant did not attend the Court, but the plaintiffs' pleader produced the requisite authority, and the Court made an order referring the suit to the decision of the arbitrator nominated in the application of the 19th. On 27th June the first defendant made an application to the Court to revoke the authority of the arbitrator and appoint a new arbitrator in his place, on the ground that, after signing the application of the 19th, he had become aware of certain circumstances connected with the arbitrator which showed that he was not worthy of the confidence reposed in him. No final order was made upon this application till after the submission of the award, when it was rejected on the ground that the charges of misconduct and partiality imputed to the arbitrator were not made out. *Held,* first, that the first defendant not having objected to the appointment of the arbitrator on or before the 23rd June 1884, when the order of reference was made, must be taken to have tacitly acquiesced in the course adopted by the Court, and that such acquiescence amounted to a fresh submission. *Ardesar Hormozji Wadia* v. *Secretary of State for India, 9 Bom., 177;* and *Sreenath Ghose* v. *Raj Chunder Paul, 8 W. R., 171,* followed. The objections raised by the first defendant could only be considered after the submission of the award, and then only to the extent permitted by section 521 of the Code of Civil Procedure (XIV of 1882). When once a matter is referred to arbitration it is not competent to the Court, under the second paragraph of section 508 of the Code of Civil Procedure (Act XIV of 1882), to "deal with" the matter in difference between the parties, except as provided in Chapter XXXVII of the Code. There is no section of that chapter which authorizes the Court to revoke the authority conferred on an arbitrator and to appoint a new one, except in cases falling strictly within the purview of section 510 of the Code, where "the scope and object of the reference cannot be executed." It is only in those cases, apparently, that the authority conferred on arbitrators can be revoked "for good cause," the cause being such as is contemplated in that section, as where "an arbitrator refuses, or neglects or becomes incapable to act, or leaves British India under circumstances showing that he will probably not return to India at an early date." The enactment of the second paragraph of section 508 of the Code of 1882, which does not occur in the corresponding section (315) of Act VIII of 1859, has the effect of rigidly restricting the Courts to the exact procedure laid down when dealing with cases in which the appointment of a new arbitrator becomes necessary. HALIMBHAI KARIMBHAI *v.* SHANKAR SAI

[I. L. R., 10 Bom., 381

59. ——— **Revocation by one party.**—*"Sufficient cause."—Civil Procedure Code, 1859, s. 326.*—The fact of one of the parties to the agreement revoking his submission is not a sufficient "cause" within the meaning of section 326 of Act VIII of 1859. The English cases on the subject considered. PESTONJEE NUSSERWANJEE *v.* MANECKJEE . . . . . **3 Mad., 183**

S. C. ON APPEAL . **12 Moore's I. A., 112: [10 W. R., P. C., 51**

SANTANJA v. RAMARAYA . **7 Mad., 257**

60 ——————— *Examination of arbitrator as a witness.*—A reference to arbitration

ARBITRATION—*continued.*

7. REVOCATION OF, OR WITHDRAWAL FROM, ARBITRATION—*continued.*

Revocation by one party—*continued.*

made under an order of Court cannot be revoked at the instance of a party. If an arbitration award is set aside and the matter is tried as a suit before the Court, the arbitrator cannot be examined as a witness as to the grounds of his decision, but only to prove any admission which may have been made before him in the course of the arbitration, and which might be material evidence. NILMONEE BOSE *v.* MOHIMA CHUNDER DUTT . **17 W. R., 516**

61. ——— Revocation of agreement to have case decided on the evidence of third person.—*Act X of 1873 (Oaths Act), ss. 8-12.—Act X of 1877 (Civil Procedure Code), Ch. XXXVII.*—The plaintiffs and some of the defendants in a suit agreed that the matters in difference between them in the suit should be decided in accordance with the statement made on oath by one *J.* after he had made a local enquiry into such matters. The Court trying the suit accordingly directed that *J.* should be examined on a certain day. Before *J.* was examined the defendants objected to the case being decided in accordance with *J.'s* evidence, but the Court disallowed the objection, and having taken *J.'s* statement on oath decided the case in accordance therewith. *Held* by STUART, *C. J.*, that the provisions of sections 8 to 12 of Act X of 1873 were not applicable to the reference of the case to *J.*; that such reference was in the nature of a reference to arbitration under the Code of Civil Procedure; that it would have been valid and binding on the parties had all the defendants joined in it; but that, as all the defendants did not do so, the proceedings were illegal, and they should be set aside and the suit be decided on the merits. *Held* by OLDFIELD, *J.*, that the reference of the case to *J.* was not made under or governed by the provisions of the Civil Procedure Code relating to arbitration, and therefore the defendants were competent to revoke the agreement; and that, assuming the reference was made under the provisions of the Oaths Act, there was no rule of law prohibiting the revocation of such a reference, and therefore the defendants were competent to revoke the same. LEKHRAJ SINGH *v.* DULHMA KUAR . . **I. L. R., 4 All., 302**

62. ——— Revocation by Court.—*Illness of arbitrators.—Civil Procedure Code, 1859, s. 318.*—Where one of the arbitrators had been ill, and the time for sending it in elapsed before they could make their award, the Court superseded the arbitration and recalled the suit. JOSEPH *v.* SREEKER . . . . . **Bourke, O. C., 359**

63. ——— Withdrawal from arbitration.—*Civil Procedure Code, 1859, s. 326.*—Either of the parties in a reference to arbitration may withdraw from the proceedings at any time previous to the making of the award, unless the submission to arbitration has been made a rule of Court under section 326 of the Civil Procedure Code. ALLA AYAPPA *v.* NUNDALA PERAIYA *alias* PERAMBHOTLU **[3 Mad., 82**

ARBITRATION—*continued.*

7. REVOCATION OF, OR WITHDRAWAL FROM, ARBITRATION—*continued.*

Withdrawal from arbitration—*continued.*

But *see* NAGASAWMY NAIK *v.* RUNGASAMY NAIK . . . . . **8 Mad., 46**

64. ——— Refusal of some arbitrators to act.—*Civil Procedure Code, 1859, s. 319.—Refusal to nominate other arbitrators—Withdrawal from arbitration.*—Where some of the arbitrators named in an arbitration agreement refuse to act, and the parties do not agree to appoint others instead of them, it is not incumbent upon the Court to appoint other arbitrators, unless both parties agree, the provision of section 319 being not obligatory, but simply permissive. *Held* further that, under such circumstances, the refusal on the part of one party to nominate other arbitrators does not amount to a withdrawal from the agreement to proceed to arbitration. SADA SOOKH *v.* SHIVA DYAL . **1 Agra, 109**

65. ——— Withdrawal from arbitration.—*Ground for withdrawal.*—A party is not entitled to withdraw without good cause shown from a submission to arbitration. Where an award was about to be pronounced and a party withdrew on the grounds, first, that the arbitrator was entering into foreign matters; and second, that a minor was likely to be interested who would not be bound, the grounds were held not to constitute a good ground for withdrawal. RAM COOMAR SHAHA *v.* KALA CHAND SHAHA . . . . . **21 W. R., 395**

66 ——— ——— *Agreement not fully carried out as to number of arbitrators.*—The parties to the suit agreed to refer the disputes between them in another suit to the arbitration of five persons named by them, and did not agree to accept the decision of any less number of persons so nominated. Three only of the arbitrators nominated were proceeding with the arbitration and one had declined to act. *Held* that the suit, which was one to put an end to the arbitration, was maintainable. PARMESHAR DAT *v.* HARI NAIK . **7 N. W., 357**

67. ——— ——— *Agreement to withdraw suit.—Failure to make award.—Application for restoration to file of Court.*—A suit was, by order of Court, referred to three specified arbitrators, who were to make an award within six months, and in case of difference of opinion all matters in dispute were to be referred to the decision of an umpire. The arbitrators had only one meeting, at which an agreement was come to by the parties to settle all matters in dispute among themselves and withdraw the matters from arbitration, which was accordingly done, but nothing appeared to have been afterwards done. No award was made by the original arbitrators within six months from the reference. On application by the plaintiff to have the suit restored to the file of the Court,—*Held*, that the suit was still pending, the arbitrators not having determined it while they had jurisdiction to do so, and it was ordered that it should be brought again before the Court. GAPI NATH NANDI *v.* SHIB CHANDRA NANDI **[6 B. L. R., Ap. 74**

ARBITRATION—*continued.*

8. AWARDS.

(*a*) CONSTRUCTION AND EFFECT OF—

68. ——— **Rule of construction.**—An award should be construed, not by oral evidence given by the arbitrators, but by looking at the language of the award itself. GUNESHEE *v.* CHOTAY LALL . . . . . **3 N. W., 117**

69. ——— **Effect of award.**—*Signature of award by parties.*—*Held* that the parties, having signed the award of arbitration, must be bound by that until it is legally set aside, and until it is set aside a suit to enforce rights irrespective of the award is not maintainable. GOLAM ALI KHAN *v.* IMAM ALI KHAN . . . . . **2 Agra, 224**

70. ——— *Party added during arbitration.*—In a suit pending before arbitrators, a person who is made a co-plaintiff on application, and makes no objection to the arbitration, is bound by the award. SHITANATH BISWAS *v.* KISHEN MOHUN MOKERJEE . . . **5 W. R., 130**

71. ——— *Defence of submission to arbitration and award upon the matter in suit before suit brought.*—An award upon a question referred to arbitrators, on whose part no misconduct or mistake appears, concludes the parties who have submitted to the reference from afterwards contesting in a suit the question so referred and disposed of by the award. Two widows of a deceased Hindu referred generally to arbitrators the question of their rights, respectively, in the estate of their deceased husband, including the matter whether there was, or was not, any cause disentitling the widow who afterwards brought this suit for her share in the estate against the other who had obtained possession of the whole. The arbitrators declared her to be disentitled to succeed to any portion of the estate, and awarded her maintenance only. *Held* that, in the absence of mistake or misconduct on the part of the arbitrators, the award was binding on the parties. BHAGOTI *v.* CHANDAN
[I. L. R., 11 Calc., 386. L. R., 12 I. A., 67

72. ——— *Person not party to award.—Reciprocity.—Estoppel of objection of parties.—Exclusion from inheritance.*—An arbitrator's award declared the right of a member of a Hindu family jointly possessed of village houses and property, such member being deaf and dumb, and not a party to the arbitration and award. He afterwards sued for separate possession against the others, who in their defence denied his title to inherit by Hindu law, on account of his physical infirmity, which was from birth. The award having been produced at the hearing,—*Held* that this member of the family, being a stranger to the submission to arbitration, was under no obligation to abide by the award, and that he consequently could not avail himself of what the award contained in his favour. HIRA SINGH *v.* GANGA SAHAI
[I. L. R., 6 All., 322 : L. R., 11 I. A., 20

Affirming decision of High Court in GANGA SAHAI *v.* HIRA SINGH . **I. L. R., 2 All., 809**

ARBITRATION—*continued.*

8. AWARDS—*continued.*

(*a*) CONSTRUCTION AND EFFECT OF—*continued.*

Effect of award—*continued.*

73. ——— *Award not made on reference by all parties.*—An arbitration award, not being one which has been made upon a reference by all the parties to the suit, is not capable of being converted into a final decree under the provisions of Chapter VI, Act VIII of 1859, though it is evidence against any party who agreed to the reference. BEEJOY CHUNDER BANERJEE *v.* BHYRUB CHUNDER BANERJEE . . . . **15 W. R., 427**

74. ——— *Consent to arbitration.—Ambiguity in award.*—A dispute having arisen as to the boundary of two estates, the parties joined in a petition to the settlement officer of the district to appoint arbitrators for the purpose of settling the boundary. That officer appointed arbitrators who subsequently made the following award: "Having in the presence of the karpurdazes of both parties taken down the depositions of the witnesses of both parties on the disputed locality and made investigation and enquiry on the spot, and having observed the aspect of the place, we have ascertained as follows." They then proceeded to state the boundary. "Going along west from the high peak of Sathoo Pahar, which is on the south of Luphapara, one comes to a gurh called Rajgurh; on the south of it is Doobhiadidi in Mahomedabad; on the north of that gurh is Kolarkoonda in Belputta; on the west of it is Perma hill; on the east, south, and west is Mahomedabad; on the north is Belputta." At the foot of the award were the words, "Decision of the arbitrators confirmed," dated and signed by the Deputy Collector. The parties to the award afterwards petitioned the settlement officer to lay pillars along the line settled by the arbitrators, but he refused the application, but made an order that "if the petitioners construct the pillars themselves there will be no likelihood of objection hereafter. It is not necessary for the Court to pass any order in this matter." *Held* (1) that both parties had accepted the award; (2) that the award was not ambiguous; (3) that the effect of the award was not merely to determine possession at the time, but to determine the right to the land itself. RAMRUNJUN CHUCKERBUTTY *v.* RAM PROSAD DASS
[13 C. L. R., 26

75. ——— *Refusal to award interest to Mahomedan.—Suit on mortgage.*—Plaintiff, who was a Mahomedan, sued upon a mortgage executed by the defendants, who were also Mahomedans, to secure certain sums advanced by him, with interest at 24 per cent. The defendants pleaded an award by which the arbitrator, to whom the question of the defendants' liability under the mortgage, an deertain cross-claims which the defendants urged against the plaintiff had been referred, had found that the plaintiff was entitled to a particular sum under the mortgage for principal, but that, as a Mahomedan, he was not entitled to any sum for interest. The plaintiff contended that the award was bad. *Held*, on appeal, that the plaintiff was not entitled, by reason of interest having been disallowed,

ARBITRATION—*continued.*

8. AWARDS—*continued.*

(*a*) CONSTRUCTION AND EFFECT OF—*continued.*

Effect of award—*continued.*

to treat the award as a nullity, that the omission by the arbitrator to allow interest was a mistake which might be rectified by the Court, and that the award must be taken to be binding on the plaintiff. *Held*, further, that the plaintiff was entitled to proceed on the mortgage, and that the sum found due by the award having been a portion of the mortgage debt, the plaintiff was entitled to the usual mortgage decree for the sum found due with interest at 24 per cent. from the date of the award. MOONZOORAD DOWLAH *v.* MEHIDI BEGUM . **7 C. L. R., 206**

(*b*) ENFORCING AWARDS.

76. ——— Requisites for enforcing award.—*Judgment and decree on award.*—By MELVILL and PINHEY, *JJ.*—Before effect can be given to an award by execution proceedings, there must be a judgment according to the award and a decree following thereon. ISHWARDAS JAGJIVANDAS *v.* DOSIBAI **[I. L. R., 7 Bom., 316**

77. ——— Award allowing maintenance in perpetuity.—*Enforcing an award beyond life-time of parties.*—The plaintiff and the defendant were members of a *deshpánde* family in Khándesh. An arbitration award, dated 1838, which was assented to by the ancestors of the parties, provided that the defendant's father should continue to hold the *deshpánde vatan*, and pay a certain allowance to the plaintiff's father and two uncles, unless they should see fit to make a partition. The plaintiff alleged that the allowance, as fixed, was payable in perpetuity, and was paid till 1864-65, when it was stopped, and prayed for a decree declaring him entitled to it and arrears for eleven years. *Held*, that effect could not be given to the award as a decree, as no Court would pass a decree fixing a grant of maintenance in perpetuity; that an allowance fixed by a decree as maintenance was ordinarily liable to be varied, on the party ordered to pay it showing circumstances rendering it equitable to make the variation; and that there being no reason to suppose that the arbitrators had any idea of fixing the allowance for a longer period than the life-time of the parties, and all those parties being dead, no effect could any longer be given to the award. MADHAVRAV DESHPÁNDE *v.* RAMRAV DESHPÁNDE **[I. L. R., 7 Bom., 151**

78. ——— Agreement to be bound by majority.—*Refusal of arbitrator to act.*—Where a case was referred by a Court to the arbitration of three persons, and the parties to the reference agreed to be bound as to the matters in dispute by the decision of a majority of the arbitrators, and one of the arbitrators subsequently refused to act and withdrew from the arbitration,—*Held*, that the Court could not pass a decree on the award of the remaining arbitrators, and could only, under section 510 of the Civil Procedure Code, appoint a new arbitrator, or supersede the arbitration and proceed with the suit.

ARBITRATION—*continued.*

8. AWARDS—*continued.*

(*b*) ENFORCING AWARDS—*continued.*

Agreement to be bound by majority—*continued.*

Nasir Ali v. *Tinoo Dossia, 6 W. R., 95*; and *Rohilkhand and Kumaun Bank* v. *Row, I. L. R., 6 All., 468*, referred to. NAND RAM *v.* FAKIR CHAND **[I. L. R., 7 All., 523**

(*c*) POWER OF COURT AS TO AWARDS.

79. ——— Confirmation of award.—*Duty of Court.*—The Court, in passing judgment on the arbitration award, must confine itself to the plaintiff's claim and give a decision thereon. TRUNATH CHOWDRY *v.* MANICK CHUNDER DASS **[14 W. R., 469**

80. ——— *Duty of Court.*—If a Court regards an award as not open to objection, such Court must deliver judgment in accordance with the terms of such award, and not modify the same. LUCHMEE NARAIN *v.* PYLE . **2 N. W., 150**

81. ——— *Adding to award on confirmation.*—The Court can only give judgment in accordance with the award, and cannot add an order for interest to it, if interest has not been given. MOHUN LALL SHAHA *v.* JOYNARAIN SHAHA CHOWDHRY . . . . . **23 W. R., 105**

82. ——— *Plea of jurisdiction on limitation.*—When an award has been made, no plea of jurisdiction or limitation can be raised before the Court, which is to pass its decree according to the award. AMEEN CHUND *v.* MENDHOO KHAN . . . **1 Agra, Rev., 53**

83. ——— *Reduction of number of instalments where payment by instalment is ordered.*—*Civil Procedure Code, ss. 518, 522.*—The arbitrators to whom the matters in difference in two suits for money were referred to arbitration, made an award for payment to the plaintiff of certain sums by the defendant, and further directed that these sums should be paid by certain instalments. The plaintiff preferred objections to the award in so far as it directed payment by instalments, and the Court, holding that the arbitrators had no power to make such a direction, modified the award to that extent, under section 518 of the Civil Procedure Code. On appeal, the District Judge, while allowing the power of the arbitrators to direct payment by instalments, reduced the number of instalments which had been fixed. *Held*, that as it was clear that the reference to arbitration gave the arbitrators full powers, not only as to the amount to be paid, but also as to the manner of payment, the lower Appellate Court was wrong in reducing the number of instalments which had been fixed. *Per* MAHMOOD, *J.*—The word "award" used in the last sentence of section 522 of the Code must be understood to mean an award as given by the arbitrators, and not as amended by the Court under section 518. The words "in excess of, or not in accordance with, the award," used in section 522, were intended to enable the Court of

ARBITRATION—*continued.*

8. AWARDS—*continued.*

(c) POWER OF COURT AS TO AWARDS—*continued.*

Confirmation of award—*continued.*

appeal to check the improper use of the power conferred by section 518. JAWAHAR SINGH *v.* MUL RAJ [I. L. R., 8 All., 449

84. ——— *Power of Court to order sale.—Award without power to sell.—Power of Court to go beyond award when made a decree of Court.*—Where the partners of a firm in their partnership deed agreed to refer their disputes to arbitration, and the reference made in pursuance of this agreement gave the arbitrators a power to make partition, but omitted a power to sell,—*Held*, on the award being made a rule of Court, that the Court had no power, under section 326, Act VIII of 1859, to order the sale of certain property of which the arbitrators were unable to make partition, and the sale of which they recommended on that ground. CHUMIMONY DASSEE *v.* NISTARINEE DASSEE . 3 C. L. R., 357

85. ——— *Grant of right of way not given by award.—Award for partition. Subsequent suit for right of way not of necessity.*—Where the house and lands of a joint Hindu family were partitioned by the Court according to an award made by an arbitrator to whom the parties had agreed to refer the matter,—*Held*, in a subsequent suit, that the Court could not go behind the award and allow one of the members of the family to claim a right of way from the family house to a public road, through the lands allotted by the award to another member, such right of way not having been granted by the award, and there being no such right of way of necessity. GOPAL CHUNDER ROY *v.* BROJENDRO COOMAR ROY [5 C. L. R., 338

(d) VALIDITY OF AWARDS AND GROUND FOR SETTING THEM ASIDE.

86. ——— **Reversal of award.**—*Civil Procedure Code, 1859, s. 324.*—An award is not reversible, unless the provisions of section 324, Act VIII of 1852, apply. REEDOY KISTO MUZOOMDAR *v.* PUDDO LOCHUN MUZOOMDAR . 1 W. R., 12

87. ——— **Application to set aside award.**—*Extension of time for applying to set aside award.—Civil Procedure Code, 1859, s. 324.*—In an application to set aside an order made by a Judge in chambers, extending the time (of ten days) for making an application under section 324 of Act VIII of 1859 to set aside an award on the ground of misconduct of one of the arbitrators and of the umpire,—*Held*, that the words of the section being in their ordinary import obligatory, and there being nothing in the other parts of the Code to show that such construction was at variance with the intention of the Legislature, and a similar provision having been held by the Courts in England to be imperative, that the application to set aside the award must be made within the ten days, provided the Court be then sitting, and if not, on the first day of its sitting after that time, and that there is no power to enlarge the time to make

ARBITRATION—*continued.*

8. AWARDS—*continued.*

(d) VALIDITY OF AWARDS AND GROUND FOR SETTING THEM ASIDE—*continued.*

Application to set aside award—*continued.*

such application. EDALJI SHAPORJI *v.* TALSIDAS SUNDARDAS . . 2 Bom., 285: 2nd Ed., 270

S. C. EDULJI SHAPURJI *v.* TULSIDAS SUNDREDAS [1 Ind. Jur., N. S., 234

88. ——— **Ground for setting aside award.**—*Delay in returning.*—An award made by the consent of the parties cannot be set aside merely by reason of its having been sent in a week later than the date appointed, when such delay is not owing to misconduct or corruption. AMEEN CHUND *v.* MENDHOO KHAN . . . 1 Agra, Rev., 53

89. ——— *Fraud.*—To set aside an award, there must have been some fraudulent suppression of evidence or other malpractice of the successful party, which should be definitely stated in the plaint. HUR CHURN DASS *v.* HAZAREE MULL [1 Ind. Jur., O. S., 12

90. ——— *Inconsistency in award.*—An award of arbitrators cannot be set aside on the ground of its being inconsistent because the plea of the defendant was proved as to part of the case, and not as to the other. DEBRAJ ROY *v.* KARTICK CHUNDER SIRCAR . . W. R., 1864, 153

91. ——— *Civil Procedure Code, 1859, ss. 322, 323, 324.*—Where by the terms of a reference to arbitration all matters in difference are referred to the arbitrator, the Court will not modify (section 322), remit (section 323), or set aside (section 324) the award, on the ground that the arbitrator in his discretion has awarded damages to the plaintiff, and at the same time make him pay all the costs, when it is not shown that he exercised the discretion given him improperly. MOHENDRONATH BOSE *v.* NUSSEE MANGEE . . 1 Ind. Jur., N. S., 224

92. ——— *Document wrongly admitted in evidence.—Privileged communication.—Refusal to confirm award.*—In a case referred to arbitration the defendant contended, that as he had tendered the amount awarded to plaintiff before suit, he ought not to pay costs, and in support of his contention produced a letter written by the plaintiff's attorneys to his attorneys, which was stated to be without prejudice, and on that the arbitrator refused plaintiff costs. An application to confirm the award was refused, on the ground that the letter had been improperly used as evidence. *Held*, on appeal, that though the arbitrator was wrong in receiving and using a document which ought not to have been received, yet that this was not a sufficient ground to justify the Judge in refusing to confirm the award. HOWARD *v.* WILSON [I. L. R., 4 Calc., 231: 2 C. L. R., 488

93. ——— *Arbitrator having interest in the matter at issue.—Civil Procedure Code, 1859, s. 324.*—A Court should make full

ARBITRATION—*continued.*

8. AWARDS—*continued.*

(*d*) VALIDITY OF AWARDS AND GROUND FOR SETTING THEM ASIDE—*continued.*

Ground for setting aside award—*continued.*

enquiry into the objections made to an award before setting it aside; and should not hastily assume that the mere circumstance of the arbitrator having some interest in the matter at issue would necessarily bring the award within the provisions of section 324 of Act VIII of 1859, and render it liable to be set aside. SENUK KACHEE *v.* OREE DOOBEY [2 N. W., 241

94. ——— *Arbitrary decision.—Civil Procedure Code, 1859, s. 324.*—It is no ground to set aside an award of arbitrators, under section 324, Act VIII of 1859, that the arbitrators decided the case against the written statement of the defendant. GOOROO CHURN DEY *v.* RAMDHONE PAUL . . . . . 7 W. R., 28

95. ——— **Misconduct of arbitrators.**—*Refusal to amend award.*—The refusal of arbitrators to amend a clearly bad award is misconduct under section 324, Act VIII of 1859. DEB NARAIN SINGH *v.* RAJMONEE KOONWAR [3 W. R., 168

96. ——— *Neglect of some arbitrators to attend.—Civil Procedure Code, 1859, s. 324.*—The neglect of some of the arbitrators to attend meetings of the arbitrators is misconduct within the meaning of section 324, justifying the setting aside of the award by the Court which appointed the arbitrators, but not by a Court of Appeal. SREENATH GHOSE *v.* RAJCHUNDER PAUL [8 W. R., 171

97. ——— *Power of Court on appeal.*—But where the decree is appealed from, the Appeal Court has power to take cognizance of the question of misconduct of arbitrators. *See* section 363, Act VIII of 1859. RAMYYAD SINGH *v.* NIRUNJUN KOER . . . . . 22 W. R., 420

RAM GUTTEE MUNDUL *v.* THAKOOR DOSS MUNDUL . . . . . 22 W. R., 418

98. ——— *Refusal to call witness.*—Refusal by an arbitrator to call witnesses produced by either party amounts to judicial misconduct within the meaning of section 521 of the Civil Procedure Code. RUGHOOBUR DYAL *v.* MAINA KOER . . . . . 12 C. L. R., 564

99. ——— *Suspicion of partiality.*—An award cannot be set aside by the Court on the mere surmise that the arbitrator has been partial. NAINSUKH RAI *v.* UMADAI [I. L. R., 7 All., 273

100. ——— *Power to set aside award after judgment given on it.—Award.—Act VIII of 1859, ss. 324, 325.—Jurisdiction.*—Two out of three arbitrators appointed in the case submitted their award before the Munsif. The defendant, against whom the award had been made, applied to the Munsif

ARBITRATION—*continued.*

8. AWARDS—*continued.*

(*d*) VALIDITY OF AWARDS AND GROUND FOR SETTING THEM ASIDE—*continued.*

Misconduct of arbitrators—*continued.*

to set aside the award on the grounds of corruption and misconduct, and that the award was a nullity, inasmuch as only two out of three arbitrators had made the award. The Munsif overruled the objections, and passed a decree in terms of the award. On appeal to the Judge, the order of the Munsif was set aside on the ground that the award was illegal, as two only of the three arbitrators originally appointed had made the award, and the evidence did not prove the plaintiff's case. On an application to the High Court to set aside the order of the Judge,—*Held* that, under section 325, Act VIII of 1859, the Judge had no jurisdiction to set aside the award when the Court of first instance had passed judgment according to the award. IN THE MATTER OF THE PETITION OF ILAHI BAX . . . 5. B. L. R., Ap., 75

S. C. ELAHEE BUKSH *v.* HAJOO [14 W. R., 33

101. ——— **Validity of award.**—*Omission to fix time for sending in.—Act VIII of 1859, s. 318.*—Where no time had been fixed in the order directing the award for sending in the award, the award is, under section 318, Act VIII of 1859, invalid. GANGAGOBINDA *v.* KALIPRASANNA NAIK [1 B. L. R., S. N., 13: 10 W. R., 206

102. ——— *Omission to fix time for delivery of award.—Civil Procedure Code, 1859, s. 315.*—Where the lower Appellate Court omitted in its order referring the case to arbitration to fix a time for the delivery of the award, as directed by section 315 of Act VIII of 1859, but both the parties permitted the reference to proceed and took part in the proceedings, without making any objection until after the award was delivered, and when the omission in the order of reference could work no injury to either party, the High Court saw no reason why the omission should be held to avoid the award. MUBARIK ALI *v.* KADIR BUKSH . 7 N. W., 351

103. ——— *Award made out of time.—Civil Procedure Code (Act XIV of 1882), ss. 506, 514.*—An appeal was preferred against a decree of an original Court dismissing a suit, and the Appellate Court sent the case back for the purpose of certain evidence being taken, and certified to it. Pending that being done, the parties applied to the Appellate Court to refer the case to arbitration, and that Court referred that application to the original Court for disposal, although the case was still pending on its own file for disposal. Subsequently another application was made to the original Court to refer the case to arbitration, and on the 10th May the record was sent to the arbitrator with directions to submit his award within seven days. On the 12th September, as the award had not been sent in, the original Court passed an order recalling the record, and subsequently the award of the arbitrator, dated the 12th September, was filed. The original Court thereupon forwarded the record to the Appellate Court

ARBITRATION—*continued.*

8. AWARDS—*continued.*

(*d*) VALIDITY OF AWARDS AND GROUND FOR SETTING THEM ASIDE—*continued.*

Validity of award—*continued.*

for its decision. Objections were taken to the award, but overruled, and the Appellate Court passed an order directing the case to be sent back to the original Court, with orders to pass a formal decree in accordance with the award of the arbitrator. *Held*, that the award was bad in law, because the time within which it was directed to be made had never been enlarged, and the Court's order of the 12th September recalling the record could not be taken as an indication that the time was enlarged. BHUGWAN DASS MARWARI *v.* NUND LALL SEIN **[I. L. R., 12 Calc., 173**

104. ——————— *Award made out of time.—Civil Procedure Code, s. 521.—Arbitration.*—Under section 521 of the Civil Procedure Code, the rule that no award shall be valid unless "made" within the period fixed by the Court, is equivalent to a rule that the award must be "delivered" within that period. Upon a reference to the arbitration of three persons, the Court ordered that the award made by them should be filed on the 19th September 1885. The award was not filed on that date, but was signed by two of the arbitrators on that date, and by the third arbitrator on the 20th September, on which day it was filed. It had been agreed that the opinion of the majority should carry the decision. *Held*, that the award was not "made within the period fixed by the Court" within the meaning of section 521 of the Civil Procedure Code. BEHARI DAS *v.* KALIAN DAS **[I. L. R., 8 All., 543**

105. ——————— *Award made out of time.—Civil Procedure Code, s. 521.—Arbitration.—Order fixing time, or enlarging time fixed, for the delivery of award requisite.—Civil Procedure Code, ss. 508, 514, 522.—Decree in accordance with award.*—The law contained in sections 508 and 514 of the Civil Procedure Code requires that there shall be an express order of the Court fixing the time for delivery of the award or for extending or enlarging such time; and the mere fact that the Court has passed a decree in accordance with the award cannot be taken as affording a presumption that an extension of time was given. An award which is invalid under section 521 of the Civil Procedure Code, because not made within the period allowed by the Court, is not an award upon which the Court can make a decree, and a decree passed in accordance with such an award is not a decree in accordance with an award from which no appeal lies with reference to the ruling of the Full Bench in *Luchman Das* v. *Brypal, I. L. R., 6 All., 174.* CHUBA MAL *v.* HARI RAM . **I. L. R., 8 All., 548**

106. ——————— *Award made out of time.—Civil Procedure Code, ss. 508, 521, 522, 622.—Act VIII of 1859, s. 318.*—An order of reference to arbitration was made on 21st January. Six weeks' time was allowed for the return of the award No application was made for extension of time The award having been returned on 8th May, the Court refused to give judgment in accordance with it, under section 522 of the Code of Civil Procedure, on the ground that it was not valid. *Held*, on an application under section 622 of the Civil Procedure Code, that the award was invalid. SIMSON *v.* VENKATAGOPALAM . . **I. L. R., 9 Mad., 475**

ARBITRATION—*continued.*

8. AWARDS—*continued.*

(*d*) VALIDITY OF AWARDS AND GROUND FOR SETTING THEM ASIDE—*continued.*

Validity of award—*continued.*

107. ——————— *Denial of genuineness.—Want of consent.*—The objections which can be raised against an award are such as at the outset are fatal to it, *e.g.*, objections which deny its genuineness or deny that the objector was a consenting party to the arbitration. PROTAP CHUNDER ROODRO *v.* HURO MONEE DOSSIA . **24 W. R., 188**

108. ——————— *Parties not all joining in reference.*—A plaintiff and some of the defendants to a suit applied to refer the suit to arbitration (certain other of the defendants not having joined in the application); an award was passed and a decree made in accordance with such award. The plaintiffs objected to the validity of the award on the ground that all the parties to the suit had not joined in referring the suit to arbitration; the objection was dismissed, and judgment given in accordance with the award. *Held* that, under the special circumstances of the case, justice was so clearly in favour of the view that the award was good, that the Court, although not entirely approving of certain decisions of the High Court (*Shitanath Biswas* v. *Kishen Mohun Mookerjee, 5 W. R., 130; Ram Soonder Mookerjee* v. *Ram Shurun Mookerjee, 6 W. R., 25; Doorga Churn Thakoor* v. *Kally Doss Hazrah, 10 W. R., 463; Bishoka Dasia* v. *Anunto Lall Pain, 4 C. L. R., 65,* which laid down that such an award is good, notwithstanding that some of the parties to the suit may not have joined in the reference to arbitration), did not think fit to differ from those decisions on that occasion. JOY PROKASH LALL *v.* SHEO GOLAM SINGH **[I. L. R., 11 Calc., 37**

109. ——————— *Parties not all joining in reference.—Submission to arbitration by one of several defendants.*—*A.* having brought a suit against *B.* and two of his tenants for possession of certain lands of which he alleged he had been dispossessed by the defendants in 1279, it was arranged between *A.* and the defendant *B.* that the matter should be referred to arbitration. Arbitrators were accordingly appointed, and their award having been given in favour of *A.*, judgment for the plaintiff was recorded in terms of that award. *B.* then appealed on the ground that the other defendants had not joined in the agreement to submit the matter to arbitration, and the judgment was set aside, and the case remanded for re-trial. On remand the plaintiff's suit was dismissed, and the order of dismissal was upheld by the lower Appellate Court. *Held*, on further appeal, by the High Court, that the fact of the

ARBITRATION—*continued.*

8. AWARDS—*continued.*

(*d*) VALIDITY OF AWARDS AND GROUND FOR SETTING THEM ASIDE—*continued.*

Validity of award—*continued.*

tenants not having joined in the submission to arbitration did not vitiate the award, and that as between *A.* and *B.* the original decision of the Court of first instance in terms of that award must be restored. BISHOKA DASIA *v.* ANUNTO LALL PANI [4 C. L. R., 65

110. ——————— *Parties not all joining in reference.—Award made without all parties consenting to arbitration.—Quære, per* JACKSON, *J.*,—What is the effect of an award arrived at in a pending suit which was referred to arbitration by an Order of Court otherwise than by consent of all the parties? DOORGA CHURN THAKOOR *v.* KALLY DOSS HAZRAH . . . . 10 W. R., 463

111. ——————— *Parties not all joining in reference.—Award without consent.—Some arbitrators only acting.*—Where parties do not give their consent to the appointment of arbitrators and the judgment proceeds on the arbitration award, the decree is not binding on those parties. Where four arbitrators had been appointed and only two acted, the award was held to be invalid. RASH BEHAREE ROY *v.* DOORGABUR ROY . . 14 W. R., 211

112. ——————— *Award by three arbitrators where reference is to five.—Illegal order.*—The parties to the suit agreed to refer the disputes between them to the arbitration of five persons named by them, and did not agree to accept the decision of any less number of persons so nominated. Three only of the arbitrators nominated were proceeding with the arbitration, and one had declined to act. The Court which made the reference released, in favour of the plaintiffs in the suit in which the reference was made, the attachments existing on debts due to the defendant in that suit, at the instance of the three arbitrators, who proposed to authorize the plaintiffs to collect those debts, and directed the debtors to pay their debts to the plaintiffs. It was held that, assuming that the reference permitted the arbitrators nominated to authorize either of the parties to collect the debts attached, inasmuch as the agreement was unaccompanied by any stipulation that a less number than the whole of the arbitrators could determine whether such permission should be given, the act of the three arbitrators which led to the issue of the order could not be supported, and that the last portion of that order was *ultra vires* and must be declared void. PARMESHAR DAT *v.* HARI NAIK . . 7 N. W., 357

113. ——————— *Award made by more arbitrators than were appointed.*—An award was held invalid, among other reasons, because it purported to be the award of four persons, whereas the order of reference was addressed only to three. PHIRAN *v.* BAHARAN . . . 7 N. W., 367

114 ——————— *Presence of arbitrators at meeting of award.*—When a case has been referred to arbitration, the presence of all the arbitrators at all meetings, and above all at the last meeting when the final act of arbitration is done, is essential to the validity of the award. NAND RAM *v.* FAKEER CHAND . . I. L. R., 7 All., 523

115. ——————— *Omission of provision for difference of opinion and award by majority.—Ground for setting aside award.*—Where an order of reference to arbitration does not provide for difference of opinion among the arbitrators, and for authorizing a majority to decide the case, the award will on objection taken be set aside. FUTTEH SINGH *v.* GANGO . . . . . 4 W. R., 4

116. ——————— *Omission of provision for difference of opinion.*—The mere absence of a clause in the order of reference providing for a difference of opinion between the arbitrators cannot vitiate the award where there is no such difference of opinion. GOUR CHUNDER BHUTTACHARJEE *v.* SODOY CHUNDER NUNDEE . 17 W. R., 30

117. ——————— *Award by majority of arbitrators.*—Where several arbitrators are appointed, and the parties do not agree to be bound by the act of the majority, the award, in order to be valid and binding, must be concurred in and executed by all the arbitrators. SURUBJEET NARAIN SINGH *v.* GOUREE PERSHAD NARAIN SINGH . 7 W. R., 260

118. ——————— *Award made by majority of arbitrators.*—Where the terms of a submission to arbitration give no authority for the majority of the arbitrators to make the award, it should be made by the whole of the arbitrators. An award made by the majority only would not be a valid award. IN THE MATTER OF THE PETITION OF JUNGLEE RAM. JUNGLEE RAM *v.* RAM HEET SAHOY [19 W. R., 47

119. ——————— *Award made by majority of arbitrators.—Civil Procedure Code, 1882, ss. 506, 509, 510.—Refusal of minority of arbitrators to act.*—Where the parties agreed to refer a suit to arbitration, but no provision was made that a decision by the majority of arbitrators should be binding, and two of five arbitrators withdrew,—*Held*, that a decision by the majority was invalid. GURUPATHAPPA *v.* NARASINGAPPA [I. L. R., 7 Mad., 174

120. ——————— *Award made by arbitrators unwilling to act.—Refusal of arbitrators to act.—Civil Procedure Code. s. 510.*—It is an essential principle of the law of arbitration that the adjudication of disputes by arbitration should be the result of the free consent of the arbitrators to act; and the finality of the award is based entirely upon the principle that the arbitrators are judges chosen by the parties themselves, and that such judges are willing to settle the disputes referred to them. Where certain matters were referred to arbitrators who

ARBITRATION—*continued.*

8. AWARDS—*continued.*

(*d*) VALIDITY OF AWARDS AND GROUND FOR SETTING THEM ASIDE—*continued.*

Validity of award—*continued.*

refused to act, and the Court of first instance passed an order directing them to proceed and to make an award, and they, on the passing of such order, made an award,—*Held*, that all proceedings taken by the arbitrators in obedience to the order of the Court directing them to arbitrate against their will were null and void. SHIBCHARAN *v.* RATIRAM

[I. L. R., 7 All., 20

121. ——————— *Award partly by fresh arbitrators appointed against consent of parties.—Civil Procedure Code, 1877, s. 510.*—Where two of five arbitrators nominated by the parties to a suit and appointed by the Court had not consented before, and after appointment declined to act, and the Court appointed two arbitrators in their place against the consent of one of the parties to the suit,—*Held* that, under the circumstances, the appointment of the new arbitrators was not warranted by the provisions of section 510 of the Code of Civil Procedure, and that the order of reference to such arbitrators, the award made by them, and the decree passed upon the award, were illegal. PAGARDIN RAVUTAN *v.* MOIDINSA RAVUTAN

[I. L. R., 6 Mad., 414

122. ——————— *Award made by some only of arbitrators.—Death of one of several arbitrators.*—Matters in dispute were referred to the arbitration of five persons, of whom four made their award on 27th August 1875. On 3rd September, the same arbitrators granted an application for re-hearing. Before the matter was re-heard, one of the four died, and an order striking off the application was made by two of the surviving arbitrators. *Held*, that the award was not a valid and final award. BOONJAD MATHOOR *v.* NATHOO SHAHOO

[I. L. R., 3 Calc., 375 : 1 C. L. R., 455

123. ——————— *Award made by some only of arbitrators.—Absence of some of arbitrators.*—A case was referred to the arbitration of five persons, with a proviso that in the event of any two of the arbitrators being absent, the arbitration should be continued by the other three. Two of the arbitrators named were the pleaders on either side, and these two, with the consent of the parties, ceased to act as arbitrators, but argued the matter before the other arbitrators. *Held*, that the award made by the other three arbitrators named was a valid award. DEBENDRA NATH SHAW *v.* AUBHOY CHURN BAGCHI

[I. L. R., 9 Calc., 905 : 12 C. L. R., 525

124. ——————— *Award by umpire and one arbitrator without provision for appointment of umpire.—Agreement to refer not providing for disagreement of arbitrators.—Appointment of umpire by Court.—Civil Procedure Code, ss. 508, 509, 523.—Application to set aside award.*—In an agreement to refer certain matters to arbitration, which was filed in Court under section 523 of the Civil Procedure Code, and on which an order of reference was made by the Court, no provision was made for difference of opinion between the arbitrators, by appointing an umpire or otherwise. The arbitrators being unable to agree upon the matters referred, the Court, on the application of one of them, appointed an umpire and directed that the award should be submitted on a particular date. An award was made by the umpire and one arbitrator, without the concurrence of the other arbitrator, and submitted to the Court, which passed a decree in accordance with its terms. *Held* that, in the present case, there had been no legal award such as the law contemplated, inasmuch as the agreement to refer gave the Court no power to appoint an umpire, and required that the award should be made by the arbitrators named by the parties. *Held*, that section 509 and the other sections preceding section 523 of the Civil Procedure Code, relating to the power of the Court to provide for difference of opinion among the arbitrators, were only made applicable to cases coming under section 523, so far as their provisions were consistent with the agreement filed under that section. MUHAMMAD ABID *v.* MUHAMMAD ASHGAR

[I. L. R., 8 All., 64

125. ——————— *Umpire appointed contrary to agreement.—Decision by majority of arbitrators.*—*B.* submitted to arbitration the matters in dispute between himself and the other parties to a suit, on the terms that an umpire should be selected from seven persons whom he named. Those terms were not objected to by the other side. Arbitrators were agreed upon, and *R.*, one of the seven persons named in the submission, was appointed an umpire. But *R.* and some of the arbitrators declined to act. Fresh arbitrators were then chosen but no umpire; and, the arbitrators being equally divided in their opinion on the case, the Court of its own motion appointed as umpire *L.*, who was not one of the seven persons named in the submission. *B.* objected to *L.*'s appointment, but the Judge overruled the objection and passed judgment in accordance with the umpire's award. *Held*, on appeal, that as it was stipulated as an essential part of the submission that an umpire should be chosen from seven persons named, the power of the Court to appoint an umpire, under section 319 of the Civil Procedure Code, was controlled and limited by that stipulation; and that the umpire not being one of the seven persons named in the submission, there was no valid award. BARRACHO *v.* DE SOUZA . . . . . **7 Mad., 72**

126. ——————— *Award by umpire and one arbitrator.—Refusal of arbitrator to attend.*—*Held*, that an award made by one of the arbitrators, and the umpire in the absence of second arbitrator, who declined to attend, was not a valid award. BUSUNT RAI *v.* GRIDHAREE SINGH

[3 Agra, 93

127. ——————— *Award by umpire where arbitrators cannot decide.*—Where the

ARBITRATION—*continued.*

8. AWARDS—*continued.*

(*d*) VALIDITY OF AWARDS AND GROUND FOR SETTING THEM ASIDE—*continued.*

Validity of award—*continued.*

parties prayed the Court to appoint two arbitrators and an umpire and to refer the case to them for decision, and undertook to abide by such decision as might be passed by them unanimously or by the majority of them,—*Held*, that an award by the umpire alone, the arbitrators being unable to decide, was valid. KUPU RAU *v.* VENKATARAMAYYAR

[I. L. R., 4 Mad., 311

128. ——————— *Partial disagreement of arbitrators*—A partial disagreement of two arbitrators does not nullify their award as a whole. PANAOOLAH *v.* TUMEEZOODDEEN

[2 W. R., 32

129. ——————— *Omission to sign award at same time.—Procedure.—Act VIII of 1859, s. 395.*—An award of arbitrators, to be legal, must be completed and signed by each in the presence of the whole of them. IN THE PETITION OF JAY MANGAL SINGH

[3 B. L. R., A. C., 82: 11 W. R., 433

130. ——————— *Omission to sign award at same time.—Act VIII of 1859, s. 327.*—Where, on a reference to arbitration, the case had been regularly heard by all the arbitrators sitting together, and an award been drawn up and signed by them, the mere omission of the arbitrators to sign the award at the same time and in each other's presence does not invalidate the award. BHOBOSUNDARI DASI *v.* MAKHUN LAL DEY . 8 B. L. R., 128

But *see per* NORMAN, *J.*, in JAY MANGAL SINGH *v.* MOHAN RAM MARWARI.

[8 B. L. R., 130, note, and 319, note: 12 W. R., 397

131. ——————— *Omission of all the arbitrators to sign award.—Draft of award signed by all the arbitrators.—Fair copy signed by only four.*—Where, in a suit to recover a sum of money on an award, the five arbitrators came to a decision, and made, dated, and signed a rough draft of their award, and the defendant then withdrew from the submission, and a fair copy was then made, bearing the same date as that of the rough draft, but signed by only four of the arbitrators,—*Held*, that the award was complete at the date of the rough draft, and that its validity was not affected by the subsequent occurrences. The validity of an award cannot be impeached because the arbitrators afterwards do an act required neither by the law nor by the terms of the submission. KULA NAGABUSHANAM *v.* KULASESHACHALAM

[1 Mad., 178

132. ——————— *Award not signed by all the arbitrators.—Civil Procedure Code, 1859, s. 312.—Division of award.*—The parties to certain suits having agreed to submit to arbitration, the suits were so referred under Act VIII of 1859, section 312. After this reference the parties agreed by an ikrarnama to submit the same suits, together with other matters, to the arbitration of five persons, the effect being to withdraw the first submission and substitute the new agreement. Before these arbitrators arrived at a final conclusion, the parties by a solenamah compromised the whole of the subjects of dispute, and afterwards an award was drawn up in the terms of the solenamah and signed by two of the arbitrators and the head arbitrator. When the award was brought before the Subordinate Judge, he considered it had been made *ultra vires* in respect of those matters which were not involved in the suits originally referred, and accordingly made a decree only in those suits corresponding with the terms of the award. Some of the defendants applied to the Subordinate Judge to have the effect of a decree given to that portion of the award which was left outstanding by the first decision. This application was decreed and the remainder of the award enforced. An appeal to the Judge was dismissed with costs. *Held*, that the award was illegal because it was not signed by all the arbitrators, and there had been no agreement to abide by the decision of the majority, or that the voice of the umpire should prevail. *Held*, however, that as the parties concerned did not take steps to set the Subordinate Judge right, the High Court could not interfere, but that the effect of the decision was to dispose of the award altogether, and not to divide it into two parts, one of which might form the foundation of a future judgment. *Held*, that the application to give effect to the unenforced portion of the award ought to have been dismissed. NEM ROY *v.* BHABUT ROY . . 22 W. R., 129

133. ——————— *Signing award after tender of resignation by one arbitrator.*—Where one of the arbitrators, before duly signing the award, tendered his resignation in a letter to the Judge, but was induced to withdraw it, and afterwards signed the award,—*Held*, that the arbitrator who first tendered and then withdrew his resignation did not formally divest himself of his character of arbitrator, and was therefore not *functus officio* when he signed the award, which was consequently valid. JOYMUNGAL SINGH BAHADOOR *v.* MOHUN RAM MARWAREE . . . 23 W. R., 429

Affirming decision of High Court in

[S. C. 15 W. R., 38

134. ——————— *Resignation of arbitrator and subsequent withdrawal of resignation.—Power to withdraw resignation.*—An arbitrator has full power to retract his resignation of office before it is accepted. An award signed after the withdrawal of such resignation is a valid award. JOYMUNGUL SINGH *v.* MOHUN RAM MARWAREE

[15 W. R., 38

135. ——————— *Award irregularly made.*—Where an arbitrator imported into his proceedings a previous enquiry alleged to have been made by him, and relied upon admissions made in

ARBITRATION—*continued.*

8. AWARDS—*continued.*

(*d*) VALIDITY OF AWARDS AND GROUND FOR SETTING THEM ASIDE—*continued.*

Validity of award—*continued.*

the former proceedings, his award was held to be bad, and the decision based upon it was set aside. KANHYE CHAND GOSSAMEE v. RAM CHUNDER GOSSAMEE . . . . . **24 W. R., 81**

136. ——— *Award made on special form of oath.—Power of arbitrators to administer other than prescribed form of oath.—Oaths Act (X of 1873), s. 13.*—The matters in dispute in a suit were, by the desire of the parties to the suit, referred to arbitration. During the investigation of these matters by the arbitrators the plaintiff offered to be bound by the oath of the defendant administered on the Koran. The defendant agreed to take such oath, and such was accordingly administered to him by the arbitrators, and his evidence taken, and an award made based on the evidence so taken. On special appeal to the High Court by the plaintiff, he objected for the first time, the objection not having been taken in his memorandum of special appeal, that the arbitrators were not legally competent to administer such oath, and the evidence so taken could not form a valid basis of an award, and the award was therefore void. *Held per* PEARSON, *J.*, SPANKIE, *J.*, dissenting, with reference to the legal competency of the arbitrators to administer the oath, that the objection was good, and that the arbitrators had no power to administer the oath. *Per* PEARSON, *J.*, that the statement of the defendant made on an oath illegally administered could not form a valid basis of an award, and the award was void and should be set aside. *Per* SPANKIE, *J.*, that the plaintiff having offered to be bound by the oath, and the defendant having agreed to take it, the plaintiff was bound by the evidence given on such oath; and that as the arbitrators had by law and consent of parties authority to receive the evidence of the defendant, the substitution by them of an oath on the Koran for an affirmation did not, under the provisions of section 13, Act X of 1873, invalidate such evidence, and consequently render the award based on such evidence void. WALI-UL-LAH v. GHULAM ALI . [**I. L. R., 1 All., 535**

9. PRIVATE ARBITRATION.

137. ——— **Mode of submission to arbitration.**—*Civil Procedure Code, 1882, s. 525 (1859, s. 327).*—In arbitrations not started with the sanction of the Court, it is not necessary that the agreement should be reduced to writing before it can be binding. MUDHOO MANJEE v. NILMONEE SINGH DEO . . . . . **18 W. R., 533**

138. ——— *Oral submission.*—A submission of private arbitration may be perfectly valid though not put in writing, and a private award made in pursuance of such submission will be respected, and treated as valid by the Courts if duly performed, and the possession of the contested property be held under them. The arbitrators may be

ARBITRATION—*continued.*

9. PRIVATE ARBITRATION—*continued.*

Mode of submission to arbitration—*continued.*

competent to prove, as well the submission as the making of the award, though no ikrarnamah was ever executed. BAHAL SINGH v. SHIBO RAM SINGH [**W. R., 1864, 76**

139. ——— **Matters for submission.**—*Subject-matter of suit and other matters in dispute.*—There is nothing in Act VIII of 1859 to prevent parties who have a suit pending in Court from submitting the subject-matter of that suit and other matters in dispute to arbitration under section 327. THAKOOR DOSS ROY v. HURRY DOSS ROY [**W. R., 1864, Mis., 21**

140. ——— **Agreement to refer to private arbitration by parties engaged in litigation.**—*Civil Procedure Code (Act X of 1877), ss. 523 and 525.*—Under sections 523 and 525 of the Civil Procedure Code (Act X of 1877), parties to a suit as well as persons not engaged in litigation may agree to refer matters in dispute between them to private arbitration without the intervention of the Court, and may apply to have the agreement filed; and the mere fact that a suit is pending with respect to the matters in dispute, is not of itself a sufficient reason to induce the Court to refuse to file the agreement. HARIVALABDAS KALLIANDAS v. UTAMCHAND MANEKCHAND . . . **I. L. R., 4 Bom., 1**

141. ——— **Power of arbitrators after making and delivery of award.**—*Review.*—After an award has been made and handed to the parties, the functions of the arbitrators cease. They have no power afterwards to deal with an application for review of their decision. IN THE MATTER OF THE PETITION OF DUTTO SINGH. DUTTO SINGH v. DOSAD BAHADUR SINGH . . **I. L. R., 9 Calc., 575**

142. ——— *Award signed by arbitrators at different times.—Civil Procedure Code, 1859, s. 327.—Award irregularly made.*—In the case of a private award where the arbitrators granted a new trial, and eventually disposed of the case in the absence of the defendant, and after a year from the time of allowing a new trial one day verbally pronounced their judgment to one party, and on another day to the other party, and on a subsequent date wrote out the award which was signed on a particular date by one arbitrator, who sent it to others elsewhere for signature on a different date, —*Held*, that the award ought not to be enforced under Act VIII of 1859, section 327. NADER ALI v. MAJOO . . . . . **21 W. R., 377**

143. ——— *Award signed only by some of the arbitrators.*—Matters in dispute between the parties were referred to seven arbitrators without the intervention of a Court. The arbitrators, or so many of them as could be got together, held sittings extending over some months, and at each sitting they came to a decision, either unanimously or by a majority, on different questions submitted to them. These decisions were entered on the minutes of their proceedings; and at their last sitting

ARBITRATION—*continued.*

9. PRIVATE ARBITRATION—*continued.*

Power of arbitrators after making and delivery of award—*continued.*

the arbitrators all agreed, and informed the parties, that the decisions so arrived at constituted the final award, and gave directions for embodying those decisions in the shape of a formal document, which was drawn up on a subsequent day, but was signed by four only out of the seven arbitrators. The remaining arbitrators not being asked to sign it, they never did sign it. *Held*, that the actual award was an oral award made by all the arbitrators on the last day of their joint sitting, and the drawing up of the formal award was a purely ministerial act to give effect to the previously completed judicial act. The omission to take the signatures of the minority of the arbitrators to the document which formed the record of the award was not fatal to the award. DANDEKAR *v.* DANDEKARS . . . **I. L. R., 6 Bom., 663**

144. ——————— *Document recommending solution of disputed points.—Act XIV of 1882, s. 525.*—A document, although headed as an "award" and signed by the arbitrator, which merely recommends a solution of the questions referred to arbitration, will not be treated by the Court as an award on an application made under section 525 of the Code of Civil Procedure. NUNDOLOLL MOOKERJEE *v.* CHUNDER KANT MOOKERJEE **[I. L. R., 11 Calc., 356**

145. ——— **Application to enforce award.**—*Time for filing award.—Civil Procedure Code, 1859, s. 327.*—An award of arbitration, whether private or not, cannot be enforced unless the application for enforcement is made within six months from the date of award. BHYRUB JHA *v.* HUNOOMAUN DUTT JHA . . . . . **5 W. R., 123**

146. ——————— *Time for filing award.—Limitation Act (XV of 1877), sch. II, art. 176.—Civil Procedure Code, 1877, ss. 525, 526.*—Where an award was made and signed by the arbitrators on the 5th of August 1881, but was not delivered to the parties till the 13th of September following,—*Semble*, that an application to file the award, made on the 25th of February 1882, under the provisions of sections 525 of the Code of Civil Procedure, was not barred by limitation. It is clearly the intention of the Legislature that a party to an arbitration should have six months to enforce the award, under section 525 of the Code of Civil Procedure, from the time when he is in a position to enforce it. IN THE MATTER OF THE PETITION OF DUTTO SINGH. DUTTO SINGH *v.* DOSAD BAHADUR SINGH . **I, L. R., 9 Calc., 575**

147. ——— **Filing award in Court.**—*Effect of not filing.—Civil Procedure Code, 1859, s. 327.*—An arbitration award should be filed in Court. Effect of not filing as defined in section 327, Act VIII of 1859. SOOPHUL SINGH *v.* METHOO SINGH **[1 W. R., 163**

148. ——————— *Effect of not filing.—Validity of award.*—An award of arbitration may be valid without being enforced by the Courts,

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as, for instance, where possession under the award is shown. MOHESH CHUNDER MOITER *v.* BULORAM MOITER . . . . . **6 W. R., 94**

149. ——————— *Effect of not filing.—Validity of award.*—An award made by private submission may be valid and binding though no proceedings under section 327, Act VIII of 1859, have been taken to enforce it. SURUBJEET NARAIN SINGH *v.* GOUREE PERSHAD NARAIN SINGH **[7 W. R., 260**

150. ——————— *Effect of not filing.—Civil Procedure Code, 1859, s. 327.—Validity of award.*—Arbitration awards not brought into Court under section 327, Act VIII of 1859, are not on that account necessarily invalid. RAMYAD SAHOO *v.* DOOLAR SAHOO . . . . **9 W. R., 441**

NURSINGH GARIWAN *v.* PUTTOO OSTAGUR **[20 W. R, 420**

151. ——————— *Obligation to file.—Suit to enforce award not filed.—Civil Procedure Code, 1859 s. 327.*—A suit lies to enforce an award made without the intervention of a court of justice. The procedure provided in section 327 of the Civil Procedure Code is not imperative upon a plaintiff who seeks to enforce an award so made. PALANIAPPA CHETTI *v.* RAYAPPA CHETTI **[4 Mad., 119**

KOTA SEETAMMA *v.* KOLLIPURLA SOOBBIAH **[8 Mad., 81**

152. ——————— *Objections to filing award.—Civil Procedure Code (Act XIV of 1882), ss. 520, 521, 525, and 526.—Procedure where identity of award impeached.—Power of Court to enquire into objection to file award.—Jurisdiction.*—Where an application was made to a Subordinate Judge to file an award, and an objection was taken that the arbitrators had made their award several months before the date of the one sought to be filed, thus impeaching the identity of the award, and the Subordinate Judge, after an enquiry with regard to the several objections, ordered the award to be filed,—*Held*, that the order of the Subordinate Judge should be set aside, or the award be deemed not to have been filed. The only objections which the Court can enquire into under sections 525 and 526 of the Civil Procedure Code (Act XIV of 1882) are those which are specified in sections 520 and 521, and these relate to cases in which the reference and the award are accepted facts; but where the objection denies the *factum* of the particular award sought to be filed, and the objection does not seem to be frivolous, but one giving rise to enquiry into difficult questions of law and fact, it is not competent for the Court to deal with that objection under sections 525 and 526. In such a case the Court should leave the applicant to a regular suit on the award as the basis of his cause of action, wherein the party urging the objection will have the advantage of being a defendant rather than a plaintiff, and of having an appeal open

ARBITRATION—*continued.*

9. PRIVATE ARBITRATION—*continued.*

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to him in the event of an unfavourable decision. SAMAL NATHU *v.* JAISHANKAR DALSUKRAM [I. L. R., 9 Bom., 254

153. ——— *Objections to filing award.—Civil Procedure Code, 1877, ss. 520, 524, 525.—Rejection of application to file award.—Consent of parties to jurisdiction.*—A dispute between the plaintiffs and defendant having been referred to arbitration and an award made, the plaintiffs applied under section 525 of the Civil Procedure Code that the award should be filed in the Munsif's Court. It having been objected that the arbitrators had been guilty of impartiality and other misconduct, an issue was framed with the consent of both parties "whether the award could be filed and enforced," and the Munsif, after hearing evidence, dismissed the application. On appeal the Subordinate Judge decided that the award was valid. On second appeal,—*Held* that, although where an application to file an award under section 525 and objection is made upon any of the grounds mentioned in section 520 or 521, the proper course for the Court is to dismiss the application, and leave the applicant to bring a regular suit to enforce the award; yet both parties having consented to the matter being tried upon the application as if in a regular suit, it could not, on second appeal, be objected that the lower Courts had acted without jurisdiction. HURO NATH ROY *v.* NISTARINI CHOWDHRAIN . . . . . 13 C. L. R., 14

154. ——— *Showing cause.—Sufficient cause.*—The term "to show cause," in sections 525 and 526 of the Code of Civil Procedure (Act X of 1877), does not mean merely to allege cause, nor even to make out that there is room for argument, but both to allege cause and to prove it to the satisfaction of the Court. DANDEKAR *v.* DANDEKARS . . . . . I. L. R. 6 Bom., 663

155. ——— *Civil Procedure Code, ss. 525, 526.—Partnership.—Agreement to refer disputes to arbitration.*—The three parties to a deed of partnership agreed that in case of any dispute or difference, the matter should be referred to the arbitration of persons chosen by each party to such dispute, and that in case any such party should refuse or fail to nominate an arbitrator, then the arbitrator named by the other party should nominate another arbitrator, and the two should nominate a third person as umpire. Certain differences having arisen among the three partners, two of them called upon the executors of the third to nominate an arbitrator under the terms of the deed, but they refused to do so. The first-mentioned partners then nominated an arbitrator, who in his turn nominated another, and these having appointed an umpire, made an award. One of the partners at whose instance the matter in dispute had been referred to arbitration presented an application under section 525 of the Civil Procedure Code praying that the award might be filed in Court. This application was opposed by the executors of the third partner, who appeared and lodged verified petitions disclosing grounds

ARBITRATION—*continued.*

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Filing award in Court—*continued.*

of objection within the meaning of section 520 or sec- 521 of the Code. *Held*, that the word "parties" as used in section 525 should not be confined to persons who are actually before the arbitrators; that if persons by an agreement have undertaken between themselves that, in the event of a certain state of things happening, a particular procedure shall be followed, which, under one state of circumstances, may be adopted *in invitum*, they should, for the purposes of section 525, be regarded as parties to that arbitration; and that there was sufficient reason to show that the defendants in the present case were *primâ facie* bound by the arbitration, so as to bring them within the terms of section 525 as parties thereto, who should be called on to show cause why the award should not be filed. *Willcox* v. *Storkey, L. R., 1 C. P., 671*, and *Re Newton and Hetherington, 19 C. B., N. S., 342*, referred to. *Held*, also, that sections 525 and 526 of the Code, read together, mean that the party coming forward to oppose the filing of the award must show cause,—that is, must establish by argument, or proof, or both, reasonable grounds to warrant the Court in arriving at the conclusion that the award is open to any of the objections mentioned in section 520 or section 521, and it is not sufficient, when it is sought to make the award a rule of Court, for the defeated party to come and merely say upon a verified petition that this or that ground referred to in section 520 and 521 existed against the filing. *Sree Ram Chowdhry* v. *Denobundhoo Chowdhry, I. L. R., 7 Calc., 490*; and *Ichamoyee Chowdhranee* v. *Prosunno Nath Chowdhry, I. L R., 9 Calc., 557*, dissented from. *Dutto Singh* v. *Dosad Bahadur Singh, I. L. R., 9 Calc., 575*; *Dandekar* v. *Dandekars, I. L. R., 6 Bom., 663*; and *Chowdhry Murtaza Hossein* v. *Bechunnissa, L. R., 3 I. A., 209 : 26 W. R., 10*, referred to. JONES *v.* LEDGARD [I. L. R., 8 All., 340

156. ——— *Sufficient cause.—Civil Procedure Code, 1859, s. 327.—Per* SPANKIE, *J.*—Section 327 intended to provide for those cases only in which the reference to arbitration is admitted and an award has been made. Where the defendant denies referring any dispute to arbitration, or that an award has been made between himself and the plaintiff, sufficient cause is shown why the award should not be filed. The plaintiff should be left to bring a regular suit for the enforcement of the award. HUSSAINI BIBI *v.* MOHSIN KHAN [I. L. R., 1 All., 156

157. ——— *Sufficient cause.—Civil Procedure Code, 1882, ss. 525, 526.*—Under sections 525 and 526 of the Code of Civil Procedure, the Court has full power to enter into the question of the sufficiency of the cause shown against the filing in Court of an award. *Dandekar* v. *Dandekars, I. L. R., 6 Bom., 663*, followed; *Ichamoyee Chowdhranee* v. *Prosunno Nath Chowdhry, I. L. R., 9 Calc., 557*, dissented from. IN THE MATTER OF THE PETITION OF DUTTO SINGH. DUTTO SINGH *v.* DOSAD BAHADUR SINGH . . I. L. R., 9 Calc., 575

ARBITRATION—*continued.*

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Filing award in Court—*continued.*

158. ——————— *Sufficient cause.—Civil Procedure Code (Act X of 1877), ss. 525, 526.*—Where an application is made under section 525 of the Code of Civil Procedure to have an award filed in Court, and it appears to the Court, on cause shown why the award should not be filed, that there is a reasonable dispute between the parties on any of the grounds mentioned in section 520 or 521, the application should be dismissed. Under section 525 of the Code of Civil Procedure, sufficient cause may be shown by affidavit or verified petition. *Sree Ram Chowdhry* v. *Denobundhoo Chowdhry, I. L. R., 7 Calc., 490;* and *Sashti Charan Chatterjee* v. *Tarak Chandra Chatterjee, 8 B. L. R., 315,* referred to. ICHAMOYEE CHOWDHRANEE *v.* PROSUNNO NATH CHOWDHRY . . . **I. L. R., 9 Calc., 557**

159. ——————— *Sufficient cause.—Objections to filing award.—Setting aside award.—Civil Procedure Code, 1859, s. 327.*—In an application under section 327 of Act VIII of 1859 to have an award filed in Court so as to be enforced as a decree, it was objected on behalf of the defendant, amongst other things, that the award, which determined the succession to a talookdari registered under Act I of 1869, having been based on a certain will produced, which in terms referred to another will of the same testator not produced, there was miscarriage on the part of the arbitrators in making their award; the whole of the will, in the absence of the last-mentioned document, not having been before them. It appeared that the defendant in the proceedings before the arbitrators, notwithstanding the knowledge that this document was withheld, submitted nevertheless to take his chances of the arbitration; suggesting in fact favourable presumptions to himself in construing the will produced, or that the whole will not having been produced, it should be declared not to be operative, and that consequently the dispute should be determined according to the British law of succession as laid down by Act I of 1869, or according to custom, or according to the Mahomedan law of succession. *Held,* that the award could not be set aside on the ground of the objection taken. According to the true construction thereof, the earlier sections are not incorporated into section 327 of Act VIII of 1859, as they are into section 326. The words "sufficient cause" in section 327 should be taken to comprehend any substantial objection which appears on the face of the award, or is founded on the misconduct of the arbitrators, or on any miscarriage in the course of the proceedings, or upon any other ground which would be considered fatal to an award on an application to the Courts in England. CHOWDHRI MURTAZA HOSSEIN *v.* BECHUNNISSA **[L. R., 3 I. A., 209: 26 W. R., 10**

160. ——————— *Application to amend an award.—Civil Procedure Code, 1859, s. 327.*—Upon a motion to amend an award filed under section 327 of the Civil Procedure Code, on the ground of obvious errors contained in it, it was held that the Court had no power, under section 327, to amend an award or remit it for the reconsideration of the arbitrators, but had only the power to file and enforce the award or reject it. ALLARAKHIA SHIVJI *v.* JEHANGIR HORMASJI . . **10 Bom., 391**

161. ——————— *Award in criminal matter.—Civil Procedure Code, 1859, s. 327.*—When complaint has been preferred to a Criminal Court, and the Magistrate has directed that the subject-matter of the complaint be referred to arbitration, if the parties consent and proceed to such reference, the award may be enforced under the provisions of section 327, Act VIII of 1859. SHEO NUND RAI *v.* MAHANUND RAM . . . **1 Agra, 45**

162. ——————— *Award deciding matter not referred.—Civil Procedure Code, 1877, s. 525.—Held,* where a private award determined a matter not referred to arbitration, that a claim under section 525 of Act X of 1877 that such award should be filed in Court was properly dismissed. JUALA SINGH *v.* NARAIN DAS **[I. L. R., 3 All., 541**

163. ——————— *Award in excess of terms of submission.—Civil Procedure Code, 1877, ss. 525, 526.—Agreement as to management of devasam.*—An award made under section 525, which is partly within, and partly exceeds, the terms of the submission to arbitration, cannot be enforced by summary procedure under section 526 as to such portion as does not exceed those terms. To refer to arbitration questions arising on the construction of the award and questions left undecided by it is a matter beyond the scope of an agreement to submit to a scheme for the future management of a *devasam* as regards conduct of suits, granting of demises, custody of property, collection of rents, appointment and removal of servants, and defrayment of current expenditure. MANA VIKRAMA, MAHARAJA OF CALICUT, *v.* MALLICHERY KRISTNAN NAMBUDRI **[I. L. R., 3 Mad., 68**

164. ——————— *Award, Dealing with.—Matters referred piece by piece.—Civil Procedure Code, 1859, s. 327.*—Where an arbitration bond provides that the matters in dispute referred to the arbitrators may be taken up and dealt with *seriatim,* and the award delivered bit by bit (*khundkhund*), it is not necessary, under section 327 of Act VIII of 1859, that all the matters referred should have been decided before the first portion of the award, dealing with some only of the subjects in dispute, can be filed. SHOSHIMUKHI DABIA *v.* NOBIN CHUNDER ROY . . **4 C. L. R., 92**

165. ——————— *Private award, Enforcement of.—Procedure.—Civil Procedure Code 1859, s. 327.*—When a private award between parties is filed in a Court, the prescribed course is for the Court to give judgment upon it and pass a decree; not to order execution before such decree has been passed. SAHEB RAM JHA *v.* KASHEENATH JHA **[21 W. R., 295**

ARBITRATION—*continued.*

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166. ——————— *Award not deciding chief subject of dispute.—Order setting aside filing of award.*—Amongst other matters the arbitrators were asked to make a division of certain fields to which the parties were equally entitled. The arbitrators decided the other matters, but, as regards the fields, said that it was inconvenient to do so in consequence of the rains, and ordered the parties "to receive the profits half and half and to pay the assessment half and half." *Held*, that the award left undetermined one of the principal subjects of dispute; and as the Court had no power to remit the award to the arbitrators, the applicant was entitled to a judgment setting aside the order for filing the award. DANDEKAR *v.* DANDEKARS **[I. L. R., 6 Bom., 663**

ARGUMENTS ON APPEAL.

See LETTERS PATENT, HIGH COURT, CL. 15. **[4 B. L. R., A. C., 86 9 B. L. R., 274**

See CASES UNDER REVIEW—QUESTIONS WHICH MAY BE RAISED ON REVIEW.

ARMS ACT (XXXI OF 1860).

See ARMS ACT (XI OF 1878). **[I. L. R., 9 Bom., 478**

1. ——— **s. 32.—Carrying or being in possession of arms without a licence.**—The mere possession of arms under Act XXXI of 1860 is not an offence in districts where section 32 of the Act is not in force. IN THE MATTER OF THE PETITION OF RAMESAR PERSHAD NARAYAN SING **[9 B. L. R., Ap., 34: 18 W. R., Cr., 1**

IN THE MATTER OF THE PETITION OF MODNARAIN PURI . . **18 W. R., Cr., 26**

2. ——— **Possession of arms.**—*Illegalities in conduct of search.*—The mere possession of arms in a certain district being an offence, if there be satisfactory evidence that the prisoners were in the possession of arms they would be punishable for such illegal possession, notwithstanding the police may have also committed an illegality in their procedure in conducting the search for the same. QUEEN *v.* SHEOPERSHUN ROY . . . **2 N. W., 57**

——— **s. 32, cl. 6.**—*Fine.—Imprisonment.—Sentence.*—Under Act XXXI of 1860, section 32, clause 6, a sentence of fine only, or of imprisonment only, is a legal sentence. QUEEN *v.* BHISTA BIN MADANNA . . . **I. L. R., 1 Bom., 308**

——— **s. 44.**—*Fine.—Manufacturing gunpowder without a licence.*—Certain persons were convicted, under section 5 of Act XXXI of 1860, of manufacturing and selling gunpowder without a licence, and sentenced to fine, or in default imprisonment. Section 44 of the Act provides a special procedure for levying the fine by distress. *Held*, that the sentence was legal, the Act giving power to imprison or fine upon conviction. ANONYMOUS . **5 Mad., Ap., 24**

ARMS ACT (XXXI OF 1860)—*continued.*

——— **(Act XI of 1878), s. 1, cl. (b), and s. 5.**—*Attachment and sale of arms in execution of a decree by Nazir of the Court.—Public servant, Sale of arms by.*—The sale of arms by the Nazir of the Court, in execution of a decree, is a sale by a public servant in discharge of his duty, and is, therefore, excluded by section 1, clause (*b*), from the operation of the Indian Arms Act, XI of 1878. It is expedient for the Court ordering such sale to give notice of the sale and of the purchaser's name and address, as contemplated by section 5 of that Act, to the "Magistrate of the district or to the police officer in charge of the nearest police station." WALA HIRAJI *v.* HIRA PATEL . **I. L. R., 9 Bom., 518**

1. ——— **s. 4.**—*Possession of unserviceable firearms without licence.*—A gun rendered unserviceable by the loss of the trigger does not fall within the definition of "arms" in section 4 of the Indian Arms Act, 1878. Possession of such a weapon without a licence is no offence. THE QUEEN *v.* SIDDAPPA . . . . **I. L. R., 6 Mad., 60**

2. ——— *Arms.—Parts of arms.—Serviceable gun-barrel.*—As a gun-barrel and nipple in serviceable condition fall within the definition of "arms" in section 4 of the Indian Arms Act, 1878, the possession of such articles without a licence is punishable under section 19 (*f*) of the said Act. THE QUEEN *v.* VYAPURI KANGANI **[I. L. R., 7 Mad., 70**

——— **ss. 4 and 5.**—*Manufacture or possession of fireworks.—Rockets.*—The manufacture or possession of fireworks, including rockets which are mere fireworks, without a licence, is not prohibited by section 5 of the Indian Arms Act, 1878. The rockets referred to in section 4 are war-rockets. THE QUEEN *v.* SUPPI . **I. L. R., 5 Mad., 159**

——— **ss. 15 and 19.**—*Arms.—Possession of arms.—Badami Taluka.—Act XXXI of 1860, s. 32, cls. 1 and 2.*—Clause 2, section 32 of Act XXXI of 1860, relating to the manufacture, importation, and sale of arms, did not apply to the Badami Taluka of the Kaladgi Collectorate at the time when the Indian Arms Act, No. XI of 1878, came into force; and the notification of the Government of Bombay, No. 1112, of the 19th February 1878, which declares that the provisions of Act XXXI of 1860 as modified by Act VI of 1866 are in force in Badami amongst other places, is not an order of disarmament under clause 1, section 32 of Act XXXI of 1860. In the absence, therefore, of a notification, under section 15 of Act XI of 1878, extending, with the previous sanction of the Governor General in Council, the provisions of the section to Badami, the possession of arms without a licence in that taluka is not punishable under section 19. THE GOVERNMENT OF BOMBAY *v.* DADYAMA BASAPA . . . . **I. L. R., 9 Bom., 478**

——— **s. 19.**—*Unlicensed possession of gunpowder used for making crackers.*—The possession of gunpowder without a license, whether intended for the manufacture of fireworks or not, is an offence under section 19 of the Indian Arms Act, 1878. *The Queen* v. *Suppi, I. L. R., 5 Mad., 159*, distinguished. QUEEN-EMPRESS *v.* KHASIM **[I. L. R., 8 Mad., 202**

ARMS ACT (XXXI OF 1860)—*continued.*

——— **s. 19, cl. (f), and ss. 25, 30.**—*Arms in a temple—Confiscation of arms used for purposes of worship.—Police Inspector specially empowered.—License to possess arms.—Criminal Procedure Code (Act X of 1872), s. 579 and sched. iv.—"Offences against other laws."*—A collection of firearms, consisting of four small cannons, four pistols, and thirty-one muskets, had been kept as objects of worship in a Sikh temple in Patna for upwards of two centuries. The Mohunt of the temple neglected to take out a license in respect of these arms under Act XI of 1878. A Police Inspector, who was appointed to see that the provisions of the latter Act were obeyed, searched the temple on information received, and, having found the arms, prosecuted the persons who had charge of the temple. The latter was convicted by the Deputy Magistrate of Patna under section 19, clause *(f)* of Act XI of 1878, and sentenced to pay a fine of R50, or to be rigorously imprisoned for two months. The Deputy Magistrate also ordered the arms to be confiscated, and directed that their value and the fine should be divided between the informer and the Police Inspector. On a reference from the Sessions Judge of Patna,—*Held*, with reference to Act X of 1872, section 579, and the last heading to schedule iv of the same Act, and to section 19, clause (*f*) of Act XI of 1878, that the proceedings of the Police Inspector and the conviction of the accused were not illegal. There is nothing in the Arms Act to exempt the custodians of a temple from complying with the requirements of the Arms Act, either by taking out a license or obtaining exemption under section 27. Section 25 of the Arms Act appears to refer to cases in which the Magistrate considers that arms, whether under a license or not, are possessed for an illegal purpose, or under circumstances such as to endanger the public peace. Section 30 of the Arms Act appears to contemplate the presence of some specially empowered officer besides the officer conducting the search. EMPRESS *v.* TEGHA SINGH [I. L. R., 8 Calc., 473

——— **s. 29.**—*Sporting license.—Rules under Arms Act.*—In a district where bison are notoriously in the habit of injuring crops, a license under Form XI, Rule 16, of the Indian Arms Act (1878) Rules (to kill wild beasts which injure crops), justifies the holder thereof in shooting bison for the sake of sport without taking out a sporting license under Form VIII, Rule 13, of the same rules. THE QUEEN *v.* BOMMAYA . . I. L. R., 5. Mad., 26

ARMY DISCIPLINE ACT, 1879 (Statute 42 & 43 Vic., c. 33), s. 144.

——— **Decree against person subject to military law.**—*Stoppage of pay, Order for.*—Where a decree was made against the defendant, who was an officer in the Indian Army, the Court, under section 144 of the Army Discipline Act, 42 and 43 Vic., Chap. 33, directed that the amount of the decree should be stopped and paid out of of the pay of the defendant not exceeding one half thereof. RAMSAY *v.* ANDERSON . . . 7 C. L. R., 336

ARMY DISCIPLINE ACT, 1881 (44 & 45 Vict., c. 58), s. 145.

——— **s. 145.**—*Soldiers in Indian Forces.*—Section 145 of the Army Act, 1881, is not applicable to soldiers of Her Majesty's Indian forces. NATHUD BI *v.* JAFAR HUSAIN . I. L. R., 8 Mad., 365

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—ARMY ACT.
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——— **ss. 148, 151.**

See SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION—ARMY ACT
[I. L. R., 13 Calc., 37

——— **s. 151.**

See ATTACHMENT—SUBJECT OF ATTACHMENT—PENSION, SALARY, OR ANNUITY.
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ARRANGEMENT BETWEEN DECREE-HOLDER AND JUDGMENT-DEBTOR.

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ARREST.

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——— **Under writ of attachment.**

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[4 B. L. R., Ap., 25: 13 W. R., 29

1. CIVIL ARREST.

1. ——— **Discharge from arrest.**—*Undertaking by prisoner not to sue.*—The prisoner was required before his discharge to give an undertaking that he would bring no action for damages for illegal arrest or false imprisonment against the judges of the Small Cause Court, the bailiff, the jailor, or the judgment-creditor. IN THE MATTER OF OMRITO LALL DEY . . . . I. L. R., 1 Calc., 78

ARREST—*continued.*

1. CIVIL ARREST—*continued.*

2. ——— **Suit for damages for arrest in execution of decree.**— *Malice.—Reasonable and probable cause, Want of.*—A suit to recover damages on account of injuries caused by an arrest in accordance with a decree of a competent Court can only be maintained under special circumstances,—*viz.*, the plaintiff must show (i) that the original action, out of which the alleged injury arose, was decided in his favour; (ii) that the arrest was procured without reasonable and probable cause; (iii) that the injury sustained was something other than an injury which has been or might have been compensated for by an award of the costs of the suit,—*e.g.*, that he has suffered "some collateral wrong." Where a plaintiff must show an absence of reasonable and probable cause, malice is not alone sufficient to entitle him to a verdict. RAJ CHUNDER ROY *v.* SHAMA SOONDARI DEBI **[I. L. R., 4 Calc., 583**

3. ——— *Malice, Proof of.*— To maintain such a suit, legal not actual malice is sufficient. GOUTIERE *v.* CHARRIOL **[1 N. W., Part 2, p. 32: Ed. 1873, 91**

4. ——— **Privilege from arrest.**—*Privilege of party morando.*—Where a native of Patna came from Calcutta to Madras on 24th October on account of a suit pending, in which he was plaintiff, and, the case having been adjourned on 27th October for seven weeks, remained in Madras on account of the suit and was arrested on 10th November,—*Held*, that he was privileged under section 642 of the Code of Civil Procedure. IN RE SIVA BUX SAVUNTHARAM **[I. L. R., 4 Mad., 317**

5. ——— *Party in contempt of Court.*—A party against whom a writ of attachment for contempt has been issued is not entitled to his right of privilege from arrest while proceeding to Court or leaving Court on the hearing of his suit. JOHN *v.* CARTER . . **4 B. L. R., O. C., 90**

6. ——— *Party to suit.*— *Summary Procedure.—Arrest under writ of Small Cause Court.—Act X of 1877, s. 642.*—The general rule that a party to a suit is protected from arrest upon any civil process, while going to the place of trial, while attending there for the purpose of the cause, and while returning home, applies to a defendant to a suit under the summary procedure sections of the Civil Procedure Code, who has not obtained leave to appear and defend, and who, therefore, cannot be heard at the trial. Questions as to the privilege of exemption from arrest, in the case of persons arrested under writs issued from the Small Cause Courts in Calcutta, must be governed by the English law, and not by section 642 of the Civil Procedure Code. It is not a deviation sufficient to forfeit the privilege if the *shortest* road home is deviated from and a less crowded and more convenient road adopted. IN THE MATTER OF SURENDRO NATH ROY CHOWDHRY **[I. L. R., 5 Calc., 106**

7 ——— *Civil Procedure Code, 1877, s., 642—Arrest in execution of process of Revenue Court.*—Section 642 of the Civil Procedure

ARREST—*continued.*

1. CIVIL ARREST—*continued.*

Privilege from arrest—*continued.*

Code only protects an accused person while he is attending a Criminal Court from arrest "under that Code." *Held*, therefore, where a person, who had been convicted by a Magistrate and had been fined, was arrested in execution of the process of a Revenue Court while waiting in Court until the money to pay such fine was brought, that such person was not protected from such arrest by the provisions of that section, and that, having escaped from custody under such arrest, such person had properly been convicted under section 651 for escaping from "lawful custody." EMPRESS OF INDIA *v.* HARAKH NATH SINGH **[I. L. R., 4 All., 27**

8. ——— *Protection of arresting officers.—Penal Code, s. 78.*—The arrest under civil process of a judgment-debtor going to a Court in obedience to a citation to give evidence, and made within the precincts of that Court and with some show of violence and contempt of Court, does not entitle the officers making the arrest to protection under section 78, Penal Code. THACOORDASS NUNDEE *v.* SHUNKUR ROY . . . **3 W. R., Cr., 53**

9. ——— *Defendant as witness for plaintiff.*—A defendant in a suit summoned by, and examined as a witness for, the plaintiff, is entitled to protection from arrest on Cvil process during the time reasonably occupied in going to, attending at, and returning from, the place of trial. APPASAMY PATTAR *v.* GOVINEN NAMBIAR **[4 Mad., 145**

10. ——— *Summary execution.—Small Cause Court, Mofussil.—Act XI of 1865, s. 19.*—In authorizing (section 19, Act XI of 1865) immediate execution of a Small Cause Court decree, by the issue of a warrant, either against the person or against the moveable property of a judgment-debtor, the Legislature never intended that the debtor should be protected from arrest until he had had a reasonable time for returning home. Where a judgment-debtor has paid the amount of a Small Cause Court decree, he is not entitled to a refund, merely because he was arrested before he reached home under an execution issued against his person by the Court, and paid the amount to obtain his discharge. DEPENNING *v.* DEBENDRONATH MOITRO . . **9 W. R., 549**

11 ——— *Power of High Court to release party arrested in execution of decree of Presidency Small Cause Court.—Civil Procedure Code, 1877, s. 642.*—Where a defendant in a suit in the High Court was arrested in execution of a decree of the Calcutta Court of Small Causes, while attending before an arbitrator appointed by the High Court to take a reference in the suit, it was held that he was privileged from such arrest while so attending, and that the High Court had power to direct his release from custody. Small Cause Courts in the Presidency towns are subject to the order and control of the High Courts. *In the matter of Omrito Lall Dey, I. L. R., 1 Calc., 78,* followed. IN THE MATTER OF JUGGESSUR ROY . . . . . **5 C. L. R., 170**

ARREST—*continued.*

1. CIVIL ARREST—*continued.*

Privilege from arrest—*continued.*

12. ——————— *Witness.—Bonâ fides.*—Where a witness was arrested in execution of a decree, and the circumstances under which the arrest had taken place showed the absence of a *bonâ fide* belief on his part that his attendance at Court was required for the purpose of giving evidence in the case in which he had been subpœnaed, the Court refused to allow his claim to privilege from arrest. WOOMA CHURN DHOLE *v.* TEIL . **14 B. L. R., Ap., 13**

See IN THE MATTER OF OMRITOLALL DEY **[I. L. R., 1 Calc., 78**

13. ——————— *Witness.—Held,* that on the facts shown in the affidavit the prisoner was privileged as a witness at the time of his arrest. IN THE MATTER OF OMRITOLALL DEY **[I. L. R., 1 Calc., 78**

14. ——— **Arrest on a Sunday**—*Lord's Day Act.*—Arrest under civil process of a Mofussil Court on Sunday is legal in this country. ANONYMOUS . . . . . **4 Mad., Ap., 62**

See ABRAHAM *v.* QUEEN. **[1 B. L. R., A. Cr., 17**

See GRASEMAN *v.* GARDNER. **[3 W. R., Rec. Ref., 2**

See PARAM SHOOK DOSS *v.* RASHEED OOD DOWLAH . . **7 Mad., 285**

15. ——— **Arrest of pilot brig.**—*Privilege from arrest.—Statute 21 and 22 Vic., c. 126.*—A Government brig employed in supplying pilots to vessels at the Sandheads was arrested under proceeding *in rem. Held,* that the brig by 21 and 22 Vic., Chap. 126, had become the property of the Crown, and, as such, was entitled to the same exemption from arrest as all other Queen's ships, and that the proceeding *in rem* was therefore illegal. BROWN *v.* THE PILOT BRIG "KEDGEREE" . . **1 Hyde, 253**

2. CRIMINAL ARREST.

16. ——— **Arrest without warrant.**—*Criminal Procedure Code, s. 54.—Powers of the police to arrest without a warrant.—Penal Code (Act XLV of 1860), s. 220 and 342.*—Section 54 of the Criminal Procedure Code (Act X of 1882) authorizes the arrest by the police, not only of persons against whom a reasonable complaint has been made, or a reasonable suspicion exists of their having been concerned in a "cognizable offence," but also of persons against whom "credible information" to that effect has been received. *Semble,*—Where the arrest is legal there can be no guilty knowledge "superadded to an illegal act" such as it is necessary to establish against the accused to justify a conviction under section 220 of the Penal Code. It is only where there has been an excess, by a police officer, of his legal powers of arrest that it becomes necessary to consider whether he has acted corruptly or maliciously, and with the knowledge that he was acting contrary to law. QUEEN-EMPRESS *v.* AMARSANG JETHA . . . **I. L. R., 10 Bom., 506**

ARREST—*continued.*

2. CRIMINAL ARREST—*continued.*

Arrest without warrant—*continued.*

17. ——————— *Offence against opium laws.*—The arrest of a person accused of an offence against the opium laws without a warrant is generally illegal, except under the circumstances specified in section 108 of the Code of Criminal Procedure. REG. *v.* NARAYAN GANGARAM . **9 Bom., 343**

18. ——————— *Finding person with stolen property.*—The police may, without any formal complaint, apprehend any person found with stolen property. QUEEN *v.* GOWREE SINGH **[8 W. R., Cr., 28**

19. ——————— *Criminal Procedure Code, 1861, s. 140.*—Section 140 of the Code of Criminal Procedure did not apply to a case of arrest for dacoity made without warrant by a subordinate police officer in the presence of a head constable who authorized him to make the arrest. QUEEN *v.* EMOO. QUEEN *v.* SAGUE BEWAH . **11 W. R., Cr., 20**

20. ——— **Re-arrest on same charge of prisoner who has been discharged.**—A prisoner who had been sent up for trial and who was discharged by the Deputy Magistrate was subsequently re-arrested by a sub-inspector on the same charge and sent up for trial. The Deputy Magistrate considered the second arrest to be illegal, and prosecuted the sub-inspector for wrongful confinement, and fined him. *Held,* that the Deputy Magistrate was right, the discharge from custody having been a useless procedure if the accused immediately became liable to be re-arrested without fresh material for prosecution of the charge. RAMDASS SADHOO *v.* ANAND CHUNDER ROY **[19 W. R., Cr., 27**

ARREST OF JUDGMENT.

1. ——— *Act XVIII of 1862, s. 41.—Act XIII of 1865.—Charge.*—It ought to appear upon the face of a charge that it had been delivered to the Clerk of the Crown by a Justice of the Peace or a Magistrate, but its not so appearing is a formal defect only, to which objection could only be taken under section 41 of Act XVIII of 1862 before the jury has been sworn, and it was not ground for arrest of judgment. QUEEN *v.* THOMPSON . **1 B. L. R., O. Cr., 1**

2. ——— *Act XVIII of 162, s. 41.—Caption of charge.—Act XIII of 1865.*—Where the High Court could have directed the preliminary investigation of a charge against *N.* by the Deputy Magistrate of Serampore, but it did not appear in the caption of the charge or in evidence that the Court had so directed it,—*Held,* that it was no ground for arrest of judgment, but the objection might have been raised before the jury was sworn under section 41 of Act XVIII of 1862. QUEEN *v.* NABADWIP GOSWAMI **[1 B. L. R., O. Cr., 15 : 15 W. R., Cr., 71, note**

ARTIFICERS.

See ACT XIII OF 1859. **[2 B. L. R., A. Cr., 32 : 12 W. R., Cr., 26**

ARTIZAN.

See MADRAS TOWNS IMPROVEMENT ACT (III OF 1871) . . I. L. R., 1 Mad., 174

ASCERTAINED GOODS.

See CONTRACT ACT, s. 78. [I. L. R., 4 Calc., 801

ASCETICS, SUCCESSION TO PROPERTY OF—

See HINDU LAW—INHERITANCE—RELIGIOUS PERSONS . . I. L. R., 4 Calc., 543 [5 N. W., 50

ASSAULT.

See COMPOUNDING OFFENCE . 6 N. W., 302

See HURT—CAUSING HURT. [7 B. L. R., Ap., 25: 16 W. R., Cr., 3

——— Suit for damages for—

See EVIDENCE—CIVIL CASES—CRIMINAL COURT, PROCEEDINGS IN— [2 B. L. R., A. C., 31: 12 W. R., 477

See SPECIAL APPEAL—SMALL CAUSE COURT SUITS . . . 4 B. L. R., A. C., 31

1. ——— **Criminal force.**—*Threatening gestures.—Words.*—Any gestures calculated to excite in the party threatened a reasonable apprehension that the party threatening intends immediately to offer violence, or in the language of the Penal Code, is "about to use criminal force" to the person threatened, constitute, if coupled with a present ability to carry such intent into execution, an assault in law. Mere words do not amount to an assault, but the words which the party threatening uses at the time may either give his gestures such a meaning as to make them amount to an assault, or, on the other hand, may prevent them from being held to amount an assault. In order to have the latter effect, the words must be such as clearly to show the party threatened that the party threatening has no present intention to use immediate criminal force. CAMA *v.* MORGAN . . . . . 1 Bom., 205

2. ——— **Joint assault.**—*Cause of action.*—An assault made by parties proceeding together and acting in conjunction as to time, place, and assault, is a single act, and the cause of action is common to all parties. RAMESSUR BHUTTACHARJEE *v.* SHIBNARAIN CHUCKERBUTTY . . 14 W. R., 419

ASSAULT ON PUBLIC SERVANT.

1. ——— **Collectorate peadah.**—*Penal Code, s. 353.*—A collectorate peadah, who had been deputed to keep the peace during a distraint, was assaulted by the prisoners while on his road to execute the order with which he had been entrusted, the prisoners attempting to deprive him of his purwanah *Held*, that they were rightly convicted under section 353 of assaulting a public servant while in the execution of his duty. QUEEN *v.* MEHDI MULLAH [13 W. R., Cr., 49

ASSAULT ON PUBLIC SERVANT— *continued.*

2. ——— **Sepoy in Revenue Department.**—*Penal Code, ss. 353 and 352.—Rules or executive orders of Government published in Mr. Nairne's Revenue Hand-Book.—Impressment of carts for the use of Government officers how far legal.*—The rules or executive orders of Government printed at pages 26 and 27 of Mr. Nairne's Revenue Hand-Book have not the force of law, and a public servant, acting in obedience thereto, cannot be considered as acting in execution of his duty as a public servant, if his act is otherwise illegal. Accordingly, where on a complaint by a sepoy in the Revenue Department deputed by a forest settlement officer to impress some carts for the use of the latter, that the accused assaulted and prevented him from seizing his cart, a Magistrate of the first class convicted the accused, under section 353 of the Penal Code (Act XLV of 1860), for assaulting and obstructing a public servant in the execution of his duty, and sentenced the accused to undergo twenty-one days' rigorous imprisonment. *Held*, that the conviction under section 353 of the Penal Code should be set aside. The only offence of which, upon the evidence, the accused was guilty, was that of simple assault under section 352 of the Penal Code. IN RE THE PETITION OF RAKHMAJI . . . I. L. R., 9 Bom., 558

ASSESSMENT BY MUNICIPAL COMMISSIONERS, APPEAL AGAINST—

See JURISDICTION OF CIVIL COURT—MUNICIPAL BODIES . . I. L. R., 1 Calc., 409

ASSESSORS.

See CONVICTION . . 2 B. L. R., F. B., 23 [10 W. R., Cr., 43

See LAND ACQUISITION ACT, 1870, s. 35. [11 B. L. R., 230 13 B. L. R., 300

——— Acquittal without consulting.

See CRIMINAL PROCEEDINGS. [I. L. R., 1 All., 610

1. ——— **Necessity of.**—*Opinion on whole evidence.*—No legal conviction can take place unless the opinion of the assessors is taken on the whole of the evidence in a case. QUEEN *v.* BHUGWAN LALL [15 W. R., Cr., 3

2. ——— **Opinions of Assessors.**—*Trial on two charges.—Criminal Procedure Code, 1872, ss. 255, 265.*—The intention of the Legislature in sections 255 and 265 of the Criminal Procedure Code in a case in which the accused was tried on two charges, was that the assessors should give a definite opinion whether the prisoner is guilty of either of the offences charged, and if so, of which of the charges preferred against him; and that the Judge on delivering judgment should give it with advertence to the opinion of the assessors. QUEEN *v.* MATAM MAL [22 W. R., Cr., 34

ASSESSORS—*continued.*

3. ——— **Grounds of opinion.**—*Assessors differing from Judge.*—Assessors ought to give the grounds of their opinions, particularly when they differ in opinion from the Judge. QUEEN *v.* BUSHMO ANENT . . . . . **3 W. R., Cr., 21**

4. ——— **Grounds for opinion.**—*One Assessor concurring with other.*—Where one of the two assessors says that he thinks it proved that a war was waged against the Queen, that there was a conspiracy to carry on that war, and that the prisoner is guilty of all the acts charged, and the other assessor concurs with him, it cannot be said that the assessors have given no reason for their opinion. QUEEN *v.* AMIRUDDIN
[7 B. L. R., 63 : 15 W. R., Cr., 25

5. ——— **Grounds of opinion.**—*Recording opinions.*—The grounds of each assessor's opinion should be distinctly recorded by the Judge. QUEEN *v.* MINA NUGGERBHATIN . . **3 W. R., Cr., 6**

6. ——— **Recording opinions of Assessors.** When a judgment of acquittal is recorded, it is not necessary to record the opinions of the assessors. REG. *v.* PARBAT . . **7 Bom., Cr., 82**

7. ——— **Omission of Judge to state grounds of decision.**—*Material error.*—In a trial conducted with the aid of assessors, the Judge's omission to state the ground of his decision is not an illegality which invalidates the conviction. REG. *v.* KALA KARSAN . . . **6 Bom., Cr., 55**

8. ——— **Summing up by Judge.**—*Criminal Procedure Code (Act XXV of 1861), s. 379.*—Although the old Criminal Procedure did not expressly provide for summing up of the evidence in a trial with the aid of assessors, it was held that there was nothing in the Code to prevent a Judge from summing up the evidence to the assessors. QUEEN *v.* AMIRUDDIN
[7 B. L. R., 63 : 15 W. R. Cr., 25

Contra, QUEEN *v.* JOGE POLY
[7 B. L. R., 67, note : 11 W. R., Cr., 39

9. ——— **Summing up evidence.**—*Criminal Procedure Code, 1882, s. 309.—Delivery of opinions of Assessors.—Sessions Judge, Duties of.*—The power of summing up the evidence given by section 309 of the new Code of Criminal Procedure, Act X of 1882, is intended to be exercised in long or intricate cases, and the Sessions Judge should confine himself to summing up the evidence and should not obtrude on the assessors his opinion of the worthlessness or otherwise of certain portions of the evidence. The Sessions Judge should also conform strictly to the words of section 309, and require *each* assessor to state his opinion orally. The Sessions Judge should not utilize the services of the pleader for the prosecution for the purpose of recording his summing up to the assessors. If he is not capable of recording the substance of it himself, he should employ an independent person for that purpose. SHADULLA HOWLADAR *v.* THE EMPRESS
[I. L. R., 9 Calc., 875 : 12 C. L. R., 506

ASSESSORS.—Summing up evidence—*continued.*

10. ——— *Trial with Assessors where no evidence offered by prosecution.*—In a trial before a Sessions Judge with assessors, when the prisoner pleads not guilty and the public prosecutor does not offer evidence in support of the charge, the Judge ought to instruct the assessors that they are bound to find the prisoner not guilty. ANONYMOUS . . . . **4 Mad., Ap., 39**

11. ——— **Inspection of place of offence.**—*Personal inspection by Judge, Time for.—Notice of intention to view.*—If a Sessions Judge should think it necessary to visit the place of the alleged occurrence of an offence under trial, he should give notice to the parties and the assessors. He should not go without such notice and after the trial has been completed by delivery of the opinion of the assessors. IN RE OUDH BEHARI NARAIN SINGH . . . . **1 C. L. R., 143**

12. ——— *Assessors viewing scene of offence.—Power of Judge to delegate examination of witnesses.*—In case of a view of the scene of an alleged offence, it is the duty of the officer conducting the jury or assessors to the spot not to suffer any other persons to speak to or hold any communication with any of the jury or assessors. The Judge therefore cannot delegate to the assessors his own function of examining witnesses on the spot. QUEEN *v.* CHUTTERDHAREE SINGH
[5 W. R., Cr., 59

13. ——— **Trial without Assessors.**—*Prisoner admitting offence but pleading insanity at time of committing it.—Criminal Procedure Code, 1861, s. 324.*—The prisoner having admitted before the Court of Sessions that he had killed his wife, no assessors were empannelled. At the end, however, of his confession he pleaded that he was not in his right mind at the time. The Judge, therefore, proceeded to record medical and other evidence on the point, and, having come to the conclusion that there was no reason to doubt from the prisoner's conduct, either prior or subsequent to the murder, that in committing the murder he knew that he was doing a wrongful act, convicted the prisoner. *Held,* that the plea was in effect one of not guilty, and that the trial should not have proceeded without assessors, and that it should be quashed. THE QUEEN *v.* CHEIT RAM
[5 N. W., 110

14. ——— **Trial by Jury of a case properly triable by Assessors.**—*Appeal on facts.—Per* MACLEAN, *J.* (MITTER, *J., dubitante*).—The trial by a jury of an offence triable with assessors is not invalid on that ground, but an accused who would have been entitled to an appeal on the facts, if the case had been tried with assessors, is not debarred from that right merely by the fact that the trialby jury is not invalid. EMPRESS *v.* MOHIM CHUNDER RAI . . . . **I. L. R., 3 Calc., 765**

ASSETS.

See ADMINISTRATOR GENERAL.
[2 Mad., 255
Cor., 67

ASSETS—*continued.*

See ADMINISTRATOR GENERAL'S ACT, 1867, s. 33 . . . . . **6 Mad., 346**

See CASES UNDER REPRESENTATIVE OF DECEASED PERSON.

ASSIGNEE OF NEXT OF KIN.

See PROBATE—OPPOSITION TO AND REVOCATION OF GRANT.

[I. L. R., 4 Calc., 360

ASSIGNMENT.

See EQUITABLE ASSIGNMENT.

[I. L. R., 6 Mad., 294

ASSIGNMENT OF CHOSE IN ACTION.

See CHAMPERTY . **I. L. R., 3 Bom., 402**

See CONTRACT ACT, s. 23.

[I. L. R., 5 Calc., 4

See PROMISSORY NOTE.

[3 B. L. R., O. C., 130

1. ——— Practice of Courts in India.—*Right of assignee to sue.*—In the practice of the Courts of India, it is lawful to assign choses in action when there is neither fraud against individuals nor special violation of the rule of public policy. The assignee of a claim for rents can sue under Act X of 1859. HURRINATH MUZOOMDAR *v.* MORAN AND CO.

[W. R., 1864, Act X, 127

2. ——— Rule in equity.—*Semble,*—There is nothing in equity which prevents a suitor, pending a suit, or any other legal proceedings, from assigning the whole or any part of the subject of litigation. *Per* PHEAR, J., in GROSE *v.* AMIRTAMAYI DASI . **4 B. L. R., O. C., 1: 12 W. R., O. C., 13**

See RAMLAL MOOKERJEE *v.* HARAN CHANDRA DHUR.

[3 B. L. R., O. C., 130: 12 W. R., O. C., 9

3. ——— Right of assignee to sue.—*Suit in his own name.*—Choses in action are assignable in this country, and they are also assignable in England, although at law the assignee cannot sue in his own name. JUG MOHUN LALL *v.* BUDDUN KOER

[9 W. R., 243

4. ——— *Right of purchaser of decree to sue for possession.*—Choses in action are assignable by Civil Courts in this country, which are not merely Courts of Law, but also Courts of Equity. The purchaser of a decree-holder's rights and interests in decreed land may sue to recover possession, even if the thing purchased have no actual existence, but rests on mere possibility; if legally saleable, it was equitably an assignable cause of action. MUNBUNJUN SINGH *v.* LEELA NUND SINGH . . . . . **11 W. R., 5**

5. ——— *Hindu Law.—Promissory note.—Small Cause Court, Madras.*—According to Hindu law, not only is the beneficial interest in the subject-matter of the contract, but the contract itself, assignable; the assignee therefore may sue in his own name. This doctrine is applicable to suits brought in the Madras Small Cause Court. VEMBAKUM SOMAYAJEE JANAKEE AMMAL *v.* MOONESAWMY CHETTY . . **4 Mad., 176**

KADARBACHA SAHIB *v.* RANGASVAMI NAYAK

[1 Mad., 150

ASSIGNMENT OF CHOSE IN ACTION.
—Right of assignee to sue—*continued.*

6. ——— Assignment of bond.—*Obligor's consent.*—The obligor's consent is not necessary to the assignment of a common money-bond. KRISTA CHETTI *v.* BALARAMA CHETTI . **1 Mad., 139**

7. ——— Right of assignee to sue.—*Promissory notes not made negotiable.—Assignee's right of suit.—Held,* where a promissory note made payable simply to the payee without the addition of the words "order" or "bearer," and therefore not negotiable, was assigned to a third person, that the assignee could sue upon such note, a chose in action being by the law of India assignable, and that the assignee could sue in the Courts of India in his own name. KANHAIYA LAL *v.* DOMINGO

[I. L. R, 1 All., 732

8. ——— *Purchase of moiety of right to damages.*—Where the plaintiff purchased from a certain person a moiety of whatever the latter might obtain as damages from the defendants for the breach of a contract,—*Held,* that such a transfer did not confer on the plaintiff a right to sue the defendants for a moiety of the damages. BHEKAREE SINGH *v.* MUHOSSEIN ALLY

[1 Hay, 482

9. ——— *Amalgamation of joint debt and personal debt.*—A joint debt cannot be amalgamated by a colourable assignment with a personal debt, so as to give the assignee the right to sue in respect of both debts. SREEHURRY PAUL *v.* NILMONEY SEN . . . . . **1 Hyde, 169**

10. ——— *Order directing servant to pay money on account of advance.*—An order directing a servant to pay at an uncertain time a certain sum of money to the payee on account of advance, is not a cheque, and the payee cannot transfer the same to a third party so as to give such third party a right of action against the drawer of such order. Nor is such a document evidence of a debt, enabling the person to whom the same is transferred to contend that by the sale to him he acquired the interest in a debt due by the writer of the order to the payee. BULLOO *v.* DEBRETON . **2 N. W., 335**

11. ——— *Suit to recover possession of land and for damages.*—In a solenamah between *B.*, the assignee of the plaintiff, and the defendant and a third party, it was agreed that as *B.* held less seer land than the other two, there should be an equal division between the shareholders within a certain time, and in case no division took place, that *B.* should be entitled to damages. In a suit by the plaintiff to recover possession of certain seer land and a certain sum as damages for breach of the contract,—*Held,* if it was a suit to enforce a contract made with *B.*, which contract did not convey any right in specific

ASSIGNMENT OF CHOSE IN ACTION.
—Right of assignee to sue.—*continued.*

lands, the cause of action was one not legally assignable. JURBUNDHUN SING *v.* SHEORAJ SINGH [5 N. W., 184

12. ——— *Sale of putnidari rights.*—When a putnidar's rights and interests in a putni are sold during the pendency of a suit brought by him against his tenants, the purchaser acquires the putnidar's privilege to carry on the suit. WILSON *v.* THE GOVERNMENT [12 W. R., 122

13. ——— *Wrongful attachment of property.—Assignment of right to sue for compensation.*—The mere right to sue for compensation for the wrongful attachment of moveable property in execution of a decree is not transferable by sale. PRAGI LAL *v.* FATEH CHAND [I. L. R., 5 All., 207

14. ——— *Sale of decree.*—Where *A.* has sold his decree to *B.*, the purchaser, *B.* can sue on it. SUNNOOBURNESSA KHANUM *v.* MEHER CHUND . . . W. R., 1864, 313

But the decree-holder should apply to the Court to certify any transfer of his interest in the decree, otherwise the Court may take no notice of the transfer. KHETTER MOHUN CHUTTAPADHYA *v.* ISSAR CHUNDER SURMA . . . 11 W. R., 271

15. ——— **Right of assignee to execute decree.**—*Assignment of decree.*—When a decree is assigned to *A.* for his benefit in the name of *B.*, *B.*, the ostensible decree-holder, may take out execution. PURNA CHANDRA ROY *v.* ABHAYA CHANDRA ROY [4 B. L. R., Ap., 40

16. ——— *Assignment of decree.*—A Court is not bound to admit the assignee of a decree to execution thereof. If there is no dispute it may admit him, or if the dispute is one which it can decide it may try the point in dispute, and upon the result of that trial admit the assignee to carry on the decree. BISHTOO CHURN BHOOSUN *v.* KISHEN GOPAL MISSER . . . . 13 W. R., 207

17. ——— *Assignment of ex parte decree for rent.*—When an *ex parte* decree for rent has been sold by the decree-holder, there is no rule of law in Bengal which forbids the assignee from carrying on the suit instead of the landlord. BINODE BEHAREE MOOKERJEE *v.* BEER NARAIN ROY [5 W. R., Act X, 52

18. ——— *Assignee of decree under Act X of 1859.*—The purchaser of a decree under Act X of 1859 is entitled to ask the holder for a power of attorney to proceed with the execution. BROJO COOMAR MULLICK *v.* MON MOHINEE DEBIA [16 W. R., 55

19. ——— *Assignment of Act X of 1859 decree.*—There is no prohibition or rule of law forbiding the assignment of a decree under Act X of 1859, any more than any other decree. IN THE MATTER OF JUNMEJOY MOOKERJEE [14 W. R., 215

ASSIGNMENT OF CHOSE IN ACTION
—continued.

20. ——— **Right of assignee to appeal.**—*Assignment of interest in suit.*—Where the whole interest of a sole plaintiff had been transferred with his unqualified assent, and the transferee was substituted for the original plaintiff in the very inception of the case, the defendant's written defence being afterwards put in without demur, it was held not to be necessary for the original plaintiff to be associated with the transferee in an appeal by the latter. MUNEEBOODEEN MOJOOMDAR *v.* PARBUTTY CHURN GHOSE . . . . . 15 W. R., 121

21. ——— *Purchaser of rights and interests of plaintiff.*—A party who purchases the rights and interests of the plaintiffs after a suit has been dismissed, is not entitled to appeal against the order of dismissal without joining the original plaintiffs in the suit as appellants. DHUNNO SOWDAGUR *v.* SUNNOO BIBEE . 15 W. R., 106

See JUDOOPATTEE CHATTERJEE *v.* CHUNDER KANT BHATTACHARJEE. [9 W. R., 311

22. ——— *Purchaser of right title, and interest in suit.*—The purchaser of the right, title, and interest of a defendant in a suit in and to the land the subject-matter of that suit, has no right as such to appeal from a decree passed against the defendant. GAJADHAR PRASAD *v.* GANESH TEWARI . 7 B. L. R., 149: 15 W. R., 485

23. ——— *Right of purchaser on death of assignee.*—*A.* sued *B.* in the Court of first instance, and obtained a decree declaring *A.'s* right to a house. The District Court, on appeal, reversed this decree, and rejected *A.'s* claim. The High Court reversed the decree of the District Court, and remanded the appeal. The District Court, on remand, made a decree confirming the original decree of the Court of first instance in *A.'s* favour. Subsequently to the last-mentioned decree of the District Court, *B.* sold the house to *C.* *B.* then preferred a special appeal to the High Court, but died before it was heard. *Held*, under Act VIII of 1859, that *C.* could not carry on the special appeal after *B.'s* death. MORESHWAR BAPUJI PHATAK *v.* KUSHABA SHANKROJI . . . . . I. L. R., 2 Bom., 248

24. ——— *Purchase of right of appeal.—Effect of as to liability for costs in lower Court.—Speculative purchase, Policy of.*—Where the rights and interests of the plaintiffs in a suit which was dismissed were purchased by third parties who filed an appeal in which they described themselves as plaintiffs, appellants, together with the original plaintiffs, and the original decree was confirmed with costs,—*Held*, that the purchasers took the position of plaintiffs, with all the risks and liabilities of plaintiffs from the commencement, including liability for all costs awarded against the plaintiffs generally without limitation. *Quære*,—Ought the speculative purchase of a right of appeal to be recognized by a Court of Justice? TROYLOCKHONATH BANERJEE *v.* BRINDABUN CHUNDER SIRKAR CHOWDHRY . . . . . 18 W. R., 438

ASSIGNMENT TO EXECUTOR.

See LEGACY . I. L. R., 1 All., 753

ASSIGNMENT AND RE-TRANSFER BY ENDORSEMENT.

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[I. L. R., 3 Calc., 347

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[8 B. L. R., 255: 17 W. R., 165

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[I. L. R., 1 All., 596

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[4 Bom., A. C., 62, 65, 67

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[I. L. R., 4 Bom., 432
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1. SUBJECTS OF ATTACHMENT.

(a) ANNUITY OR PENSION.

1. ——— **Annuity charged on estate.**—*Civil Procedure Code, 1859, s. 205.*—An annuity, the payment of which is a charge upon an estate, is property which can be attached under the provisions of section 205, Act VIII of 1859, at the instance of the person who has inherited the estate from the grantor of the annuity, and by whom the annuity is payable. DHERAJ MAHTAB CHAND *v.* DHUN COOMARU BIBEE
[17 W. R., 254

2. ——— **Stipends allowed to Mysore Princes.**—The stipends allowed by Government to the members of the Mysore family cannot be attached. MAHOMED KUZULBASH *v.* MAHOMED BUSSEROODEEN
[7 W. R., 169

3. ——— **Pay of Carnatic Stipendiary.**—*Mad. Reg. IV of 1831.—Act XXIII of 1838.*—The stipend of a Carnatic stipendiary is not liable to attachment in execution of a decree obtained against the stipendiary, it being one of the descriptions of personal grants expressly protected from attachment in satisfaction of any decree or order of a Court by section 3, Regulation IV of 1831, extended by Act XXIII of 1838. These enactments were not impliedly repealed by sections 205 and 237 of the Code of Civil Procedure. MAHOMED ABDUL VAKAB SAHIB *v.* COMANDUR RAMA SAMY AIYENGAR
[4 Mad., 277

4. ——— **Allowance charged on estate.**—*Annuity.—Civil Procedure Code, 1859, s. 205.*—Where a deed is executed stipulating the grant of a regular maintenance payable from the grantor's estate, and recoverable, in the event of non-payment, from that estate, the allowance so granted is property which can be attached under the provisions of section 205, Act VIII of 1859. ENAET HOSSEIN *v.* NUJEEBOONISSA BEGUM . . . 11 W. R., 138

ATTACHMENT—*continued.*

1. SUBJECTS OF ATTACHMENT—*continued.*

(*a*) ANNUITY OR PENSION—*continued.*

5. ——— **Arrears of yeomiah pension.**—*Suit against representatives of yeomiahdar.*—Arrears of yeomiah pension due to the estate of a deceased yeomiahdar, which have accidentally accumulated, are not subject to attachment in satisfaction of a decree of a Civil Court obtained against the representatives of the yeomiahdar. ANONYMOUS CASE **[5 Mad., 371**

6. ——— **Tora garas hak.**—*Pensions Act, s. 11.*—A tora garas hak is not exempted from attachment under a decree of a Civil Court by section 11 of the Pensions Act of 1871. THE SECRETARY OF STATE *v.* KHEMCHAND JEYCHAND **[I. L. R., 4 Bom., 432**

7. ——— **Arrears of pension due.**—*Civil Procedure Code, 1877, s. 266.—Saleable property.*—In case of pensions not exempted from attachment under section 266 of the Civil Procedure Code (Act X of 1877), it is only arrears in respect thereof actually accrued due that are attachable in execution of a decree. *Tuffoozzool Hossein Khan* v. *Rughoonath Pershad, 14 Moore's I. A., 40 : 7 B. L. R., 186,* cited and followed. BHOYRUB CHUNDER ROY *v.* MADHUB CHUNDER SEN . . **6 C. L. R., 19**

8. ——— **Gratuity.**—*Civil Procedure Code, 1882, s. 266 (g.)—Liability to attachment in execution of decree.*—The bar in section 266 of the Civil Procedure Code to the attachment of gratuities allowed by Government to its ex servants, military and civil, is not limited to such gratuities as are allowed to "pensioners," but applies to a gratuity granted in consideration of past services. BAWAN DAS *v.* MUL CHAND. . **I. L. R., 6 All., 173**

9. ——— *Civil Procedure Code, 1882, s. 266.—Liability to attachment.—Gift.—Delivery.—Act IV of 1882 (Transfer of Property Act), s. 123.—Act IX of 1872 (Contract Act), s. 90.*—*K.*, a servant in the employment of the East Indian Railway Company, was recommended, by the Traffic Manager, a bonus in consideration of long and good services. This recommendation was sanctioned, and the amount of the bonus was received by the District Paymaster. Before payment to *K.*, the money was attached in execution of a decree obtained against him by *J. Held,* that inasmuch as the bestowal of the money was a gift of moveable property of date subsequent to the 1st July 1882, and was not evidenced by a registered instrument, it could only be effected by actual delivery; that as there had been no such delivery as completed the transfer (section 123 of the Transfer of Property Act, and section 90 of the Contract Act), the money was not at *K.'s* disposal, and he could not have enforced payment; and that the money was therefore not liable to attachment in execution of a decree against him. JANKI DAS *v.* EAST INDIAN RAILWAY COMPANY **[I. L. R., 6 All., 634**

ATTACHMENT—*continued.*

1. SUBJECTS OF ATTACHMENT—*continued.*

(*b*) BOOKS OF ACCOUNT.

10. ——— **Account Books.**—Books of account cannot be attached in execution of a decree. IN RE PESTANJI CURSETJI . **3 Bom., O. C., 42**

ADJOODHYA PERSHAD *v.* MIDDLETON, COHEN AND CO. . . . **3 N. W., 334**

11. ——— *Order for production in Court by Court executing decree.*—Although a Court will not allow account books to be attached and brought to sale as mere waste paper, yet to prevent a judgment-debtor from making away with his books and defeating a decree-holder, it will be competent to a Court executing a decree, if execution is applied for by attachment of debts, to require the judgment-debtor to produce his books in Court and leave them in the custody of the Court. ADJOODHYA PERSHAD *v.* MIDDLETON, COHEN AND CO. **3 N. W., 334**

(*c*) BUILDING AND HOUSE MATERIALS.

12. ——— **Materials of house.**—*Property specifically mortgaged.—Civil Procedure Code, 1882, s. 266.*—Section 266 of the Civil Procedure Code (Act X) of 1877, proviso (*c*), does not prohibit the sale of property specifically mortgaged, albeit that the property be materials of a house belonging to or occupied by an agriculturist. BHAGVANDAS *v.* HATHIBHAI . . . **I. L. R., 4 Bom., 25**

13. ——— **Building materials.**—*Civil Procedure Code, s. 266, cl. (c), and explanation (a) and s. 295.—Attachment and sale of building materials.—Rateable distribution of proceeds of sale.*—By clause (*c*) of section 266 of the Civil Procedure Code (Act X of 1877) an ordinary judgment-creditor is precluded from attaching or selling the materials of a house or other building belonging to his judgment-debtor, but by explanation (*a*) of the same section, this prohibition does not extend to a creditor whose decree is for rent. *Held,* that sections 266 and 295 must be read together, and that an ordinary judgment-creditor is not entitled, under section 295, to a rateable proportion of the assets realized by the sale of such house or building, under a decree obtained by another creditor for rent due to him in respect of the said house or building. MANIKLAL VENILAL *v.* LAKHA . . . **I. L. R., 4 Bom., 429**

14. ——— **Houses and buildings occupied by agriculturists.**—*Representative of an agriculturist.—Exemption from attachment and sale.—Civil Procedure Code, s. 266, cl. (c).*—The expression "materials of houses and other buildings belonging to and occupied by agriculturists" used in section 266, clause (*c*) of the Code of Civil Procedure, is intended to exempt from attachment and sale the house dwelt in by an agriculturist as such, and the farm buildings appended to such dwelling. The exemption does not extend to other houses not in the physical occupation of an agriculturist owner as a dwelling appropriate or convenient for his calling. The exemption extends, after the death of an agriculturist

ATTACHMENT—*continued.*

1. SUBJECTS OF ATTACHMENT—*continued.*

(*c*) BUILDING AND HOUSE MATERIALS—*continued.*

Houses and buildings occupied by agriculturists—*continued.*

debtor, to his representative who occupies the house in good faith as an agriculturist, and who does not take it up merely with the view of defrauding his creditor. RADHAKISAN HAKUMJI *v.* BALVANT RAMJI [I. L. R., 7 Bom., 530

(*d*) DEBTS.

15. ——— **Proclamation as to nature and value of property.**—*Civil Procedure Code, 1877, ss. 268, 278—s. 287.*—A decree-holder, by a prohibitory order issued under section 268 of the Civil Procedure Code, attached a debt due to his judgment-debtor. The person served with the order applied, under section 278, to have the attachment removed. *Held*, that the application could not be entertained under section 278, that section having no application to the case; but that, before issuing a proclamation of sale in execution of a decree of the debt so attached, it is the duty of the Court, under section 287 of the Code, to ascertain all that the Court considers it material for the intending purchaser to know in order to judge of the nature and value of the property proclaimed for sale. If the property of which sale is sought is a debt, and the Court receives notice from the alleged debtor that no debt exists, the Court should satisfy itself as to the existence, or otherwise, of the debt, and, if it comes to the conclusion that no debt exists, should abstain from proceeding to sale. HARILAL AMTHABHAI *v.* ABHESANG MERU [I. L. R., 4 Bom., 323

16. ——— **Right and interest of vendor in purchase-money.**—*Civil Procedure Code, 1877, s. 266.—Vendor and purchaser.*—The right or interest which the vendor of immoveable property has in the purchase-money, where it has been agreed that the same shall be paid on the execution of the conveyance, is not, so long as the conveyance has not been executed, a debt, but a merely possible right or interest, and as such, under section 266 of Act X of 1877, is not liable to attachment and sale in the execution of a decree. The person who purchases such a right or interest at a sale in the execution of a decree takes nothing by his purchase. AHMAD UDDIN KHAN v. MAJLIS RAI . I. L. R., 3 All., 12

17. ——— **Claims over which British Courts have no jurisdiction.**—*Civil Procedure Code, s. 266.—Subject of the Gaikwar.—Subject of a Kathiawar State.—Rajkot.*—Debts due to a British subject by the Gaikwar Government or by a subject of that Government or of a State in the province of Kathiawar, are not debts which, under section 266 of the Code of Civil Procedure (Act X of 1877), are liable to attachment in execution of a decree. Claims over which no Court in British India has jurisdiction, are not debts liable to be attached under section 266 of the Civil Procedure Code (Act X) of 1877. The mere circumstance that the garnishee is at the time of the application for attachment beyond the limits of British India, would not of itself render the debts not liable to be attached. GHAMSHAMLAL *v.* BHANSALI [I. L. R., 5 Bom., 249

ATTACHMENT—*continued.*

1. SUBJECTS OF ATTACHMENT—*continued.*

(*d*) DEBTS—*continued.*

Claims over which British Courts have no jurisdiction—*continued.*

18. ——— **Debt secured by mortgage of immoveable property.**—*Civil Procedure Code (X of 1877), s. 266.*—A debt secured by mortgage of immoveable property cannot be sold in execution of a decree under the provisions of the Civil Procedure Code applicable to moveable property. SRINATH DUTT *v.* GOPAL CHUNDER MITTRA [I. L. R., 9 Calc., 511: 12 C. L. R., 445

19. ——— **Debt creating charge on immoveable property.**—*Interest in immoveable property.—Civil Procedure Code, 1882, s. 266.*—Where a judgment-debtor is entitled to a debt secured by a collateral hypothecation of land and the decree-holder attaches and sells the judgment-debtor's interest in the bond, such interest is immoveable property for the purpose of attachment and sale under the Code of Civil Procedure, 1882. *Per* TURNER, *C. J.—Quære,*—Whether the decree-holder could not sell the debt apart from the security as moveable property. APPASAMI v. SCOTT [I. L. R., 9 Mad., 5

(*e*) DECREES.

20. ——— **"Other property."**—*Act VIII of 1859, s. 205—Decree.*—A decree of Court fell within the description of "other property" in section 205 of the Civil Procedure Code, and was, therefore, liable to attachment, which should be made under section 237. GHOLAM MAHOMED *v.* INDRA CHAND JAHURI . 7 B. L. R., 318: 15 W. R., 34

21. ——— **Immoveable property.**—*Execution of decree, Sale in.*—A decree is held to be part of a judgment-debtor's effects, and not to fall under the head of immoveable property. BUNSHEEMOHUN DOSS *v.* HUROCHUNDER DOSS CHOWDHRY [W. R., 1864, Mis., 28

22. ——— **Decree for mesne profits.**—*Civil Procedure Code, 1859, s. 232.—Decree for money.—Attachment pending ascertainment of mesne profits.*—A decree for mesne profits to be ascertained in execution is a decree for money within the meaning of section 232, Act VIII of 1859; and there is no irregularity in the decree-holder applying for attachment of the judgment-debtor's property pending the ascertainment of the mesne profits. SHARODA MOYEE BURMONEE *v.* WOOMA MOYEE BURMONEE [8 W. R., 9

23. ——— **Decree for money obtained by judgment-debtor.**—*Debt.—Civil Procedure Code (1877), (1882), ss. 266, 273.*—A decree for money obtained by a judgment-debtor is not a debt which, by virtue of section 266 of the Code of Civil Proce-

ATTACHMENT—*continued.*

1. SUBJECTS OF ATTACHMENT—*continued.*

(*e*) DECREES—*continued.*

Decree for money obtained by judgment-debtor—*continued.*

dure, can be attached and sold. Where a decree-holder desires to render a decree obtained by his judgment-debtor available for the satisfaction of his own decree, the procedure laid down by section 273 of the Code of Civil Procedure must be followed. TIRUVENGADA CHARI *v.* VYTHILINGA PILLAI

[I. L. R., 6 Mad., 418

24. ——— **Money-decree.**—*Civil Procedure Code, 1877, s. 273.*—*Held*, that Act X of 1877 does not contemplate the sale of a decree for money as the result of its attachment in the execution of a decree, and the attachment of a decree for money in the mode ordained in section 273 cannot lead to its sale. *Held*, also, that the last clause but one of section 273 applies to other than money-decrees. Where two decrees for money, although they were not passed by the same Court, were being executed by the same Court,—*Held*, that the provisions of the first clause of section 273 of Act X of 1877 were applicable on principle. SULTAN KUAR *v.* GULZARI LAL

[I. L. R., 2 All., 290

25. ——— **Decree for possession of land.**—*Immoveable property.*—A decree for possession of land is of the nature of immoveable property, and a Judge has no jurisdiction to interfere with the order of a lower Court setting aside the sale of such a decree. MOBKOONISSA *v.* DEWAN ALI

[4 W. R., Mis., 22

26. ——— **Decree for redemption.**—*Mode of attachment.—Civil Procedure Code, ss. 273, 274, 316.—Sale of a decree for redemption.*—Section 273 of the Civil Procedure Code (Act X of 1877) having expressly provided a mode for the attachment of decrees, the procedure laid down in section 274 relating to immoveable property has no application to the attachment of a decree for redemption. NAIGAR TIMAPA *v.* BHASKAR PARMAYA

[I. L. R., 10 Bom., 444

(*f*) EXPECTANCY.

27. ——— *Quære,*—Whether a mere expectancy is liable to attachment and sale in execution of decree. DOOLI CHAND *v.* BRIJ BHUKAN LAL AWASTI . . . . . **6 C. L. R., 528**

[10 C. L. R., 61

28. ——— **Sum to be paid in future.**—*Civil Procedure Code, 1859, s. 205.*—A sum *receivable* by way of assignment is not liable to be attached and sold in execution of decree. SAM CHUNDER BABOO *v.* TEELUCK CHUNDER BABOO

[2 Hay, 142

29. ——— **Claim under pending award.**—*Property, Definition of.*—Under section 205 of the Civil Procedure Code, sums to be attached must not be inchoate, but existing and definite; and although liquidated demands in their nature definite and certain, though *sub lite* and unproved, may be seized; a mere expectancy or a mere right of suit cannot be attached; the attachment must operate at the time of attachment, and not be anticipatory, so as to fasten on some future state of property in which the suit may result. A claim which may accrue under a pending award cannot be sold in execution. TUFFAZAL HOSSEIN KHAN *v.* RAGHONATH PRASAD

[7 B. L. R., 186: 14 Moore's I. A., 40

See BHAICHAND BIN KHEMCHAND *v.* FULCHAND HARICHAND.

[8 Bom., A. C., 150

ATTACHMENT—*continued.*

1. SUBJECTS OF ATTACHMENT—*continued.*

(*f*) EXPECTANCY—*continued.*

Claim under pending award—*continued.*

(*g*) IMMOVEABLE PROPERTY CHARGED WITH MAINTENANCE.

30. ——— **Immoveable property assigned for maintenance with proviso against alienation.**—*Civil Procedure Code (Act XIV of 1882), s. 266, cl. (l).—Land assigned for maintenance of widow with proviso against alienation.—Such land exempt from attachment.*—By a deed of assignment the usufruct of certain land was given to a Hindu widow for her maintenance, the deed expressly stipulating that the same was not to be in any way alienated. A judgment-creditor of the widow caused the land to be attached in execution of a money-decree. The widow contended that the land was protected from attachment under section 266 of the Civil Procedure Code (Act XIV of 1882). Both the lower Courts disallowed the widow's contention. On appeal to the High Court,—*Held*, reversing the orders of the lower Courts, that, having regard to the proviso against alienation contained in the deed of assignment, the usufructuary interest in the land assigned to the widow was one over which she had no power of disposal, and, consequently, could not be attached and sold in execution of a money-decree against her. DIWALI *v.* APAJI GANESH

[I. L. R., 10 Bom., 342

(*h*) JOINT FAMILY AND REVERSIONARY INTERESTS.

31. ——— **Interest of member of joint family.**—*Civil Procedure Code, 1859, s. 205.*—*Quære,*—May not the creditor of a member of a joint Hindu family have, under Act VIII of 1859, section 205, some remedy against the property to which his debtor may be entitled? KALI PUDO BANERJEE *v.* CHOITUN PANDAH . **22 W. R., 214**

32. ——— **Reversionary interest.**—*Execution of decree.*—*R. C. D.*, a Hindu, died possessed of property, leaving as his heiress his widow, *R. D.* He also left four daughters, two of whom died in the lifetime of their mother, each leaving a son. *R. D.* died, leaving her surviving two daughters, *P. D.* and *J. D.*, who succeeded to the estate of *R C. D.* *Held* that *J. B.*, one of the sons of *J. D.*, had no such interest in the property as could be attached and sold in execution of a decree against

ATTACHMENT—*continued.*

1. SUBJECTS OF ATTACHMENT—*continued.*

(*h*) JOINT FAMILY AND REVERSIONARY INTERESTS —*continued.*

Reversionary interest—*continued.*

him. BHOOBUNMOHUN BANERJEA *v.* THAKOORDOSS BISWAS
[2 Ind. Jur., N. S., 277: 15 W. R., F. B., 18, note

33. ——— *Act VIII of 1859, s. 205.—Property, Right of.—Interest of Hindu heir expectant on death of widow.*—The interest of an heir, according to the Hindu law, expectant on the death of a widow in possession, is not property, and, therefore, not liable to attachment and sale in execution of a decree under section 205 of Act VIII of 1859. RAM CHANDRA TANTRA DAS *v.* DHARMO NARAYAN CHUCKERBUTTY
[7 B. L. R., 341: 15 W. R., F. B., 17

KORAJ KOONWAR *v.* KOMAL KOONWAR
[6 W. R., 34

But *see* GAUR HARI DUTT *v.* RADHA GOBIND SHAHA
[7 B. L. R., 343, note: 12 W. R., 54

34 ——— **Interest of grandson in Mitakshara family.**—*Sale in execution of decree.—Civil Procedure Code, 1882, s. 266.—Interest of grandson in ancestral property.*—The interest of a grandson in the ancestral property of a joint Hindu family governed by the Mitakshara law can be attached and sold in execution of a decree. JOGUL KISHORE *v.* SHIB SAHAI . I. L. R., 5 All., 430

35. ——— **Interest of undivided member of joint family.**—*Death of judgment-debtor.—Avoidance of right of survivorship by the attachment.*—In the Madras Presidency, where the interest of an undivided member in the joint property of a Hindu family has been attached in execution of a decree for the personal debt of such member, and the judgment-debtor dies pending attachment, a valid charge is constituted in favour of the judgment-creditor which will prevent the accrual to the other co-parceners of the right of survivorship. BAILUR KRISHNA RAU *v.* LAKSHMANA SHANBHOGUE
[I. L. R., 4 Mad., 302

36 ——— **Right of son to succeed by survivorship.**—*Civil Procedure Code, 1859, s. 205.*—The right of a son to succeed by survivorship to his father's specific share of property cannot be sold in execution of decree, such right being too remote. Section 205 of the Code of Civil Procedure, which specifies the kinds of property which are liable to attachment and sale in execution of decree, makes no mention of contingent interests. The property must belong at the time to the defendants. GOUR SURUN DOSS *v.* RAM SURUN BHUKUT . 8 W. R., 253

37. ——— **Son's interest in ancestral estate.**—*Reversionary rights.—Death of son between attachment and sale.*—The rights of a Hindu son during his father's lifetime in ancestral property, viz., a right of joint enjoyment thereof under the

ATTACHMENT—*continued.*

1. SUBJECTS OF ATTACHMENT—*continued.*

(*h*) JOINT FAMILY AND REVERSIONARY INTERESTS —*continued.*

Son's interest in ancestral estate—*continued.*

father's management, and a right of partition under certain circumstances, together with the right of succeeding the father in the management after his death, may be vested rights, and are undoubtedly rights of an incipient proprietary character, but they do not constitute a transferable or inheritable property, and they cannot survive the person in whom they are vested. GOOR PERSHAD *v.* SHEODEEN
[4 N. W., 137

(*i*) MAINTENANCE.

38. ——— **Right of future maintenance.**—*Civil Procedure Code, 1859, s 205.*—A prospective right of maintenance cannot be attached, and a contingency of this kind is not included in Act VIII, of 1859, section 205, as something capable of attachment. MONESSUR DOSS *v.* KISHEN PROTAB SHAHEE . . . . . 23 W. R., 427

39. ——— *Act VIII of 1859, ss. 205, 243.—Attachment of future maintenance, or "Babooana."—Procedure.*—Where a judgment-debtor was possessed of a decree entitling him to maintenance from a third party,—*Held*, that his judgment-creditor could attach the amount before it accrued due, by prohibitory order forbidding such third party to pay the judgment-debtor, and directing him to pay to such person only as the Court might direct; or an arrangement might be made for the collection or administration, if necessary, of the amount of maintenance. MANISWAR DAS *v.* BIR PERTAB SAHU 6 B. L. R., 646: 15 W. R., 188

40. ——— *Right to appeal.*—A decree-holder cannot attach his judgment-debtor's right to appeal, or his right to future maintenance; nor can the Court prescribe to the decree-holder what course he is to take for the realization of his claim, or what property he is to attach. BIPRO PROTAP SAHU *v.* DEO NARAIN ROY
[3 W. R. Mis., 16

KASHESHUREE DEBIA *v.* GREESH CHUNDER LAHOOREE . . 6 W. R., Mis., 64

DULOON KOONWAR *v.* SUNGUM SINGH
[7 W. R., 311

CHUKOWREE MISSER *v.* NUMOODAH KOORE
[24 W. R., 5

41. ——— **Money allowance for maintenance.**—*A.* was liable to pay *B.*, a widow, a monthly allowance for maintenance. *B.* obtained a decree against *B.* as heir of her husband for a debt of her husband. *Held*, without deciding as to whether a money allowance for maintenance can be attached in execution of a decree, that under the circumstances of this case he was not entitled to attach the maintenance under the decree. KOMAREE DABEE *v.* GREESH CHUNDER LAHOORY
[Marsh., 200: 1 Hay, 583

ATTACHMENT—*continued.*

1. SUBJECTS OF ATTACHMENT—*continued.*

(*i*) MAINTENANCE—*continued.*

Money allowance for maintenance—*continued.*

But arrears of maintenance are capable of being attached as a debt due to a widow in execution of the decree against her.

HOYMOBUTTY DEBIA CHOWDHRAIN *v.* KOROONA MOYEE DEBIA CHOWDHRAIN . **8 W. R., 41**

42. ——— Money allowance charged on land.—A Hindu widow's right to maintenance out of lands which belonged to her husband and have devolved on her son, is a purely personal right which cannot be sold in execution of a decree or otherwise transferred. BHOYRUB CHUNDER GHOSE *v.* NUBO CHUNDER GOOHO . **5 W. R., 111**

43. ——— Right to monthly allowance in lieu of share of land.—*Civil Procedure Code (Act XIV of 1882), s. 266, proviso, cl. (l).—Attachment of monthly allowance.*—A heritable right to receive a certain monthly allowance originally assigned in lieu of a share of landed property is not a mere right to maintenance or anything else exempted by the proviso to section 266 of the Civil Procedure Code, and is saleable in execution of a decree. SALAMAT HOSSEIN v. LUCKHI RAM **[I. L. R., 10 Calc., 521**

(*j*) PARTNERSHIP PROPERTY.

44. ——— Share in partnership assets.—*Act VIII of 1859, s. 205, and ss. 233, 234.*—A decree-holder, who was also a partner of the judgment-debtor, sought to attach, in execution of his decree, the share of the judgment-debtor in the assets of the partnership business, the business then being in the hands of the Receiver of the Court under a decree for dissolution and winding up. *Held*, that such share of the judgment-debtor was not "property" within the meaning of section 205 of Act VIII of 1859, and, therefore, not liable to attachment in execution. ABBOTT *v.* ABBOTT and CRUMP . . . . . **5 B. L. R., 382**

45. ——— Property of partnership.—*Attachment limited to share of partner.—Act VIII of 1859, ss. 233, 234.*—A decree-holder, in execution, attached and seized certain property which belonged to the judgment-debtor in partnership with another person, who alone, at the time of attachment, was in actual possession. *Held*, that such property was the subject of attachment in execution of the decree against the one partner, but such attachment must be limited to his share, and the attachment should be by prohibitory order, not by actual manual seizure. THAMA SING *v.* KALIDAS ROY . **5 B. L. R., 386**

46. ——— *Attachment limited to share of partner.*—Property belonging to a partnership cannot be seized in execution of a decree against one partner only. Accordingly, where a suit was brought against one partner only, and the decree made him alone liable,—*Held*, that only his property

ATTACHMENT—*continued.*

1. SUBJECTS OF ATTACHMENT—*continued.*

(*j*) PARTNERSHIP PROPERTY—*continued.*

Property of partnership—*continued.*

could be attached in execution of that decree. KARIMBHAI *v.* CONSERVATOR OF FORESTS **[I. L. R., 4 Bom., 222**

SITARAM *v.* ATMARAM BAJI **[I. L. R., 4 Bom., 227, note**

HARIBHAI *v.* ARDESIR UKADJI **[I. L. R., 4 Bom., 229, note**

(*k*) PERISHABLE ARTICLES.

47. ——— Articles of perishable nature.—Articles of such a perishable nature that they cannot be kept for fifteen days and sold, according to the Civil Procedure Code, ought not to be taken in execution. SADASHIV MORESHVAR *v.* HANSO BIN SHRAVAN . . . **5 Bom., A. C., 156**

(*l*) PROPERTY AND INTEREST IN PROPERTY OF VARIOUS KINDS.

48. ——— Service tenure.—*Interest in property.—Civil Procedure Code, 1859, s. 205.*—Where a tenant had an hereditary interest in property, paying a small quit-rent for it, and holding it subject only to the duty to the zemindar of furnishing a few men in aid of the regular police,—*Held*, that the interest was a beneficial one which could be attached and sold by the tenant's creditor. RAMESSUR NATH SINGH *v.* GOLAMEE SAHOO **[24 W. R., 309**

49. ——— Ship-owner, Interest of, in mortgaged ship.—*Sale under prior mortgage.*—A ship-owner having mortgaged his ship has still an interest in her seizable in attachment under the Civil Procedure Code. An attachment on a vessel in respect of the mortgagor's right and interest does not affect the validity of a sale under a prior mortgage. AUHIN *v.* AHMED MAHOMED **[1 Ind. Jur., N. S., 241**

50. ——— Profits of property.—When a party attaches property, he also attaches the profits thereof. RAM COOMAR GHOSE v. GOBIND CHUNDER SANDYAL . . . **12 W. R., 391**

RAM COOMAR GHOSE *v.* GOBIND NATH SANDYAL . . . . **9 W. R., 450**

51. ——— Profits already realized.—But if, when attaching the property, he allows the original owner to remain in possession and enjoy the profits, those profits cease, from the moment they find their way into the pockets of the owner, to be specifically liable for the judgment-debt under the attachment. RAM COOMAR GHOSE, *v.* GOBIND CHUNDER SANDYAL . . . **12 W. R., 391**

52. ——— Attachment of property of tenant for rent.—A landlord may have a right to receive a share of the produce as rent; and if the share is not made over, to compel it to be done or to recover damages; but the property in the crops is in

ATTACHMENT—*continued.*

1. SUBJECTS OF ATTACHMENT—*continued.*

(*l*) PROPERTY AND INTEREST IN PROPERTY OF VARIOUS KINDS—*continued.*

Attachment of property of tenant for rent—*continued.*

the ryot until transferred by some act of his own. It is illegal for the landlord to attach everything in the possession of the ryot which he considers may be liable to satisfy the rent: all that he can do by way of attachment is to treat the rent as a debt due from the ryot to the landlord and to attach it as such. PRITUN KOORMEE *v.* EDIL SINGH

[18 W. R., 464

53. ——— **Doors and window-shutters.**—*Execution of decree.—Attachable property.—Doors and windows.—Immoveable property.*—The doors and window-shutters of a *pucka* building cannot be separately attached in execution of decree, forming as they do part of an immoveable property, and having no separate existence. PERU BEPARI *v.* RONUO MAIFARASH . I. L. R., 11 Calc., 164

54. ——— **Property which is the subject of a suit.**—*Interest in property contingent on suit.*—The fact of a judgment-debtor's property being the subject of an existing suit is no hindrance to its being attached in execution, but it is in the discretion of the Court to order its sale at the fittest and most proper time. RAM CHUNDER *v.* NUND LALL BOSE . . . . 19 W. R., 132

55. ——— **Property in zenana.**—There is nothing in Act VIII of 1859 which exempts from attachment property to be found in the zenana of a judgment-debtor. DOORGA CHURN MITTER *v.* HUREE MOHUN GOOHO . . 17 W. R., 86

56. ——— **Property necessary for livelihood.**—*Civil Procedure Code (Act XIV of 1882), s. 266.—Property exempted from attachment.—Execution of decree.—Rules of High Court.*—Before property of a judgment-debtor can be exempted from execution as falling under the head of the property described in section 266 of the Code of Civil Procedure, it is necessary that the Court should first express its opinion that such property is necessary to enable the execution-debtor to earn his livelihood, and the Court which must decide this point is the Court which issues the execution. Section 14 (*a*), Part II, Chapter V, of the General Rules and Circular Orders of the High Court commented on. BAKHIR MOHAMMED *v.* DOORGA CHURN SHAHA

[I. L. R., 10 Calc., 39: 13 C. L. R. 200

57. ——— **Property in hands of the Receiver.**—*Order on Receiver to sell.—Attachment in mofussil.—Execution of decree.*—By a decree of the High Court obtained by *D. M.* in November 1871 in a suit on a mortgage brought by him against *B. C.* and *P. C.*, it was ordered that the suit should be dismissed against *P. C.*; that the amount found due on the mortgage should be paid to *D. M.* by *B. C.*; that the mortgaged property, some of which was in Calcutta and some in the mofussil, should be sold in default of payment, and any deficiency should be made good by *B. C.* The property in Calcutta was sold under the decree, and did not realize sufficient to satisfy the decree. *D. M.* thereupon, in August 1873, obtained an order for the transfer of the decree to the mofussil Court for execution. After the transfer *B. C.* died, in December 1874, leaving a widow and an adopted son his representatives, against whom the suit was revived. The decree, however, was returned to the High Court unexecuted. In a suit for partition of the estate of *R. C.* deceased, brought by *P. C.* against *B. C.* in the High Court, a decree was made in February 1871 for an injunction to restrain *B. C.* from intermeddling with the estate or the accumulations, and for the appointment of the Receiver of the Court as Receiver, to whom all parties were to give up quiet possession. *B. C.* was in that suit declared entitled to a moiety of the property in suit. *Held*, on application by *D. M.* to the High Court for an order that the Receiver should sell the right, title, and interest of the widow and son of *B. C.* in the estate in his hands to satisfy the balance of his debt, that *D. M.* was entitled to an order that their interest should be attached in the hands of the Receiver, and that the Receiver should proceed to sell the same. Property in the hands of the Receiver of the High Court cannot be proceeded against by attachment in the mofussil. HEMCHUNDER CHUNDER *v.* PRANKRISTO CHUNDER

[I. L. R., 1 Calc., 403

58. ——— **Malikana rights payable for ever.**—*Civil Procedure Code.—Act VIII of 1859, s. 237.*—*A.* and *B.* were entitled to receive annually and for ever a specified amount by way of malikana rights from the Collector as compensation for their extinguished rights in lakhiraj lands. In execution of a decree, *C.*, on 13th September, purported to attach, under section 237 of Act VIII of 1859, *A.'s* share in such specified amount. Subsequent to this attachment,—namely, on 23rd September 1873,—*A.* and *B.* mortgaged their rights to the plaintiff. In a suit brought by him against *A.* and *B.* and *C.*,—*Held*, that attachment under section 237 was not applicable to a right to receive money for ever; that such an attachment is only good so far as it relates to any specific amount, which may be set forth in the request to the officer in whose hands the moneys are, as being then payable or likely to become payable, and that the attachment in question was therefore invalid. *Semble*,—The attaching creditor should have proceeded under section 235 or section 236. In either of such cases the defendant, the person to whom the money was payable, would be entitled to notice that he was not at liberty to alienate his rights. NILKUNTO DEY *v.* HURRO SOONDEREE DOSSEE

[I. L. R., 3 Calc., 414: 1 C. L. R., 412

59. ——— **Deposit by servant of railway company.**—*Civil Procedure Code s. 268.—Rights of attaching creditor.*—Where money deposited with a railway company by one of its servants as a guarantee for the due performance of his duties was attached by a judgment-creditor of such servant

ATTACHMENT—*continued.*

1. SUBJECTS OF ATTACHMENT—*continued.*

(*l*) PROPERTY AND INTEREST IN PROPERTY OF VARIOUS KINDS—*continued.*

Deposit by servant of railway company —*continued.*

under section 268 of the Code of Civil Procedure,— —*Held*, that the creditor was not entitled to have his decree satisfied out of the deposit, but was entitled to a stop order under clause (*c*) of section 268, and also to payment of the interest, if any, due by the company on such deposit to the servant. KARUTHAN *v.* SUBRAMANYA . . I. L. R., 9 Mad., 203

60. ——— Cheque for money due on contracts.—*Right of nominal surety.—Assignment of money due to assignor.—Principal and surety.*— The plaintiff was nominal surety, though really the principal in the case of two contracts entered into by one *R.* with the Executive Engineer, Ahmednagar. On completion of the works the Executive Engineer handed over to the plaintiff a cheque on the Government treasury for the amount due on the first contract. Before the cheque was presented by the plaintiff for payment, the defendant, who was the judgment-creditor of *R.*, served the Executive Engineer with a notice attaching any money in his hands due by him to *R.* The Executive Engineer thereupon stopped payment of the cheque, the amount of which was eventually paid to the defendant. *Held* that, at the date of the attachment the cheque had become the property of the plaintiff, and that the defendant should refund the amount received by him. The second contract was sold to the plaintiff by *R.*, and the account in the Executive Engineer's office relating to it was closed, showing a sum of money to *R.*'s credit at the date of the defendant's attachment. *Held* that the plaintiff, being the only person really interested, was entitled to this sum also; for although the Executive Engineer would have been legally justified in paying it to *R.*, he was not bound, it being really the plaintiff's property, to pay it to a third person such as the defendant, the judgment-creditor, who, if the sum was paid to him, must refund it to the plaintiff. BHAGVANDAS KISHORDAS *v.* ABDUL HUSEIN . . . . I. L. R., 3 Bom., 49

61. ——— Deposit of material for carrying out contract.—*Interest liable to attachment.*— Where a person deposited upon the works of another certain materials to be used in carrying out a contract with such second person, and the latter had recognised and accepted such deposit by the advance of the value thereof,—*Held*, that such materials had vested in the person with whom they were deposited as a purchaser, and were not liable to attachment under a decree against the depositor. ANONYMOUS CASE [2 N. W., 337

62. ——— Money deposited in Court.— *Discretion of Court.—Civil Procedure Code, 1877, s. 272.*—The Court has no discretion to refuse an application, for attachment of property in Court, made under section 272 of the Civil Procedure Code. NOOR JEHAN BEGUM *v.* MASHITTY KHANUM [8 C. L. R., 7

ATTACHMENT—*continued.*

1. SUBJECTS OF ATTACHMENT—*continued.*

(*l*) PROPERTY AND INTEREST IN PROPERTY OF VARIOUS KINDS—*continued.*

63. ——— Right of personal service.— *Civil Procedure Code, s. 266.—Vritti.—Liability of a vritti to attachment and sale in execution of decree.—Voluntary conveyances.*—The nature of an *upadhikpana vritti* on the River Godavari at Nasik was stated to be as follows: "The *vritti* is an hereditary priestly office by virtue of which certain religious ceremonies are performed on the River Godavari on behalf of pilgrims who pay fees to the holders of such priestly offices for performance of such religious ceremonies at or about the time of their performance. By law and usage, a certain relationship grows up between certain pilgrims or worshippers and a particular priest, and when such relationship exists, such pilgrims or worshippers are called *yajmans*, or clients of the priest, whose right to offer and perform the religious ceremonies in question for such *yajmans* becomes exclusive against rival priests, so far that, under the Hindu law as applied and followed in this Presidency, if any such *yajmans* accept the religious services of another priest, they must compensate the priest, whose *yajmans* they are, by giving to him a reasonable fee." *Held*, that such a *vritti* is a "right of personal service" within the meaning of clause (*f*) of section 266 of the Code of Civil Procedure (XIV of 1882), and, therefore, protected from attachment. GANESH RAMCHANDRA DATE *v.* SHANKAR RAMCHANDRA . . I. L. R., 10 Bom., 395

(*m*) RIGHT OF SUIT.

64 ——— Right to bring a suit.—A right to bring a suit cannot be attached under the Civil Procedure Code, 1859. CHAPIET *v.* PANNA LAL SEAL . . . . 14 W. R., 152

DRURY *v.* HARADHUN BHUTTACHARJEE [3 W. R., Mis., 8

MAHOMED HADEE *v.* SHEO SEVUK DOOBEY [6 N. W., 95

65. ——— Right to sue for damages.— *Mesne profits.—Civil Procedure Code (1877), s. 266, cl. (e).*—The right to sue for mesne profits is a "right to sue for damages" within the meaning of section 266, clause (*e*) of the Code of Civil Procedure, and therefore cannot be sold in execution of decree. Where, therefore, the plaintiff purchased the right to sue for *mesne profits* at a sale in execution of a decree,—*Held* that a suit by him to enforce the right was not maintainable. SHYAM CHAND KOONDOO *v.* LAND MORTGAGE BANK OF INDIA [I. L. R., 9 Calc., 695: 12 C. L. R., 440

66 ——— Right to appeal.—A judgment-debtor's right to appeal cannot be attached in execution of a decree. BIPRO PROTAP SAHU *v.* DEO NARAIN ROY . . 3 W. R., Mis., 16

(*n*) SALARY.

67. ——— Salary of officer of Small Cause Court, Calcutta.—*Execution of decree of*

ATTACHMENT—*continued.*

1. SUBJECTS OF ATTACHMENT—*continued.*

(*n*) SALARY—*continued.*

Salary of officer of Small Cause Court, Calcutta—*continued.*

High Court.—The pay of an officer of the Small Cause Court will be set aside by an order of the High Court, in satisfaction of judgment obtained in that Court. KOOMKURRUN v. MICHAEL [Bourke., O. C., 259

68. ——— **Salaries of Railway Company's servants.**—*Jurisdiction of Mofussil Small Cause Courts.—Act VIII of 1859, ss. 236, 239.*—Salaries or other debts due from the Railway Company to any of its servants can be attached in satisfaction of a Small Cause Court decree under Act VIII of 1859, section 236. The attaching Court must make a written order to be fixed up in some conspicuous part of the Court-house, and a copy is to be delivered or sent registered by post to the debtor. The registered letter should be addressed to the Agent of the Railway Company at the head office of the Company. It need not be sent through the High Court, although the head office is within the jurisdiction of the High Court. IN THE MATTER OF HOLLICK . 2 B. L. R., A. C., 109: 10 W. R., 447

69. ——— **Salary of telegraph officer.**—The salary of a telegraph officer which is due for past services is a debt which may be attached under section 236, Act VIII of 1859. HUSSEN BHAMJEE v. HICKS . . . . . 18 W. R., 124

70. ——— **Salary of peon of mamlatdar.**—The whole salary of a peon in the service of a mamlatdar under Government is liable to attachment as it becomes due. TEJRAM JAGRUPAJI v. KUSAJIBIN GANGJI . . . 7 Bom., A. C., 110

71. ——— **Salary of hereditary officer.**—*Act XI of 1843.*—The official remuneration of the officiating hereditary officer is not liable to civil process so long as it is in the hands of the Collector or other disbursing officer; but as soon as it is in the hands of the hereditary officer himself, it is deprived of any special protection. GANPATLAL ANUPRAM v. SAMPATRAM GHELABHAI . 10 Bom., 400

72. ——— **Salary already due.**—*Civil Procedure Code, 1859, ss. 236, 237.*—A judgment-debtor's salary which has become due is a debt within the meaning of Act VIII of 1859, section 236, which indicates the remedy open to the judgment-creditor. Section 237 has no bearing on such a case. KALU SHAIKH KHANSAMA v. BEATSON [24 W. R., 446

73. ——— **Moiety of salary of officer on half-pay.**—*Civil Procedure Code, 1877, s. 266(h).—Attachment of moiety of salary of officer on half-pay.*—Under clause (*h*) of section 266 of the Code of Civil Procedure, 1882, a moiety of the salary of a public officer drawing half-pay (exceeding R20 per mensem) on sick leave is liable to attachment. BEARD v. EDERTON . . . I. L. R., 6 Mad., 179

ATTACHMENT—*continued.*

1. SUBJECTS OF ATTACHMENT—*continued.*

(*n*) SALARY—*continued.*

74. ——— **Moiety of salary of military officer.**—*Civil Procedure Code, s. 266, expl. (b).—Debtor subject to military law.—Attachment of moiety of salary under R20 per mensem.—Army Act, s. 151.*—Section 151 of the Army Act, 1881, not being affected by the provisions of section 266 of the Code of Civil Procedure, the attachment by a Civil Court of a moiety of the monthly salary of a debtor subject to military law, not exceeding R20, is legal. VIRARAGAVA v. RAMUDU . . I. L. R., 9 Mad., 170

75. ——— **Pay of military officer.**—*Mutiny Act, s. 99.—Military officer.—Attachment of moveable property.*—Where, with reference to section 99 of the Mutiny Act, a decree for money made against a military officer serving in India directed that the judgment-debt should be stopped out of a moiety of such officer's pay,—*Held,* that the decree-holder could not obtain satisfaction of the decree by attachment of such officer's moveable property. MERCER v. NARPAT RAI [I. L. R., 1 All., 730

76. ——— *Civil Procedure Code, 1859, s. 205.—Omission to provide for stoppage of pay in decree.*—The pay of a military officer cannot be attached in the hands of the Paymaster in the execution of a decree where no provision for its stoppage has been made in the decree. BANSI LAL v. MERCER . . . . . 7 N. W., 331

77. ——— **Pay of non-commissioned officer in civil employ.**—Execution of a decree against the pay of a non-commissioned officer in civil employ is entirely in conformity with law. COHEN v. MCCARTHY . . . . . 14 W. R., 231

78. ——— **Military pay attached, Refund of.**—Where a part of the military pay of a sergeant employed under the Executive Engineer was erroneously remitted by his superior to a Small Cause Court, which had directed execution against the sergeant's pay, it was held that the sum remitted should be refunded to the Executive Engineer. COHEN v. MCCARTHY . . . . . 14 W. R., 441

(*o*) TRUST PROPERTY.

79. ——— **Debtor's interest in property assigned to trustees for benefit of creditors.**—A *bonâ fide* assignment by a debtor of his entire property to trustees for the benefit of his creditors divests him of any interest which can be the subject of attachment subsequently issued in execution of a decree against such debtor until the trusts of the deed of assignment have been carried out. BAMANJI MANICKJI v. NAOROJI PALANJI [1 Bom., 233

80. ——— **Property placed in trust with managers.**—Property placed in trust with parties as managers but not beneficial owners is not liable to be taken in execution of a decree against them. MOHEEPUT SINGH v. ETBAREE CHOWDHRY [19 W. R., 226

ATTACHMENT—*continued.*

1. SUBJECTS OF ATTACHMENT—*continued.*

(*p*) WAGES.

81. ——— Money paid to sirdar as wages of coolies.—*Act VIII of 1859, ss. 236, 237.*—The defendants were sirdars of coolies. A decree was obtained against them by the plaintiff in respect of goods supplied for the coolies. It was proved that, by virtue of custom, a sirdar of coolies was entitled to have the wages of coolies paid to him, so that he might deduct the amounts due to him by the respective coolies for food supplied by him to them; but it was not found that the coolies were hired on the basis of such custom. In execution of the decree an order was made upon the officer of the Public Works Department in whose employ the coolies were, attaching "all moneys which are or may become payable to the debtors, whether on their own personal account or on account of the coolies over whom they were sirdars." *Held,* the attachment could not be maintained. The wages of the coolies were not liable to attachment under section 236 or 237 of Act VIII of 1859. SAJIWAN *v.* GOPAL . **1 B. L. R., S. N., 15 [10 W. R., 149**

82. ——— Money paid for spinning cotton.—*Civil Procedure Code, Act X of 1877, s. 266, cl. (j).—Labourer.—Wages.*—Persons who agree to spin cotton belonging to a spinning and weaving company, and to receive a certain amount of money for a certain quantity of cotton spun by them, are labourers within the meaning of section 266 of the Code of Civil Procedure (Act X of 1877), and, therefore, their remuneration is wages which, under clause (*j*) of the section, cannot be attached in execution of a decree. JECHAND KHUSAL *v.* ABA **[I. L. R., 5 Bom., 132**

(*q*) WEARING APPAREL AND ORNAMENTS.

83. ——— Wearing apparel.—*Civil Procedure Code, 1859, s. 205.*—Necessary wearing apparel is not liable to attachment under section 205 of the Code of Civil Procedure. GANGARAM VELGI *v.* PARBHU DAYARAM . . . **9 Bom., 272**

84. ——— Ornaments.—*Civil Procedure Code, 1882, s. 266.—Attachment.—Wearing apparel.—Mangalsutra (a neck ornament).*—The *mangalsutra,* a neck ornament which is worn by a Hindu married woman during the lifetime of her husband and never removed, is a part of her necessary wearing apparel, and is exempt from execution under section 266 of the Code of Civil Procedure (Act No. XIV of 1882). APPANA *v.* TANGMMA **[I. L. R., 9 Bom., 106**

85. ——— Ornaments on person of Hindu wife.—*Execution against husband.*—Ornaments on the person of a Hindu wife, if forming part of her *stridhan,* cannot be taken under an execution against her husband. On certain occasions, however, the husband may take them, but the right is personal to him. TUKARAM BIN RAMKRISHNA *v.* GUNAJI BIN MHALOJI . . . . **8 Bom., A. C., 129**

ATTACHMENT—*continued.*

2. ATTACHMENT BEFORE JUDGMENT.

86. ——— Attachment before judgment, Effect of.—An attachment before judgment places the property in the custody of the law, but does not alter the right to it. IN THE MATTER OF GOCOOL DASS SOONDERJEE. PETUMBER MUNDLE *v.* GOCOOL DOSS SOONDERJEE **[1 Ind. Jur., N. S., 32: Bourke, O. C., 24**

87. ——— *Civil Procedure Code, 1859, ss. 83 and 84.*—In attachment before judgment under sections 83 and 84 of Act VIII of 1859, the Court does not interfere with the legal disposal of the property attached, beyond declaring that possession shall not be taken without its previous sanction, undertaking only that, if no subsequent order to the contrary be made, the property shall be forthcoming at the time of pronouncing the decree to abide whatever order it shall make about it. JAVA RAMJI *v.* JADHAVJI NATHU . **1 Bom., 224**

SAVA RAMJI *v.* JADHAVJI NATHU; EX PARTE GAMBLE . **2 Bom. Rep., 150: 2nd Ed., 142**

88. ——— *Civil Procedure Code, 1859, s. 89.*—Section 89 of the Code of Civil Procedure renders an attachment before judgment ineffectual as a bar to process of execution against the property attached in satisfaction of a decree in another suit, whether obtained before or after the attachment. ANONYMOUS CASE . . **6 Mad., 135**

89. ——— Attachment before judgment, Operation of, where there are no conflicting attachments.—If there are no conflicting attachments, a sale of property under a decree may legally follow upon an attachment made before decree. MUSTAN SAIB *v.* BROOKS . **7 Mad., 347**

90. ——— Civil Procedure Code, 1859, s. 89.—*Subsequent attachment.—Semble,*—Section 89 of the Code of Civil Procedure was introduced, not for the purpose of restraining the ordinary effect of attachment, but for the purpose of preventing the same view being taken of attachments before judgment as had been taken by the Indian Courts of the writ of sequestration. When attachment of property has preceded decree, no fresh attachment is necessary subsequent to decree. SARKIES *v.* BUNDROO BAKE **[1 N. W., Part 6, p. 81: Ed. 1873, 172**

Contra. See SATBHAWAN *v.* SAHOO BANARASEE DOSS . **2 N. W., 365**

91. ——— Writs of execution, Priority of.—*Lodging writ in office of Sheriff.*—In considering which of two writs of attachment in execution of a decree is to have priority over the other, the time when the writs are lodged in the office of the Sheriff is the criterion by which priority is to be determined, and not the time when such writs reach the hands of that officer. NARSINGDAS MULTANCHAND *v.* NAHUNURAI. SUMARMAL JOHARIMAL *v.* NAHANUBAI **[7 Bom., O. C., 183**

92. ——— Where one of several writs first reaches the Sheriff it has priority, and he has no power to deprive it of such priority and

ATTACHMENT—*continued.*

2 ATTACHMENT BEFORE JUDGMENT—*continued.*

Writs of execution, Priority of—*continued.*

transfer it to another by first executing a writ delivered to him later. DWARKANATH SHAW *v.* PRANKRISTO PAUL CHOWDHRY . **Bourke, O. C., 260**

93. ——— Priority.—*Civil Procedure Code, 1859, s. 81.—N. S.*, and subsequently *J. S.*, filed plaints and obtained attachment orders against *J. P.'s* property. *J. S.*, who got a decree on the 13th and an order for sale on the 16th of February, claimed priority. Claim disallowed. *Held*, that of several creditors who have attached a debtor's property under section 81 of Act VIII of 1859, the one who first obtains judgment is entitled to priority. JUGGURNAUTH SHAW *v.* ISSURCHUNDER ROY

[Bourke, O. C., 146

LUTCHMEEPUT DOGAREE *v.* KENARAM SEN

[1 Ind. Jur., N. S., 393

SHUMBHOONATH GHOSE *v.* NOBINMONEY DOSSEE

ROBERT AND CHARRIOL *v.* NOBINMONEY DOSSEE

[Bourke, O. C., 92

94. ——— Attachment, Effect of.—*Necessity of subsequent attachment.—Civil Procedure Code, 1859, s. 89.—R. R.* filed a plaint against *I. R.* on the 15th, and obtained a decree on the 27th of February, and a prohibitory order was made against *I. R.'s* property on the 18th of March, subject to three prior attachments; one by *J. S.*, whose plaint was filed on the 30th of January, and obtained a prohibitory order on the 13th and a decree on the 16th of February; a second by *N. S.*, who filed his plaint and obtained a prohibitory order on the 30th of January, and obtained a decree on February 22nd; and a third by *K. S.*, who also filed his plaint and got a prohibitory order on January 30th, and a decree on February 28th for an order for the sale of the goods on notice to the other three plaintiffs; and the Court ruled that *N. S.* and *K. S.* were entitled to priority over *R. R. Held*, that the process in attachment before judgment is in all respects the same as in cases of attachment after judgment, and the effect in binding the property attached, so as as prevent alienation, is the same. That an attachment, whether before or after judgment, places the property in the custody of the law. That if property have been attached before judgment, there is no need of a second attachment in the same suit after judgment. That the words "attachment before judgment," in section 89 of Act VIII of 1859, must be read as equivalent to "attachments in pending suits," or, in other words, the phrase "before judgment" must be read as meaning "until after judgment." RAJCHUNDER ROY *v.* ISSERCHUNDER ROY. . . **Bourke, O. C., 139**

95. ——— Jurisdiction of High Court.—*Property situate out of jurisdiction.*—The High Court has no power to attach before judgment a defendant's property situate outside the limits of its ordinary original civil jurisdiction. NUR MUHAMMAD *v.* ABUBAKAR IBRAHIM MEMAN

[8 Bom., O. C., 29

ATTACHMENT—*continued.*

2. ATTACHMENT BEFORE JUDGMENT—*continued.*

Jurisdiction of High Court—*continued.*

96. ——— Act XXIII of 1840.—*Warrant by Mofussil Court.*—It was competent to the High Court, under Act XXIII of 1840, to order a warrant of attachment before judgment issued by a Mofussil Court to be executed within the limits of the High Court's ordinary original civil jurisdiction. IN RE ABRAHAM

[6 Bom., A. C., 170

97. ——— Civil Procedure Code, 1859, s. 81.—*Execution of decree.—Endorsement of decree under Act XXIII of 1840, s. 1.*—The words in section 81 of Act VIII of 1859, "where the defendant is about to dispose of his property or any part thereof," refer only to property within the jurisdiction of the Court where the suit is pending; therefore, where an order under that section by the First Subordinate Judge of the 24-Pergunnahs in respect of property in Calcutta was sent up to the High Court, in order that it might be endorsed in accordance with the provisions of section 1 of Act XXIII of 1840, the High Court refused to endorse it. BALARAM MULLICK *v.* SOLANO . **8 B. L. R., 335**

98. ——— Grounds of application.—*Suit not commenced.—Civil Procedure Code, 1859, s. 81.*—In an application made under section 81, Act VIII of 1859, the Court must be satisfied that a removal of goods is being made, or about to be made, with a view to evade the execution of a decree in a specific suit, though it is not necessary that the suit should be actually commenced at the time of their removal. RAMNARAIN PODDAR *v.* LEVY

[2 Hyde, 183

99. ——— Property within jurisdiction.—*Civil Procedure Code, 1877, s. 483.*—The words "any portion of his property" in the latter part of section 483 of the Code of Civil Procedure, 1877, mean any portion of the property of the defendant which is within the jurisdiction of the Court in which the suit is pending. KEDAR NATH DUTT *v.* SEEVA VEYANA RANA LUCHMAN CHETTY

[1 C. L. R., 336

100. ——— Property not in jurisdiction.—*Civil Procedure Code, 1882, ss. 483, 484.*—Under the provisions of sections 483 and 484 of the Code of Civil Procedure, 1882, property of the defendant, which is not within the jurisdiction of the Court, cannot be attached before judgment. KRISHNASAMI *v.* ENGEL . . . **I. L. R., 8 Mad., 20**

101. ——— Security for satisfaction of decree.—*Civil Procedure Code, 1877, s. 484.—Security.*—The defendants were, on the 10th of March 1881, called upon, under section 484 of the Civil Procedure Code (Act X of 1877), to furnish security for the satisfaction of a decree that the plaintiff might obtain against them, or to show cause on the 28th March 1881 why security should not be furnished. To this direction the order was appended, which is provided by the form at the end of the Code of Civil

ATTACHMENT—*continued.*

2. ATTACHMENT BEFORE JUDGMENT—*continued.*

Security for satisfaction of decree—*continued.*

Procedure for a provisional attachment under section 484. The defendants, to avoid the attachment, gave security on the 12th March 1881, for satisfaction of the decree, and the attachment was not carried out. On the 28th March 1881, they showed cause why security should not be furnished, but the Subordinate Judge, as security had been furnished; thought the matter was at an end, and that he could not cancel the security bond. *Held*, that the Subordinate Judge was wrong; the security so given was really not the security expressly provided under section 484, and did not preclude the defendants from showing cause why no security should be furnished. LOTLIKAR *v.* LOTLIKAR . . . **I. L. R., 5 Bom., 643**

102. ——— Grounds for granting application.—*Defendant leaving jurisdiction to avoid or delay process—Civil Procedure Code, 1859, ss. 74, 75.*—Applications under sections 74 and 75, Act VIII of 1859, on the ground first mentioned in section 74, must show at least that defendant is about to leave the jurisdiction, with a view to avoid process, or to delay the plaintiff in the prosecution of his suit. Evidence sufficient to support this must be adduced in all cases. TEENARAM *v.* RAMBUTTON

[2 Hyde, 181

103. ——— *Defendant leaving jurisdiction or dealing with property so as to make it unavailable.—Ground for arrest of debtor.*—A creditor is not entitled, merely because he has a just demand against his debtor, to move the Courts to put in force the extraordinary processes of arrest or attachment on mesne process; he must also have good reason to believe that his debtor is about to depart from the jurisdiction of the Court, or to deal with his property in such a manner that it will be unavailable for satisfaction of the claim against him. GOUTIERE *v.* CHARRIOL

[1 N. W., Part 2, p. 32: Ed. 1873, 91

104. ——— *Defendant leaving India.—Good cause.—Civil Procedure Code, 1859, ss. 74-80.*—When it appears *primâ facie* that the defendant is going to leave India with intent to remain absent so long that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant, he will be ordered, unless he show good cause, to find security for the amount of the claim and the costs of the suit. And "good cause" must be either (1) that he is not going to leave India, or not for so long a time as will obstruct, or be likely to obstruct, the plaintiff, should he succeed; or (2) that the suit is not a *bonâ fide* one; or (3) that even if it is, the institution of it has been vexatiously delayed till the defendant is about to depart from India, in order to embarrass or coerce him. SPENCE'S HOTEL COMPANY *v.* ANDERSON

[1 Ind. Jur., N. S., 294, note

105. ——— *Defendant leaving jurisdiction.—Civil Procedure Code, 1859, s.*

ATTACHMENT—*continued.*

2. ATTACHMENT BEFORE JUDGMENT—*continued.*

Grounds for granting application—*continued.*

80.—It is not necessary for the plaintiff to show that the defendant intends to obstruct or delay the plaintiff in execution of his decree, in order to justify an application to the Court for his arrest before judgment under Act VIII of 1859, section 80: it is enough if his going away will have that effect. AGRA AND MASTERMAN'S BANK *v.* MINTO

[1 Ind. Jur., N. S., 265

106. ——— *Defendant leaving the jurisdiction.—Repairs of ship, Suit for price of.*—The defendant having employed the plaintiffs to do repairs to his ship on the promise that they would be paid for out of the proceeds of a letter of credit from the owners for that purpose, afterwards drew bills on the credit for other purposes. The defendant being about to leave Calcutta, on the application of the plaintiffs an attachment order was issued against him and the proceeds of the bills in the hands of *P.'s* agent. CALCUTTA DOCKING COMPANY *v.* PASSMORE

[Bourke, O. C., 125: Cor., 151

107. ——— *Arrest of master and part owner of ship where ship was lost.—Repairs of ship, Suit for price of.*—In an action for repairs, where the ship had been lost, the Court granted an order for personal arrest of the defendant, the master and part owner, under section 80 of Act VIII of 1859. CHARRIOL *v.* COURTOIS . **Cor., 123**

108. ——— *Disposing of property to delay or obstruct execution.—Civil Procedure Code, 1882, s. 483.*—Before proceeding under section 483 of the Civil Procedure Code to attach property, the Court should be thoroughly satisfied that the defendant is really disposing of his property with intent to obstruct or delay the execution of any decree that may be passed against him. SHOSHEE SHEKHORESWAR ROY *v.* HARO GOBIND BOSE

[13 C. L. R., 356

109. ——— Residence.—*Civil Procedure Code, 1882, s. 648.—Arrest before judgment.*—Where an officer proceeding from Burma to England on leave resided a few days in Madras on the way,—*Held*, that such residence was sufficient, for the purpose of section 648 of the Code of Civil Procedure, to render him liable to arrest before judgment. EVERET *v.* FREEE . . . **I. L. R., 8 Mad., 205**

3. ATTACHMENT OF PERSON.

110. ——— Attachment against person and property simultaneously.—*Civil Procedure Code, 1859, ss. 201, 207.—Act XXIII of 1861, s. 15.—Discretion of Court.*—Under section 201 and other sections cited of Act VIII of 1859, a judgment-creditor has uncontrolled option whether he will proceed in the first instance against the person or the property of his judgment-debtor; and by section 15, Act XXIII of 1861, the Small Cause Court

ATTACHMENT—*continued.*

3. ATTACHMENT OF PERSON—*continued.*

Attachment against person and property simultaneously—*continued.*

is bound to issue execution according to the nature of the application, if made in writing after the passing of the decree under section 207, Act VIII of 1859. The Court may, at its discretion, refuse execution against the person and property at the same time or against the same person when, under Section 13, Act XXIII of 1861, or under section 19, Act XI of 1865, application for immediate execution is made verbally at the time of passing the decree. DAVIS *v.* MIDDLETON . . . . **8 W. R., 282**

111. ——— *Absconding debtor.*—Where a defendant, against whose person an attachment in execution has been issued, absconded, a second attachment against his moveable property was granted, and the writ of attachment against the person was not recalled. GREGORY *v.* HADJEE ESSUFF COONJEE **[1 Ind. Jur., N. S., 244**

112. ——— **Second application for attachment.**—*Discretion of Court.*—*Held* by PHEAR *J.*, that, under the Code of Civil Procedure, 1859, a Court was not bound to grant, as a matter of course, a second application from a judgment-creditor for attachment, but ought always to require him to show why the steps previously taken did not lead to a full discharge of the debt, and ought not to grant its process a second time unless satisfied that the failure was not attributable to the applicant's own fault. BYJNATH PUNDIT *v.* KUNHYA LALL PUNDIT **[9 W. R., 527**

113. ——— *Discretion of Court.*—*Act VIII of 1859, s. 221.*—In execution of a decree a writ was issued against the defendant, who had not any property within the jurisdiction of the High Court. The first writ was made returnable in a month. Another writ, returnable in the same time, was issued, the first not being successful, but the defendants were not found. An application for a writ returnable in one year was refused. *Held*, on appeal, *per* PEACOCK, *C. J.*, that although the Judge had a discretion to refuse the writ under section 221, Act VIII of 1859, yet the fact that the plaintiff had not used the utmost possible diligence was not sufficient ground on which the writ should be refused. *Per* MACPHERSON, *J.*—The Court had a discretion under section 221, and ought not to grant the writ where it is not satisfied that the parties have used every reasonable endeavour to execute former ones that have expired; as the former writs were returnable in so short a time, however, in this case the writ ought to be granted. NITTAI CHANDRA PAL *v.* THAKUR DAS BISWAS . **8 B. L. R., 258, note**

KALEE CHUNDER PAUL *v.* THAKUR DAS BISWAS **[12 W. R., O. C., 7**

114. ——— **Attachment and discharge.**—*Further execution against debtor's property.*—After a debtor has been arrested in execution of a decree and discharged at the request of the creditor, his personal property may be taken in execution under the same decree. JANOKI SINGH ROY *v.* KALOO MUNDUL **[B. L. R., Sup. Vol., 889 : 9 W. R., 178**

ATTACHMENT—*continued.*

3. ATTACHMENT OF PERSON—*continued.*

Attachment and discharge—*continued.*

115. ——— **Non-satisfaction of decree against property of judgment-debtor.**—*Right to attach person.*—Where a judgment-creditor had obtained a writ of attachment against the property of his judgment-debtor, but the debtor had no property to the knowledge of the creditor against which the attachment could be enfored,—*Held* (reversing the decision of the Court below), that he was entitled to an order for execution of the decree by attachment of the person of the debtor. SETON *v* BIJOHN **[8 B. L. R., 255 : 17 W. R., 165**

116. ——— **Option of proceeding against person or property.**—*Civil Procedure Code, 1877, 1882, s. 254 (1859, s. 201).*—*Execution of decree.*—*Ex parte decree.*—Under section 201 of Act VIII of 1859, a judgment-creditor has the option of enforcing his decree against the person or property of the judgment-debtor, and the fact that such decree is an *ex parte* one makes no difference. RAJ CHUNDER ROY *v.* SHAMA SOONDARI DEBI **[I. L. R., 4 Calc., 583**

117. ——— **Arrest and discharge of debtor,**—*Re-arrest.*—*D. M.*, a prisoner for debt, having been discharged for non-payment of subsistence-money, the execution-creditor applied for a rule *nisi* for his re-arrest, or for a new writ. *Held*, that a prisoner once discharged, on non-payment of his subsistence-money, cannot be re-arrested, nor can a new writ be issued against him for the former debt, and that the principle that no man shall be twice vexed on the same charge applies here. *Per* MORGAN, *J.*—That there may be a distinction between the words "release" and "discharge" in Act VIII of 1859, and that the arrest of the person is not the full satisfaction here that it is under English law. IN THE MATTER OF DWARKALALL MITTER . **Bourke, O. C., 109**

118 ——— *Re-arrest.*—*Distinction between arrest and imprisonment.*—The Code of Civil Procedure expressly preserves a distinction between arrest and imprisonment, and the immunity from further process is only generated by actual confinement. A second arrest, therefore, held to be legal CHINGALRAYA CHETTY *v.* SUBBIAH . **6 Mad., 84**

119. ——— **Warrant of arrest, Power of detention under.**—*Illegal detention.*—The warrant of arrest in execution of decree empowers the Sheriff only to arrest the defendant in execution, and detain him for such reasonable time as is sufficient to allow of his being brought before the Court, and having an opportunity of applying for his discharge; the detention of such prisoner by the Sheriff after such reasonable time, without further authority of law, is illegal. IN RE SUMBOO CHUNDER HALDAR. IN RE DURGAPERSAUD MITTER. IN RE RAKHAL DOSS **[Bourke, O. C., 59**

ATTACHMENT—*continued.*

3. ATTACHMENT OF PERSON—*continued*

120. ——— - Imprisonment, Period of.—*Subsequent arrest in execution.—Civil Procedure Code, Act XIV of 1882, ss. 481 and 342.*—The defendant was arrested before judgment, and on the 5th February 1883, committed to jail under section 481 of the Civil Procedure Code. On the 6th March following a decree in the suit was passed against him. On the 28th July, the defendant being then still in jail under the order of the 5th February, the plaintiff took out a fresh warrant of arrest in execution of the decree, and sought to have the defendant further imprisoned for the full period of six months limited by section 342 of the Code. *Held*, that the defendant could be re-committed to jail, in execution of the decree, only for such a period as, together with the period of imprisonment that had elapsed since the passing of the decree, would complete a period of six months,, and that consequently, he would be entitled to be liberated on the 5th September 1883. Imprisonment under section 481 becomes, after decree, imprisonment in execution of the decree, and the imprisonment suffered after that date must consequently be taken into consideration in calculating the period of six months, which, by section 342 of the Code, is the limit allowed for an imprisonment in execution of a decree. GHANASHAMDAS GOOBSAMULL *v.* JOHARIMULL KEDARINATH **[I. L. R., 7 Bom., 431**

121. ——— Imprisonment, Several periods of.—*Right to discharge.*—A judgment-debtor, who has been imprisoned in execution of a decree, if the several periods of his imprisonment be added together, for more than the maximum period for which he can be legally kept in prison, is entitled to his release. KHODA BUKSH *v.* SHUKR-OOLLAH **[5 N. W., 220**

122. ——— Order for arrest before judgment, Form of.—*Civil Procedure Code, 1877-1882, s. 481 (1859, ss. 78 and 276).—Commitment in execution of decree.*—An order for the arrest before judgment of a debtor made in the form directed by section 78 is after judgment has passed a commitment in execution of a decree, within the meaning of section 276. RAMPERSAUD ROY *v.* CALLACHAND DOSS . . **Bourke, O. C., 423**

123. ——— Discharge of judgment-debtor on offer to place estate at disposal of Court—*Act of bad faith subsequent to discharge.—Civil Procedure Code, 1859, ss. 273, 275.*—A judgment-debtor having been arrested in 1871, offered to place his estate at the disposal of the Court, and was examined on oath as to the particulars of the estate and discharged from custody. His estate was never taken possession of, and part of it was subsequently disposed of by him to a stranger. *Held*, that he was not liable to be arrested again in execution of the decree. VENKATAKRISHNA CHARYA *v.* COELHO **[I. L. R., 6 Mad., 170**

124. ——— Decree payable by instalments.—*Execution by arrest and imprisonment.—Civil Procedure Code (Act X of 1877), s. 341.*—In the execution of a decree payable by instalments, the judgment-debtor cannot be arrested and imprisoned separately for default in the payment of each instalment. DAMODAR SHALIGRAM *v.* MALHARI **[I. L. R., 7 Bom., 106**

ATTACHMENT—*continued*

3. ATTACHMENT OF PERSON—*continued.*

Decree payable by instalments—*continued.*

125. ——— Simultaneous execution by arrest and attachment of property.—*Attempt to evade payment.*—A warrant of arrest directed to be issued against the judgment-debtor, notwithstanding the previous proceedings by attachment, the Court being satisfied that the judgment-debtor was determined to evade, if possible, the payment of his debt. CHENA PEMAJI *v.* GHELABHAI NARANDAS . . . **I. L. R., 7 Bom., 301**

126. ——— Re-arrest of judgment-debtor.—*Power of Court to arrest without petition.*—It is not within the competence of a Judge to direct the re-arrest of a judgment-debtor without any petition or motion of the decree-holder to that effect. SHIB RAM MUNDLE *v.* ROHEEMTOOLLAH **[15 W. R., 69**

127. ——— *Civil Procedure Code, 1882, s. 341.—Non-payment of subsistence-money.—Discharge.*—The discharge of a judgment-debtor before imprisonment on account of the non-payment of the subsistence-money for the debtor is no bar to the debtor being re-arrested. SUBBA *v.* VENKATTA . . . **I. L. R., 8 Mad., 21**

128. ——— Discharge of debtor.—*Civil Procedure Code, 1882, s. 336.—Discharge of judgment-debtor arrested under decree of High Court.—Right of discharge.—Intention to be adjudicated insolvent.*—A judgment-debtor having been arrested in execution of a decree of the High Court in its Original Civil Jurisdiction and brought before the Court under the provisions of section 336 of the Code of Civil Procedure, claimed to be discharged on the ground that he intended to apply to the Court to be declared an insolvent either under the provisions of Chapter XX of the Code or of 11 and 12 Vict., Chap. 21. *Held*, that the judgment-debtor, on expressing his intention to file a petition and schedule under 11 and 12 Vict., Chap. 21, and complying with the conditions of section 336 of the Code of Civil Procedure, was entitled to be discharged. EX PARTE PINSENT . . . **I. L. R., 8 Mad., 276**

129. ——— *Civil Procedure Code, 1882, ss. 336, 341, 344, 349.—Judgment-debtor.—Imprisonment.*—Sections 336 and 349 of the Code of Civil Procedure, 1882, are applicable to judgment-debtors under arrest but not committed to jail. A judgment-debtor committed to jail can only be discharged under section 341. IN RE QUARME **[I. L. R., 8 Mad., 503**

130. ——— Arrest of debtor in execution of decree.—*"Arrest," Meaning of.—Insolvent judgment-debtor.—Civil Procedure Code (Act X of 1882), s. 349.—"Arrest," "imprisonment," Meaning of.—Procedure where two methods of protection are open to the debtor.*—A judgment-debtor arrested in execution of a decree for money, who has not, on his

ATTACHMENT—*continued.*

3. ATTACHMENT OF PERSON—*continued.*

Arrest of debtor in execution of decree —*continued.*

committal to jail, expressed his intention of applying to be declared an insolvent under Chapter XX of the Code of Civil Procedure, is nevertheless entitled during his imprisonment to make an application for that purpose; and the Court may, under section 349, pending the hearing of such application, release him on his finding security to appear when called upon. The word "arrest" in section 349 should be read as meaning "under detention" or "detained in custody." Where the Legislature has provided two methods by which a debtor can obtain protection from arrest or other serious consequences, and if one of those methods, in any particular case, turns out to be more favourable to the debtor than the other, the Courts will not deprive him of that advantage. IN THE MATTER OF HASTIE . **I. L. R., 11 Calc., 451**

131. ——— Warrant of arrest.—*Imprisonment in jail other than that named in warrant.—Release.—Civil Procedure Code (Act XIV of 1882), ss. 336, 337.*—A Sheriff's officer, of his own motion, delivered over to the officer in charge of the Alipore Jail, a judgment-debtor who had been duly committed to the Presidency Jail. *Held*, that the imprisonment was unlawful; that the delivery over to the officer in charge of the Alipore Jail amounted to a release; and that the prisoner was entitled, therefore, to be discharged. SHAMSONESSA BEGUM *v.* LOVE **[I. L. R., 11 Calc., 527**

132. ——— Re-arrest of debtor under same decree.—*Release on recognizance.—Surrender under recognizance.—Recognizance, Expiry of.—Arrest, Fresh application for.—Civil Procedure Code (Act XIV of 1882), ss. 239, 241, 341, 349, 357.—Writ of attachment.—Criminal Procedure Code (Act X of 1882), s. 491.*—A judgment-debtor once arrested and imprisoned in execution of a decree, cannot under the Civil Procedure Code be again arrested under a fresh writ of attachment on the same decree. SECRETARY OF STATE FOR INDIA IN COUNCIL *v.* JUDAH . **I. L. R., 12 Calc., 652**

133. ——— Arrest of purdah-nashin lady.—*Entering zenana.—Civil Procedure Code (Act X of 1877), s. 336.*—It is not necessary that a special order of Court should be made, empowering an officer authorized to arrest a purdah-nashin lady to enter the zenana of the house in which she resides. Under section 336 of the Civil Procedure Code, if the officer is able to enter the house, he may break into any room in the house, including the zenana, in order to effect the arrest. KADUMBINEE DOSSEE *v.* KOYLASHKAMINEE DOSSEE **[I. L. R., 7 Calc., 19: 9 C. L. R., 25**

See DOORGA CHURN MITTER *v.* HUREE MOHUN GOOHO . **17 W. R., 86**

134. ——— Married woman.—*Imprisonment for debt.*—Married women, against whom personal decrees for debt have been made, are not exempt from arrest or imprisonment in execution of such decrees under the Code of Civil Procedure. LAKSHMANA *v.* KULLAMMA . **I. L. R., 9 Mad., 99**

ATTACHMENT—*continued.*

4. MODE OF ATTACHMENT AND IRREGULARITIES IN ATTACHMENT.

135. ——— Attachment without sale. —*Sale in execution of decree.*—Under the Code of Civil Procedure, property may be attached without view to immediate sale. SARODA PROSAD MULLICK *v.* LUTCHMEPUT SINGH DOOGUR **[10 B. L. R., 214: 17 W. R., 289 • 14 Moore's I. A., 529**

136. ——— Sale without attachment. —*Civil Procedure Code, 1859, s. 207.*—Property must, under Act VIII of 1859, be attached before being sold in execution of decree, the words "attachment and sale" in section 203 being taken together and not read distributively. DENONATH RUCKIT *v.* MUTTY LALL PAUL **[1 Hyde, 158: 1 Ind. Jur., O. S., 125**

137. ——— Attachment of debts.—*Written notice.—Civil Procedure Code, 1859, s. 236.*—When the property to be attached consists of debts, a written notice of attachment is necessary under section 236, Act VIII of 1859. Until the debtor receives such notice, he is bound to pay the amount of his debt to the creditor whose right to receive it has been declared by a decree of Court, and it is no part of the duty of the debtor to make enquiries whether his creditor is or is not entitled to receive the money. THAKOOR DAS SINGH *v.* LUCHMEEPUT DOOGOR **[7 W. R., 10**

138. ——— Proclamation of sale, Issue of.—*Civil Procedure Code, 1859, s. 285.—Property not in jurisdiction.*—Where an attachment is made under section 235, Act VIII of 1859, the only further process required to bring the property to sale is the due issue of the proclamation of sale: the property need not be attached. If the property be not within the jurisdiction of the Court whose duty it is to execute the decree, the course to be followed by the decree-holder is that prescribed in sections 285 and following. MOOKTA KESHEE DEBEE *v.* KUNUCK MONEE DEBEE **[7 W. R., 267**

139. ——— Attachment by Court which did not pass decree.—*Civil Procedure Code, 1859, s. 285.*—The attachment of immoveable property by a Court other than that which passed the decree before the decree had been sent to it for execution, vitiates the sale subsequently made of that property, as not being made in strict observance of the procedure prescribed by Section 285 of Act VIII of 1859. SHURUTOOLAH MERDHA *v.* GOOROO CHURN DASS . . . . **8 W. R., 310**

140. ——— Sale of shares of zemindari hypothecated by lessee for arrears of rent.—Where the shares of a zemindari hypothecated by the lessee are to be sold to recover arrears of rent due to the Court of Wards, no attachment is necessary, and the Collector has no power to attach the property previous to sale. JOGESSUR SAHOY *v.* GOPAL LALL . . . . **13 W. R., 173**

141. ——— Estates paying revenue to Government.—*Civil Procedure Code, 1859, s. 213.*

ATTACHMENT—*continued.*

4. MODE OF ATTACHMENT AND IRREGULARITIES IN ATTACHMENT—*continued.*

Estates paying revenue to Government —*continued.*

—In attaching an estate paying revenue to Government, the attaching creditor must, in addition to the information required by the 1st clause of section 213, Act VIII of 1859, in respect of ordinary immoveable property, give also the special information indicated in the latter clause of that section, that section being cumulative in respect of estates paying revenue to Government. AJOODHIYA DOSS *v.* SHEO PERSHUN SINGH . . **11 W. R., 175**

142. ——————— *Notice of attachment.—Civil Procedure Code, 1859, s. 213.*—The intention of section 213, Act VIII of 1859, is that the description in a notice of attachment should be sufficient to identify the property; and in the case of an estate paying revenue to Government, that there should be a specification of the revenue. LACK RAM *v.* MOHESH DASS . . **[12 W. R., 488**

DHERAJ MAHTAB CHUND *v.* BURODANATH MUNDUL . . . . . **18 W. R., 411**

143. ——————— *Notice of attachment.—Civil Procedure Code, 1859, s. 213.*—Where a property was described as a lakheraj tank with four banks, the boundaries of which were given, the identification was held to be fully made out. DHERAJ MAHTAB CHUND *v.* BURODANATH MUNDUL **[18 W. R., 411**

144. ——— **Decree directing sale of certain property and, in case of non-satisfaction, of other property.**—*Right to attach and sell first property, Effect of failure to get satisfaction from second property on.*—Where a decree directs the sale of *A.'s* property first, and then of *B.'s*, if the decree-holder is unable, from opposition, to sell *A.'s* property, and proceeds against *B.'s*, and cannot realize his decree therefrom, he has not lost his right to attach and sell *A.'s* property. STEPHENSON *v.* UNNODA DOSSEE . . . **6 W. R., Mis., 18**

145. ——— **Attachment of property in hands of manager.**—*Mortgaged property.—Second attachment.*—Where attached property is mortgaged by the judgment-debtor with the consent of all parties concerned, yet so as to leave some proprietary interest in the judgment-debtor, any judgment-creditor coming after the appointment of the manager and the making of the said mortgage has a right notwithstanding to attach and sell what remains of the judgment-debtor's interest in the property. An application for such second attachment cannot properly be refused by a Court, on the ground of the property being under the management of the District Court pursuant to section 243, even if the Judge's precept forbids such attachment. So far as the property sought to be attached is moveable, if in the hands of the Judge or the Judge's Court, it must be attached in the mode prescribed by the first part of Act VIII of 1859, section 239, and a notice so sent to the Judge is an effectual attachment of such moveable property, although it is refused by the Judge, whose refusal to receive the notice cannot make that no attachment which would otherwise be a good attachment. IN THE MATTER OF THE PETITION OF TEIL AND CO. TEIL AND CO. *v.* ABDOOL HYE **[19 W. R., 37**

146. ——— **Attachment and sale of mortgage-bond.**—*Civil Procedure Code, 1882, ss. 268, 274.—Lien of purchaser on mortgaged property after attachment under s. 268.*—In execution of a decree obtained by them against *J.* and *M.*, the plaintiffs attached a decree obtained by *J.* and *M.* against *D.*, and on the allegation that *J.* and *M.*, in order to avoid the consequence of this attachment, executed a *benami* conveyance of their interest under the attached decree to *B.* and *P.*, and afterwards with the same object took in adjustment and satisfaction of that decree two bonds in favour of *R.* and *I.*, respectively, by which immoveable property was pledged as collateral security, the plaintiffs attached these two bonds by prohibitory order, under section 268 of the Civil Procedure Code, and purchased them at the sale in execution of their decree. In a suit on the bonds against *D.* as the principal defendant with *J.*, *M.*, *B.*, *P. R.*, and *I.* joined as parties,—*Held*, that the plaintiffs were entitled to enforce the lien created by the bonds against the immoveable property specified in them, notwithstanding that no attachment had been made in accordance with the provisions of section 274 of the Code; a debt secured by a mortgage lien on immoveable property not being "immoveable property" within the meaning of that section. DEBENDRA KUMAR MANDEL *v.* RUP LALL DASS **[I. L. R., 12 Calc., 546**

147. ——— **Irregularity in attachment.**—*Beng. Reg. VII of 1825, s. 7.—Omission to require security.*—An attachment made under Bengal Regulation VII of 1825, without first requiring security as directed by section 7 of that Regulation, was held to have been irregularly made, but the irregularity was not one which affected the jurisdiction of the Court or made the attachment void. KHODAJANINISSA *v.* STEVENS . **20 W. R., 433**

148. ——————— *Civil Procedure Code, 1859, s. 239.—Immaterial injury.*—An attachment of immoveable property is not voidable merely because all the forms prescribed in section 239, Code of Civil Procedure, have not been followed, when the irregularities complained of are immaterial and not productive of any substantial injury to the person who objects to the proceedings. KOORANEE DASSEE *v.* BHUBUN MOHINEE DOSSEE **[6 W. R., Mis., 52**

149. ——————— *Attachment of more property than is necessary.*—Where the decree-holder wantonly attached more property than was necessary for the discharge of his claim, the Court may order sequestration of only a portion of the property attached. PURSOTUM DOSS *v.* OODEY NARAIN MULL . . . **1 Agra, Mis., 3**

ATTACHMENT—*continued.*

4. MODE OF ATTACHMENT AND IRREGULARITIES IN ATTACHMENT—*continued.*

Irregularity in attachment—*continued.*

150. ——— *Attachment for arrears of rent.—Notice of attachment before portion of arrears became due.*—Where property was attached for arrears of rent,—*Held*, that the attachment was not vitiated by the circumstance that notice of the attachment was given before a portion of the arrears claimed had become due. KAMALA NAYAK *v.* RANGA RAU . . . . . **1 Mad., 24**

151. ——— *Copy of order for attachment not fixed in Collector's office.—Civil Procedure Code, s. 274.—Copy of order for attachment not fixed up in Collector's office.*—In execution of a money-decree, an order was issued, under section 274 of the Civil Procedure Code, for the attachment of property which was the joint ancestral estate of the judgment-debtor and his father. A copy of this order was not fixed up in the office of the Collector of the district in which the land was situate, as required by section 274. *Held* that, though the defect in the manner in which the attachment was made might render the attachment ineffectual for the purpose of voiding alienations made, the attachment was effectual against the judgment-debtor, and the defect did not afford a ground for declaring the execution proceedings ineffectual. RAI BALKISHEN *v.* RAI SITA RAM . **I. L. R., 7 All., 731**

5. ALIENATION DURING ATTACHMENT.

152. ——— **Effect on alienation of setting aside ex parte decree.**—*Civil Procedure Code, s. 240.—Validity of attachment.—Ex parte decree.*—The effect of granting an application under section 119 of Act VIII of 1859 is to declare that there has not been yet a valid decree in the suit, and thereby any attachment that has issued in execution of the decree which has been set aside becomes invalid. *A.* obtained a decree *ex parte* against *B.* Property belonging to *B.* was attached in execution. While under attachment, *B.* sold the property to *C.* Afterwards *B.* applied for and obtained an order, under section 119 of Act VIII of 1859, to set aside *A.'s* decree and for a new trial. *Held*, that *C.'s* purchase was not null and void under section 240 of Act VIII of 1859. LALA JAGAT NARAYAN *v.* TULSIRAM . **1 B. L. R., A. C., 71**

S. C. JUGGUT NARAIN *v.* TOOLSEE RAM **[10 W. R., 99**

153. ——— **Incumbrance pending attachment.**—*Right of purchaser at sale at instance of second attaching creditor.*—The purchaser of the right, title, and interest of a judgment-debtor in certain immoveable property at an auction-sale which took place at the instance of a second attaching creditor, was held to take the property subject to an incumbrance created by the judgment-debtor pending the first, but prior to the second, attachment, although the first attaching creditor was first paid out of the proceeds of the sale. *Quære,*—Whether the sale ought not to have been under the first attachment as against which the incumbrance would have been void. GURU PRASAD SAHU *v.* BINDA BIBI **[9 B. L. R., 180: 18 W. R., 279**

ATTACHMENT—*continued.*

5. ALIENATION DURING ATTACHMENT—*continued.*

Incumbrance pending attachment—*continued.*

154. ——— **Bonâ fide private alienation.**—*Act VIII of 1859 s. 240.—Held* (MARKBY, *J.*, dissenting), that a private *bonâ fide* alienation for value of property attached under Act VIII of 1859, made during the continuance of the attachment, is, by section 240 of that Act, null and void only as against the attaching creditor or persons who may acquire rights under or through the attachment, and not as against the whole world. ANANDO LALL DASS *v.* RADHAMOHUN SHAW **[2 B. L. R., F. B., 49: 11 W. R., O. C., 1**

Same case affirmed in the Privy Council. ANUND LALL DASS *v.* JULLODHUR SHAW **[10 B. L. R., 134: 17 W. R., 313: 14 Moore's I. A., 543**

RAM CHARAN LAL *v.* JHATU SAHU **[12 B. L. R., 413, note: 14 W. R., 25**

BALMOKUND *v.* RAMHIT DASS . **13 W. R., 134**

155. ——— **Effect of removal of attachment.**—*Execution struck off from laches of decree-holder.*—Certain property was attached in execution of a decree, and while the attachment was in force pottahs were granted to certain persons by the judgment-debtors. Twelve years after the attachment, no further steps having been taken in the matter, the execution case was struck off the file, and the property was afterwards mortgaged by the judgment-debtors to *R.* Subsequently, a fresh attachment was issued at the instance of the heirs of the former attaching creditor, under which the property was put up for sale subject to *R.'s* mortgage, and *R.* herself became the purchaser. In a suit by *R.* to set aside the pottahs granted during the continuance of the first attachment,—*Held*, that the prohibition against alienation of property under attachment avoids such alienation only as against the execution-creditor or persons entitled to claim under him. A conveyance executed by the judgment-debtor after an attachment has been removed, and before a fresh attachment is issued, is valid, though the second attachment is under the same execution as the first. *Quære,*—Whether an alienation of property under attachment void as against the execution-creditor becomes valid by relation when the attachment is removed. *Semble,*—It may be presumed that an execution long neglected, and finally struck off, has ceased to be operative, and in that case a judgment-creditor's title will only date from any subsequent attachment which he may obtain. PUDDOMONEE DOSSEE *v.* ROY MUTHOORANATH CHOWDHRY . . **12 B. L. R., 411: 20 W. R., 133**

GOONJESSUR KOONWAR *v.* LUCHMEE NARAIN SINGH . . . . . **20 W. R., 418**

MATONGINY DOSSEE *v.* CHOWDHRY JUNMUNJOY MULLICK . . . **25 W. R., 513**

ATTACHMENT—*continued.*

5. ALIENATION DURING ATTACHMENT—*continued.*

Effect of removal of attachment—*continued.*

Quære,—Would this decision apply where the delay was caused by the decree-holder's willingness to give his debtor every indulgence and every opportunity of repaying the debt? *See per* GLOVER, *J*, INDURJEET KOER *v.* LUCHMUN SINGH . . **24 W. R., 56**

156. ——————— *Presumption of abandonment of attachment.*—A deed of alienation of certain property made pending an attachment of the property, was held not to become valid by reason of the removal of the attachment. It does not follow because subsequent applications for attachment are made by a decree-holder that the original one is abandoned. DHIRAJ MAHATAB CHAND BAHADUR *v.* SURNOMOYEE DOSSEE

[12 B. L. R., 414, note: 15 W. R., 222

157. ——————— *Execution case struck off the file.*—Where certain immoveable property having been attached, the execution case was subsequently struck off the file, and the judgment-debtor applied again for attachment of the same property,—*Held*, looking to the particular circumstances of the case, that a private alienation of the property, after the date of such application, but before attachment, was not void under the provisions of section 240 of Act VIII of 1859. The principle of the High Court's decision in *Ahmud Hussain Khan* v. *Muhammad Azim Khan, 1 N. W., 51, Ed. 1873, 48*, followed. JAIB-UN-NISSA *v.* JAIRAM GIR . **I. L. R., 1 All., 616**

158. ——— **Alienation under irregular attachment.**—*Civil Procedure Code, 1859, ss. 239, 240.—Private alienation after attachment.*—Certain land was attached in the execution of a decree in the manner required by section 235 of Act VIII of 1859, but a copy of the order of attachment was not, as required by section 239 of that Act, fixed up in a conspicuous part or in any part at all of the Court-house of the Court executing the decree, nor was it sent or fixed up in the office of the Collector of the district in which the land was situated. Subsequently to the attachment of the land the judgment-debtor privately alienated it by sale. *Held* that, as the attachment had not been made known as prescribed by law, the provisions of section 240 of Act VIII of 1859 did not apply, and the sale was not null and void. *Indra Chandra* v. *The Agra and Masterman's Bank, 1 B. L. R., S. N., 20 · 10 W. R., 264*, followed. NUR AHMAD *v.* ALTAF ALI

[I. L. R., 2 All., 58

159. ——— **Alienation under attachment to satisfy future default.**—*Decree for money payable by instalments.—Act VIII of 1859, ss. 240, 243, 245.*—*A.* obtained a decree against *B.* for a sum payable by instalments. *B.* made default in payment of an instalment, and *A.* attached certain immoveable property belonging to *B.* While under attachment, *B.* sold the property to *C.*, and out of the proceeds paid into Court the full amount of the debt then due and for which the property had been attached. *A.* took out the money, but applied for and obtained an order from the Munsif that the property should remain under attachment, in order to satisfy any future sum which should fall due under the decree and in payment of which *B.* should make default. *B.* failed to pay a further instalment when due, and *A.* obtained an order for sale of the property. *A.* himself became the purchaser, and was put in possession by the Court, notwithstanding the claim of *C.*, who had been in possession ever since his purchase. In a suit by *C.* to recover possession,—*Held*, the Court had no power to make the order continuing the attachment, the right of attachment being only for sums actually due, and the whole amount for which execution issued being satisfied out of the proceeds, the alienation of the property to *C.* was not void as against *A.* RAMDHAN MITTER *v.* KAILAS NATH DUTT

[4 B. L. R., A. C., 20: 12 W. R., 457

160. ——— **Alienation under attachment not properly executed.**—*Suit for money paid to stay foreclosure.—Act VIII of 1859, s. 240.—Mortgage.—Lien.*—In execution of a decree, *A.*, the judgment-creditor, obtained an order for the attachment of certain property of *B.*, the judgment-debtor, but it was not executed as required by Act VIII of 1859. The property was, however, advertised for sale, and *B.* obtained an order staying the sale, on a petition alleging that *A.* had agreed to give him time on condition that the attachment should remain good, and declaring that he (*B.*) would not alienate the property until the whole of the decree was satisfied. Subsequently *B.* mortgaged a portion of this property to *C.* *A.* assigned his decree to *D.*, upon whose application the property was attached and sold, and *E.* became the purchaser. *C.* having taken steps to foreclose the mortgage, *E.*, to prevent such foreclosure, paid the amount into Court. *Held*, that *E.* could not maintain a suit against *C* to recover the amount so paid by him. The mortgage by *B.* was not an alienation null and void under section 240, Act VIII of 1859. *B.'s* petition did not create a charge upon the property in favour of *A.* RAMESWAR SING *v.* RAMTANU GHOSE

[4 B. L. R., A. C., 24

S. C. RUTNESSUR SINGH *v.* RAM TANOO GHOSE **[12 W. R., 491**

161. ——— **Alienation made under agreement for satisfaction.**—*Sanction of Court.—Civil Procedure Code, 1859, s, 240.*—The plaintiff sued to recover certain land which had been hypothecated to him in 1843, and subsequently sold to him in 1868, while under attachment in execution of a decree in a suit brought by the plaintiff to establish his hypothecatory claim. The third defendant claimed under a mortgage prior in date to the hypothecation to the plaintiff, and under a sale prior in date to the sale to the plaintiff, made to the third defendant whilst the land was under attachment in execution of the

ATTACHMENT—*continued.*

5. ALIENATION DURING ATTACHMENT—*continued.*

Alienation made under agreement for satisfaction—*continued.*

decree to the plaintiff. *Held*, that the sale to the third defendant, which was made not under any agreement with the plaintiff for the satisfaction of the decree through the Court, was invalid by reason of section 240 of the Civil Procedure Code; but that the alienation to the plaintiff, the decree-holder, during the attachment to satisfy the decree, which was duly sanctioned by the approval of the Court which issued the process of attachment, was valid. ANNAVUNADAVAN *v.* IYASAWMY PILLAI . **6 Mad., 65**

162. ——— Sale by consent of judgment-creditor.—*Subsequent withdrawal of attachment.*—Where a judgment-debtor raised a sum of money by a sale of part of the attached property and devoted some part of that money to a payment on account to the judgment-creditor, and the judgment-creditor thereupon withdrew from the execution and from the attachment of the property,—*Held*, that the attachment would not invalidate the sale. PRANNATH MITTER *v.* SUMBHOO CHUNDER NATH . . . . . **7 W. R., 430**

163. ——— Mortgage pending attachment.—*Civil Procedure Code, 1859, s. 240.*—*Held* by LOCH and E. JACKSON, *JJ.*, that a mortgage of any kind made after attachment is such an alienation as is contemplated by section 240, Act VIII of 1858, and is null and void. MUNNOO LALL *v.* REET BHUNGUN SINGH . . . **9 W. R., 544**

164. ——— Requirements of attachment not complied with.—*Civil Procedure Code, 1859, s. 240.*—Before an attachment can be relied on under section 240, Code of Civil Procedure, for the purpose of invalidating any subsequent alienation, it must be shown to have been duly made by a written order issued and published,—*viz.*, the prohibitory notice prescribed by law. DWARKANATH BISWAS *v.* RAM CHUNDER ROY . **13 W. R., 136**

165. ——— *Civil Procedure Code, 1859, ss. 235, 239, and 240.*—*Held*, that the alienation of property cannot be declared void under the provisions of section 240, Act VIII of 1859, where no attachment order was issued or notified in the manner prescribed by sections 235 and 239 of the said enactment. Where there was no attachment after the manner prescribed in Act VIII of 1859, but the property was advertised for sale, and the judgment-debtor encumbered the property with liens,—*Held*, that the decree-holder could sell the property, but subject to liens which were not otherwise proved to be collusive. SAHOO CHUND *v.* GEETUM SINGH . . . . . **2 Agra, 206**

166. ——— Civil Procedure Code, 1859, s. 240 (1882, s. 276), Object of.—*Civil Procedure Code, 1859, ss. 240, 270, 271.*—A private alienation of property while under attachment, is null and void only as regards the attaching creditor and those who claim under or through the attachment. *Anund Lall Doss* v. *Jullodhur Shaw, 10 B. L. R., 134*: *17 W. R., 313*, followed. Act VIII of 1859, section 240, is for the benefit of an attaching creditor (subsequent to, and in defiance of, whose attachment the private alienation thereby declared void has been made), and of those claiming under or through him, and not for the benefit of puisne attaching creditors, whose attachment is laid later than such private alienation. BALAJI RAM CHANDRA *v.* GAYANAN BABAJI . . . . . **11 Bom., 159**

ATTACHMENT—*continued.*

5. ALIENATION DURING ATTACHMENT—*continued.*

Civil Procedure Code, 1859—*continued.*

167. ——— Effect of good attachment on alienation.—*Voidable alienation.*—An alienation of property while under attachment is not absolutely void for all purposes and as to all persons, but voidable only, and capable of confirmation. MAHOMED ALI *v.* GOKUL CHUND **[1 N. W., 19: Ed. 1873, 18**

e.g., as in case of the decree being set aside. JUGGUT NARAIN *v.* TOOLSEE RAM . **10 W. R., 99 [1 B. L. R., A. C., 71**

168. ——— *Voidable alienation.*—*Civil Procedure Code, 1859, s. 240.*—An alienation of property attached in execution of a decree, made for the *bonâ fide* purpose of satisfying the decree in respect of which the attachment has been made, and where the consideration for the alienation is applied to, and is found to be sufficient for, the satisfaction of the decree, is not invalid under section 240 of the Code of Civil Procedure. PURMESHUR RAI *v.* HIDAYUTOOLLAH. MEHPAL RAI *v.* HIDAYUTOOLLAH . **1 N. W., 60: Ed. 1873, 114**

169. ——— Alienation after satisfaction but before removal of attachment.—*Civil Procedure Code, 1859, s. 240.*—A judgment-debtor satisfied a decree under which attachment of his property had been made. He reported the satisfaction to the Court, and on the following day he executed a mortgage of his property. The day after the execution of the mortgage the attachment was removed by the Court. *Held* that the mortgage, if *bonâ fide*, was not null and void under section 240 of the Code of Civil Procedure. BULDEE SINGH *v.* KANAHA . . **1 N. W., 71: Ed. 1873, 125**

170. ——— Private alienation, Meaning of.—*Civil Procedure Code, 1859, s. 240.*—*Insolvent Act, s. 7.*—*Vesting order.*—The expression "private alienation," in section 240 of the Code of Civil Procedure, does not refer to an alienation effected by a vesting order of the Insolvent Court under section 7 of the Indian Insolvent Act; such an alienation is rather an alienation by operation of law than one by the judgment-debtor. SARKIES *v.* BUNDHOO BAEE **[1 N. W., Part 6, p. 81: Ed. 1873, 172**

171. ——— Illegal alienation.—*Civil Procedure Code, 1859, s. 240.*—Any alienation of property after attachment is illegal under section 240, Act VIII of 1859. JADURANUND ROY *v.* BEJOY GOBIND CHOWDRY . . . **7 W. R., 511**

ATTACHMENT—*continued.*

5. ALIENATION DURING ATTACHMENT—*continued.*

Illegal alienation—*continued.*

MOORUL SINGH *v.* MOHUN KOOER [9 W. R., 167

MONOHUR LALL *v.* JUGGOMOHUN LALL [9 W. R., 307

172. ——— **Prior lease on attached property.**—Where landed property is attached in execution of a decree, the party attaching is bound by a lease obtained for it prior to his attachment. FEGREDO *v.* MAHOMED MUDESSUR [15 W. R., 75

173. ——— **Alienation after one decree and before another.**—*Civil Procedure Code, 1859, s. 240.*—Although, under the provisions of section 240 of Act VIII of 1859, a private alienation by sale of property after attachment can be impugned by the holder of the decree in execution of which it was attached, if obstructive of the execution, yet such alienation cannot be impugned by the holder of the decree, under those provisions, because it obstructs the execution of another decree obtained by him subsequently to the date of the alienation. MAHBUBAN *v.* RAHEEMUN . . . 6 N. W., 217

174. ——— **Alienation with knowledge and consent of creditor attaching.**—*Civil Procedure Code, 1859, s. 240.*—While certain immoveable property was under attachment, the judgment-debtor mortgaged it for value to the Mussoorie Savings Bank, with the knowledge of the attaching creditor, the Delhi Bank, which acquiesced in, and benefited by, the mortgage. The property was subsequently released from attachment, but was again attached, and was brought to sale in execution of the decree held by the Delhi Bank, and purchased by the defendants. The Mussoorie Savings Bank sued the auction-purchasers, claiming the right to bring the property to sale on the ground of its being under mortgage to the Bank prior to its purchase by the defendants. Its was held that under the circumstances the defendants must take the consequences of having purchased the property without having satisfied themselves as to its condition. Had it not been for the conduct of the Delhi Bank, however, the rule that a private *bonâ fide* alienation for value of property attached under Act VIII of 1859 is, by virtue of section 240 of the Act, null and void only as against the attaching creditor or persons who may acquire rights under or through the attachment, would have saved the defendants, and it would have done so notwithstanding that the sale of the property in suit took place in pursuance of a second attachment. DHURRUM DASS *v.* MUSSOORIE SAVINGS BANK [6 N. W., 296

175. ——— **Title acquired by private purchaser.**—*Incumbrance created after attachment.—Civil Procedure Code (Act VIII of 1859), s. 240.*—The title obtained by the purchaser on a private sale of property in satisfaction of a decree, differs from that acquired upon a sale in execution. Under a private sale, the purchaser derives title through the vendor, and cannot acquire a title better than his. Under an execution-sale, the purchaser, notwithstanding that he acquires merely the right, title, and interest of the judgment-debtor, acquires that title, by operation of law, adversely to the judgment-debtor and freed from all alienations and incumbrances effected by him after the attachment of the property sold. In 1858 the respondent obtained a decree against *B.* In 1863, in satisfaction thereof, he caused to be attached a decree for mesne profits made in favour of *B.* against the appellants in 1860. In May 1865 the respondent obtained an order for the sale thereof; but instead of proceeding to execution-sale, he purchased, in 1866, the whole of the mesne profits due under the decree of 1860 by private sale from *B.* Meanwhile, in September 1865, an order of Court had been made, between *B.* and the appellants, on their consent (but without the respondent being a party to it), whereby the decree for mesne profits was set off, *pro tanto*, against a prior decree for a larger amount, which the appellants had obtained against *B. Held*, that the sale of 1866 having been a private one, and not in process of execution, the respondent only obtained such title as *B.* had in the decree of 1860,—*viz.*, a title subject to the effect of the order of September 1865. DINENDRONATH SANIAL *v.* RAMKUMAR GHOSE. TARACHANDRA BHUTTACHARJIA *v.* BAIKANTNATH SANIAL . . . . I. L. R., 7 Calc., 107: L. R., 8 I. A., 65: 10 C. L. R., 281

176. ——— **Renewal of mortgage already existing.**—A renewal of a mortgage already existing on the property prior to attachment, which does not enhance the charge, is not an alienation within the meaning of section 276 of the Code of Civil Procedure. MAHADEVAPPA *v.* SRINIVASA RAU [I. L. R., 4 Mad., 417

177. ——— **Alienation under attachment making material error in description of property.**—*Civil Procedure Code, 1877, s. 276.—Attachment of immoveable property.—Private alienation after attachment.*—Application was made for the attachment in execution of a decree of a muafi holding belonging to the judgment-debtor. The numbers and areas given in such application as the numbers and areas of the lands comprised in such holding, were the numbers and areas of certain revenue-paying lands, and were not the numbers and areas of any lands held as muafi by the judgment-debtor. The order of attachment described the property as described in the application for attachment. The judgment-debtor having alienated by sale a muafi holding belonging to him, the decree-holders sued to have such alienation set aside as void under the provisions of section 276 of Act X of 1877. *Held* that, having regard to the description given in the application for attachment and the order of attachment, it could not be said that the muafi holding alienated by the judgment-debtor was under attachment at the time of the

ATTACHMENT—*continued.*

5. ALIENATION DURING ATTACHMENT—*continued.*

Alienation under attachment making material error in description of property—*continued.*

alienation, and its alienation was therefore not void under section 276 of Act X of 1877. *Held*, also, that the material misdescription of the property in this case in the order of attachment protected the alienees, who were *bonâ fide* purchasers, from having the alienation set aside as void under section 276, as the attachment could not under the circumstances be held to have been "duly intimated and made known" as required by that section. GUMANI *v.* HARDWAR PANDEY . . . . **I. L. R., 3 All., 698**

178. ——— Conveyance under award directing it.—*Civil Procedure Code, 1877, s. 276.—Decree in accordance with award—Execution of conveyance.—"Private alienation."*—By agreement between *L.* and *Q.*, the parties to a suit, the matters in difference between them were referred to arbitration. An award was made directing that *L.* should transfer certain property to *Q.* by way of sale. Between the day the award was made and the day a decree was made, in accordance with the award, such property was attached in execution of a decree against *L.* After the attachment *L.*, in compliance with the decree made in accordance with the award, executed a conveyance of such property to *Q.* *Held* by the Full Bench (affirming the decision of STRAIGHT, *J.*, and reversing that of SPANKIE, *J.*), that such conveyance was not a "private alienation" in the sense of section 276 of Act X of 1877, and was therefore not void under that section as against a claim enforceable under such attachment. QURBAN ALI *v.* ASHRAF ALI . . . **I. L. R., 4 All., 219**

179. ——— Expiry of attachment, Effect of, on alienation.—*Civil Procedure Code, s. 276.*—A private alienation of property under attachment is void, under section 276 of the Civil Procedure Code, "as against all claims enforceable under the attachment" only. Where, therefore, property attached in execution of a decree was alienated, and was after such alienation again attached, the first attachment having expired, and was brought to sale in pursuance of the second attachment, and the purchaser sued for possession of the property claiming on the ground that the alienation of the property was void under the provisions of section 276,—*Held*, that as no claim was enforced or was enforceable under the first attachment, under which the property was alienated, but the purchaser was claiming under the second attachment, such alienation could not be assailed under the provision of sections 276. GOBIND SINGH *v.* ZALIM SINGH . . . **I. L. R., 6 All., 33**

180. ——— Alienation after imperfect attachment of immoveable property.—*Private alienation after such attachment.—Civil Procedure Code, ss. 274, 276, 295, sch. IV, No. 141.*—A judgment-debtor whose property had been attached in execution of a money-decree, sold the property, and out of the price paid into Court the amount of the decree, and prayed that the attachment might be removed. While the attachment was subsisting, and prior to the sale, the holders of other money-decrees against the same judgment-debtor preferred applications, purporting to be made under section 295 of the Civil Procedure Code, and praying that the proceeds of the sale of the property might be rateably divided between themselves and the attaching creditor. The Court refused to remove the attachment until these creditors had been paid. It was found that the sale by the judgment-debtor was a *bonâ fide* transaction, entered into for valuable consideration. *Held* that, inasmuch as no order for attachment of the property was passed in favour of the decree-holders in manner provided by section 274 of the Civil Procedure Code, their claims were not entitled to the protection conferred by section 276 against private alienations of property under attachment; that these claims were not enforceable under the attachment which was made; that the sale by the judgment-debtor was valid; and that execution of the decrees could not take place. *Per* MAHMOOD, *J.*—That section 276 of the Civil Procedure Code, being a restriction of private rights of alienation, should be strictly construed; that before property can be subjected to such restriction, there must be a perfected attachment; that the orders passed under section 295 did not amount to such attachment, and that, even assuming them to amount to such attachment, they, not having been duly intimated and notified, could not make the prohibition of section 276 applicable to the case. *Mahadeo Dubey* v. *Bhola Nath Dichit, I. L. R., 5 All., 86; Anand Lall Dass* v. *Jullodhur Shaw, 14 Moore's I. A., 543: 10 B. L. R., 134; Rameswar Singh* v. *Ramtanu Ghose, 4 B. L. R., A. C., 24; Indro Chunder Baboo* v. *Dunlop, 10 W. R., 264; Gobind Singh* v. *Zalim Singh, I. L. R., 6 All., 33;* and *Gumani* v. *Hardwar Pandey, I. L. R., 6 All., 698*, referred to. GANGA DIN *v.* KHUSHALI . . **I. L. R., 7 All., 702**

181. ——— Sale of tenant's interest by landlord pending attachment by Civil Court.—*Madras Act VIII of 1865, s. 38.—Civil Procedure Code, ss. 276, 295.*—The interest of a tenant in certain land having been attached by his creditor in execution of a decree for money, the landlord attached the same land for arrears of rent, brought it to sale, and purchased it under the provisions of the Rent Recovery Act. The creditor subsequently purchased the interest of the tenant, which was sold in execution of his decree. In a suit by the landlord to have the sale to the creditor declared invalid,—*Held*, that the landlord's purchase was subject to the creditor's attachment. SUBRAMANYA *v.* RAJARAM **[I. L. R., 8 Mad., 573**

6. ATTACHMENT PENDING APPEAL.

182. ——— Attachment before judgment.—*Continuation of attachment.*—A plaintiff before judgment attached defendant's property, but

ATTACHMENT—*continued.*

6. ATTACHMENT PENDING APPEAL—*continued.*

Attachment before judgment—*continued.*

the suit was dismissed by the High Court on appeal. He filed an appeal to the Privy Council, and on his application the High Court held that it could not continue the attachment over the defendant's property pending the appeal of the plaintiff to the Privy Council; nor could it call on the defendant, respondent, to give security for the value of the property attached before being allowed to remove it. IN RE DITTA HARAKMAN SING . . 3 B. L. R., F. B., 45

S. C. IN THE MATTER OF DITTIA HARUCKMAN SINGH *v.* MODHOOSUDUN PYNE [12 W. R., F. B., 16

7. STRIKING OFF EXECUTION PROCEEDINGS, EFFECT OF, ON ATTACHMENT.

183. ——— **Revival of attachment on reversal of sale in execution of decree.**—An attachment once legally made is revived upon the reversal of the sale in execution. GUNNO SINGH *v.* MUDDUN MOHUN SINGH . W. R., 1864, 26

MOHESH NARAIN SINGH *v.* KISHNANUND MISSER [2 Ind. Jur., O. S., 1: 5 W. R., P. C., 7 Marsh., 592: 9 Moore's I. A., 324

184. ——— **Striking off case for neglect to pay tulubana fees.**—An attachment cannot subsist when the suit has been struck off for neglect to pay in the tulubana for the service of the necessary sale processes. PURBHOO DOSS *v.* GOMA BHUJUN SINGH . . . 5 W. R., Mis., 4

185. ——— **Extinguishment of attachment.**—*Act VIII of 1859, s. 270.—Execution of decree.—Striking off execution case.—Money-decree.*—*A.* obtained a decree against *C.* for possession and mesne profits, but no specific amount of mesne profits was then assessed. In 1864 *A.*, in execution of his decree, attached land belonging to *C.*, but the execution case was struck off the file in 1865. After several ineffectual proceedings, *A.* re-attached the property in March 1869. In execution of a decree against *C.*, *B.* had, in February 1869, attached the same property. The property was sold under *A.'s* attachment in May 1869, and on the application of *A.*, the Subordinate Judge, on the strength of *A.'s* attachment in 1864, gave priority to *A.'s* claim over that of *B.* The balance of the sale-proceeds, after satisfaction of *A.'s* decree, was only sufficient to cover a small portion of the decree obtained by *B.* In a suit by *B* against *A.*, under section 270, Act VIII of 1859, to recover the amount of her claim which remained unsatisfied,—*Held*, that the attachment of *A.* in 1864, on the strength of which *A.'s* claim was considered by the Subordinate Judge to have priority over that of *B.*, was not a sufficient and valid attachment under section 270. The attachment contemplated by that section means an attachment after a final money-decree. *Held*, also, that the striking off of the execution case of *A.* in 1865 caused an extinguishment of the effect of the attachment of 1864. BINDA BIBEE *v.* LALLA GOPEENATH [14 B. L. R., 323: 21 W. R., 66

ATTACHMENT—*continued.*

7. STRIKING OFF EXECUTION PROCEEDINGS, EFFECT OF, ON ATTACHMENT—*continued.*

Extinguishment of attachment—*continued.*

186. ——— *Striking off execution case.*—The striking off of an execution proceeding affects only the files of the Court and the application for sale, and does not interfere with the continuance of any attachment under the decree which is executed. NADIR HOSSEIN *v.* PEAROO THEOVILDAREE [14 B. L. R., 425, note: 19 W. R., 255

JUGOBUNDHOO SEIN *v.* BHUGWAN CHUNDER DOSS . . . . . 17 W. R., 15

187. ——— **Continuation of attachment.**—If property is once attached, the attachment will subsist, if not expressly abandoned by the party at whose suit it was issued, until an order is issued for its withdrawal, even although no further steps are taken on the attachment within a reasonable period. A mere striking of the execution case off the file by the Court, of its own motion, without notice to or consent of parties, will not invalidate an attachment. JHATU SAHU v. RAMCHARAN LAL [3 B. L. R., Ap., 68: 11 W. R., 517

RAMCHARAN LAL *v.* JHATU SAHU [12 B. L. R., 413, note: 14 W. R., 25

188. ——— *Striking off execution case.—Release from attachment.* The striking off of a case from the file, while pending in execution, does not release a property from attachment. GOLAM YABEYA v. SHAMA SUNDARI KUARI [3 B. L. R., Ap., 134: 12 W. R., 142

Contra, KHADEM HOSSEIN KHAN *v.* KALEE PERSHAD SINGH . . 8 W. R., 49

189. ——— **Attachment before and after decree.**—*Striking off execution sale proceedings.—Held*, that attachment issued after suit supersedes the attachment order obtained during the pendency of the suit, and that the former was taken off the property when the sale proceedings were struck off the file. RAM JEAWAN *v.* RAM LALL [2 Agra, 190

190. ——— **Implied withdrawal of attachment.**—The implied withdrawal of an order of attachment, even though such order was not formally withdrawn, but was understood to be withdrawn by the decree-holder, bars objection against the validity of alienation of the attached property by mortgage or otherwise. JUGUN NATH *v.* GHASEERAM [1 N. W., 32: Ed. 1873, 30

191. ——— **Case struck off for convenience of Court.**—*Stay of execution for fixed period.*—Execution cases in which a sale or other proceedings are stayed for a fixed period at the request, of the debtor, and with the consent of the decree-holder, should not be struck off till that period has expired; and if struck off for the convenience of the Court, by an order which provides for the continuance of the attachment, sale may follow within the said period

ATTACHMENT—*continued.*

7. STRIKING OFF EXECUTION PROCEEDINGS, EFFECT OF, ON ATTACHMENT—*continued.*

Case struck off for convenience of Court—*continued.*

without a fresh attachment. CHUMUN LALL CHOWDREY *v.* DOMUN LALL . . **9 W. R., 205**

192. ——— *Stay of execution for fixed period.*—Certain property having been attached and advertised for sale in execution of a money-decree, the decree-holder asked the Court to stay further proceedings for six weeks, as the debtor had made part payment, praying that the attachment might be considered to be still in force. The execution case was accordingly removed from the file. *Held*, that the order striking the case off the file for the convenience of the Court did not put an end to the attachment. *Held* (JACKSON, *J.*, dissenting), that the attachment continued in force, notwithstanding a year's delay on the part of the judgment-creditor in applying again for execution. DACOSTA *v.* KALEE PERSHAD SINGH . . . **12 W. R., 260**

193. ——— **Order striking off attachment pending appeal.**—An order striking off an attachment pending an appeal does not release the property from attachment. SHEW NARAIN SINGH *v.* MILLER . . . . **17 W. R., 234**

194. ——— **Re-attachment.**—*Abandonment of attachment.*—*Semble,*—A re-attachment of property after decree does not imply an abandonment of an attachment obtained before decree. RAMKRISHNA DAS SURROWJI *v.* SURFUNNISSA BEGUM **[I. L. R., 6 Calc., 129**

195. ——— **Stay of execution, keeping attachment in force.**—*Case struck off the files of the Court.*—Where a sale of attached property is stayed by a Court upon the application of the judgment-debtor, on condition of the attachment remaining in force, the subsequent striking off of the application for execution from the file of the Court does not affect the rights of the decree-holder. MUNGUL PERSHAD DICHIT *v.* GRIJA KANT LAHIRI **[I. L. R., 8 Calc., 51: 11 C. L. R., 113 L. R., 8 I. A., 123**

196. ——— **Order postponing sale and striking case off the file.**—*Effect of, on attachment.*—Where property has been attached in execution of decree, and the parties applied that the sale might be postponed, the Court executing the decree ordered the sale to be postponed, and the "case to be struck off the file." *Held* by the majority of the Court—the CHIEF JUSTICE, and ROBERTS, TURNER, and SPANKIE, *JJ.* (ROSS and PEARSON, *JJ.*, dissenting)—that inasmuch as there was no order passed directing the removal of the attachment, but on the contrary it appeared that it was the intention of the Court and of the parties that the attachment should continue, the direction that the case should be struck off the file of pending cases did not operate to remove the attachment. AHMUD HOSSEIN KHAN *v.* MAHOMED AZEEM KHAN . **1 N. W., 51: Ed. 1873, 48 [S. C. Agra, F. B., Ed. 1874, 175**

ATTACHMENT—*continued.*

7. STRIKING OFF EXECUTION PROCEEDINGS, EFFECT OF, ON ATTACHMENT—*continued.*

197. ——— **Case struck off file of pending cases.**—*Effect of, on attachment.*—A case of execution of decree, in which an attachment had been taken out, was struck off the file of pending cases by the order of the Court executing the decree. The plaintiff never asked for, or consented to the withdrawal of the attachment, nor did the Court by any formal order withdraw the attachment. *Held*, that the attachment was not terminated by the order which struck the case off the file of pending cases. MOOKHESHUR RAI *v.* RAMPHUL SAHOO **[5 N. W., 70**

198. ——— *Effect of, on attachment.*—The attachment of property by a judgment-creditor ceases on his execution case being struck off the file, and he is remitted to his former position of a simple judgment-creditor, and must begin *de novo* and re-attach the property before a sale at his instance can take place. LUCHMEEPUT *v.* LEKRAJ ROY . . . . . **8 W. R., 415**

199. ——— **Attachment without direction that money should be held subject to further order.**—*Dismissal of suit.*—*Effect of, on attachment.*—*Civil Procedure Code, 1859, s. 237.*—Where an attachment of money in the hands of a Deputy Collector was made by a Civil Court, without any such direction as is enjoined by section 237, Civil Procedure Code, that the money should be held subject to the further order of the Court, it was held that the attachment ceased to be binding when once the suit was dismissed. LUCHMEEPUT SINGH DOOGUR *v.* HUMPHREY . . . . . **14 W. R., 101**

200. ——— **Release of property from attachment.**—*Civil Procedure Code, 1859, s. 246.*—*Effect of decree in suit to establish right.*—Certain property having been released from attachment on a claim made under Act VIII of 1859, section 246, the attaching creditor brought a suit and obtained a decree establishing his right of attachment. *Held*, that the effect of that decree was to set aside the order of release and to restore the state of things which it had disturbed. MAHOMED WARRIS *v.* PITAMBUR SEN . . . . . **21 W. R., 435**

201. ——— **Stay of execution on security pending appeal.**—*Alienation pending attachment.*—*Striking off execution case on inability to give security.*—While an appeal from a decree was pending before the Privy Council, the decree-holder (*M.*) applied for execution, and attached the property of the judgment-debtor (*B.*), who thereupon obtained an order of the High Court for stay of sale until security could be furnished. The decree-holder having failed to furnish adequate security, the execution case was struck off. The appeal to the Privy Council having been dismissed, the decree-holder revived execution proceedings, adding costs and interest to her original claim. Upon this a third party intervened, and objected to the attachment on the ground that he had obtained a mokurrari pottah of the pro.

ATTACHMENT—*continued.*

7. STRIKING OFF EXECUTION PROCEEDINGS, EFFECT OF, ON ATTACHMENT—*continued.*

Stay of execution on security pending appeal—*continued.*

perties from *B.'s* representative. The objection having been allowed under Act VIII of 1859, section 246, *M.* brought a suit to have the mokurrari declared to be invalid and fictitious. *Held*, that plaintiff was not required to cause *M.'s* admitted proprietary right to be sold before she could maintain her suit. *Held*, that the act of the Court in striking off the execution proceeding because of the inability of the decree-holder to furnish the required security, was only for the convenience of business, and it left intact all the proceedings which had been taken up to that stage; nor did the decree-holder abandon the attachment, which was therefore subsisting when the mokurrari pottah was granted. Accordingly the alienation of the property by the pottah was invalid and inoperative. SOONDUR SINGH *v.* BUHOORIA ALUM BASHEE **24 W. R., 36**

202. ———— Sale at instance of one attaching decree-holder during the pendency of other attachments.—*Priority of attaching creditors.—Rival decree-holders.—Civil Procedure Code (Act VIII of 1859), ss. 240, 242, and 270; and Act XIV of 1882, ss. 284 and 295.*—When a property is sold in execution of a decree, it cannot be sold again at the instance of another decree-holder who may have attached it before the attachment effected by the decree-holder under whose decree it is actually sold; and when a judicial sale takes place, all previous attachments effected upon the property sold fall to the ground. KASHY NATH ROY CHOWDHRY *v.* SURBANAND SHAHA . . **I. L. R., 12 Calc., 317**

203. ———— Stay of execution and striking off case "for the present."—*Duration of attachment.—Effect of mortgage made after "striking off" of execution proceedings.*—An application for execution of a simple money-decree having been made on the 6th December 1873, and fresh attachment made thereon in terms of an arrangement between the judgment-debtor and the decree-holder, the proceedings were, on the 31st December 1873, stayed for a month, and the execution case was by an order "struck off for the present," the judgment-debtor undertaking not to alienate certain property in the meantime. Nothing was done by the decree-holder until the 30th November 1874, when a fresh application for attachment and sale was made. On the 2nd February 1874, the judgment-debtor had mortgaged the property in question. *Held*, that on that date there was no subsisting attachment, and that from that time the mortgage lien attached to the property. GUNGA GOTTI PAL *v.* RAM SUNDER DUTT **[8 C. L. R., 157**

ATTACHMENT OF FRACTIONAL SHARE IN PROPERTY.

See CLAIM TO ATTACHED PROPERTY.
[4 B. L. R., F. B., 175: 13 W. R., F. B., 63
8 W. R., 378

ATTACHMENT OF LAND, SUIT TO SET ASIDE—

See COURT FEES ACT, ss. 5 & 7.
[I. L. R., 1 Bom., 352

ATTACHMENT OF RESPONDENT.

See DIVORCE ACT, s. 36.
[11 B. L. R., Ap., 2

ATTACHMENT, ORDER REFUSING—

See APPEAL—RIGHT OF APPEAL, EFFECT OF REPEAL ON . **I. L. R., 1 All., 668**

ATTEMPT TO COMMIT OFFENCE.

See RAPE . . **I. L. R., 5 Bom., 403**

1. ———— Penal Code, s. 511.—*Mischief by fire.—Possession of a fire-ball.*—*Held* by GLOVER, *J.*, that incendiarism having, on several occasions, occurred in a village, produced by a ball of rag, with a piece of burning charcoal within it, and the prisoner one evening being discovered to have a ball of that description concealed in his dhoti, which contained burning charcoal, he is, under section 511 of the Penal Code, guilty of an attempt to commit mischief by fire. The possession of the instrument to commit mischief by fire, and the going about of the person with it, are sufficient to raise a presumption that he intended to commit the act, and had already begun to move towards the execution. These facts are sufficient to constitute an attempt. *Held* by MITTER, *J.*, that the possession of a fire-ball and moving about with it cannot support a conviction under sections 436 and 511 of the Penal Code. These facts are not sufficiently indicative of an intention to destroy a building used for human dwelling. To constitute an offence under section 511 of the Penal Code, it is not only necessary that the prisoner should have done an overt act towards commission of the offence, but that the act itself should have been done in the attempt to commit it. QUEEN *v.* DAYAL BAWRI
[3 B. L. R., A. Cr., 55

2. ———— A person cannot be convicted of an attempt to commit an offence under section 511 of the Penal Code unless the offence would have been committed if the attempt charged had succeeded. IN THE MATTER OF THE PETITION OF RIASAT ALI. EMPRESS *v.* RIASAT ALI
[I. L. R., 7 Calc., 352: 8 C. L. R., 572

3. ———— *Attempt to murder.—Inconsistency between English Law and Penal Code.*—In order to constitute the offence of attempt to murder, under section 307 of the Penal Code, the act committed by the prisoner must be an act capable of causing death in the natural and ordinary course of events. *Aliter* under section 511 taken in connection with sections 299 and 300. Therefore where the prisoner presented an uncapped gun at *F. G.* (believing the gun to be capped) with the intention of murdering him, but was prevented from pulling the trigger,—*Held*, that he could not be convicted of an attempt to murder upon a charge framed under section 307 of the Penal Code, but that under the same circumstances he might be convicted upon

ATTEMPT TO COMMIT OFFENCE.—Penal Code, s. 511—*continued.*

a charge of simple attempt to murder framed under section 511 in connection with sections 299 and 300. Apparent inconsistency between the English law with reference to attempts, as laid down in *Reg.* v. *Collins, 33 L. J. M. C., 177,* and the provisions of the Indian Penal Code, explained. REG. *v.* CASSIDY [4 Bom., Cr., 17

4. ——————— *Dacoity.*—Section 511 of the Penal Code does not apply in a case of dacoity. Where a prisoner was found guilty of an attempt at dacoity under that section, and of causing grievous hurt in such attempt under section 397, and a sentence of three years' rigorous imprisonment was passed on him, the finding was amended by striking out "Sections 397 and 511," and substituting "Section 395." QUEEN *v.* KOONER [7 W. R., Cr., 48

5. ——————— *Attempt to murder.*—A young Brahman widow was confined of a child. The chief constable of police, acting, as he stated, on information that the accused was about to kill a baby, went to search her house with a number of men, and found her lying on the first floor and discovered on the second floor a living new-born child wrapped up in a cloth with a cooking pot turned over it. The Sessions Judge convicted the accused of attempt to murder. The High Court on appeal reversed the conviction, on the ground that the evidence was insufficient to support it. REG. *v.* CHIMA [8 Bom., Cr., 164

6. ——————— *Fabricating false evidence.—Concealment of salt.*—Facts showing that an accused person had dug a hole intending to place salt therein, in order that the discovery of the salt so placed might be used in evidence against his enemy in a judicial proceeding, would justify a conviction for an attempt to fabricate false evidence. THE QUEEN *v.* NUNDA . . . . . 4 N. W., 133

7. ——————— *Intention to commit offence.*—To constitute the offence of attempt under section 511, Penal Code, there must be an act done with the intention of committing an offence, and for the purpose of committing that offence, and it must be done in attempting the commission of the offence. The provisions of section 511, Penal Code, do not extend to make punishable as attempts acts done in the mere stage of preparation. Although such acts are doubtless done towards the commission of the offence, they are not done in the attempt to commit the offence within the meaning of the word "attempt" as used in the section. THE QUEEN *v.* RAMSARUN CHOWBEY . . 4 N. W., 46

8. ——————— *Attempt to cheat.*—In a prosecution for an attempt to cheat, under sections 417, 511 of the Penal Code, the accused was charged and convicted of having at the central octroi office made false representations as to the contents of certain *kuppas* (skin vessels), the object of which was to obtain a certificate entitling him to obtain a refund of octroi duty. Prior to granting the certificate, the octroi officers examined the contents of the *kuppas* and found that the representations of the accused regarding them were untrue. In consequence of this discovery no certificate was given to him, and he was charged and convicted as above mentioned. The procedure necessary for obtaining a refund of octroi duty was that the central office, on satisfying itself that the articles produced were of the nature stated, would grant a certificate, which certificate would have to be indorsed by the outpost clerk when he passed the goods (on which refund was claimed) out of the town, and the owner would have to take back the certificate so indorsed to the central office and present it to be cashed. *Held,* that even assuming the accused to have falsely represented the contents of the *kuppas* as alleged, he had not completed an attempt to cheat, but had only made preparation for cheating, and that the conviction must therefore be set aside. QUEEN-EMPRESS *v.* DHUNDI . . I. L. R., 8 All., 304

ATTESTATION.

See CASES UNDER DEED—ATTESTATION.

See CASES UNDER WILL—ATTESTATION.

ATTORNEY.

See COUNSEL. [I. L. R., 6 Calc., 59 : 6 C. L. R., 374

See GUARDIAN—LIABILITY OF GUARDIANS. [2 Ind. Jur., N. S., 269

See LETTERS PATENT, HIGH COURT, CL. 10. [8 B. L. R., 418

See PRIVILEGED COMMUNICATION. [12 B. L. R., 249

See TAXATION OF BILL OF COSTS. [7 B. L. R., Ap., 50

See WITNESS—CIVIL CASES—PERSON COMPETENT TO BE WITNESS. [5 B. L. R., Ap., 28

1. ——————— **Striking off the roll.**—*Misconduct.*—Where an attorney knowingly prepares a conveyance containing untrue recitals of the transaction between the parties thereto, and attests the deed and a receipt for consideration-money, which, to his knowledge, was never paid, or intended to be paid, the production of such a document to the Court is sufficient ground for calling upon the attorney for an explanation of his conduct. But if such explanation be given, supported by evidence to the effect that there was no fraudulent intent, and if no fraudulent use of the deed has in fact been made or attempted, nor any injury caused thereby, it is not sufficient ground for striking the attorney off the rolls of the Court. *Semble,*—The High Court in Calcutta is not authorized in striking an attorney off the rolls when such a step would not be sanctioned by the practice of the Courts in England. IN THE MATTER OF STEWART [1 B. L. R., P. C., 55 : 10 W. R., P. C., 43

2. ——————— **Negligence.**—*Allowing clerk to file false affidavit.*—Where an attorney had been

ATTORNEY.—Negligence—*continued.*

guilty of negligence in allowing his clerk to act in his absence and file a false affidavit, and adopted it without enquiring into its character, he was suspended from practising in the High Court in its original jurisdiction for one year, but he was at liberty to practise as vakeel on the Appellate Side. It had not been proved that the clerk was acting as an attorney without a license, or had a share in the profits. Had this been so, the attorney would have been struck off the rolls. IN THE MATTER OF POORNOO CHANDRA MOOKERJEE . . . **Bourke, O. C., 377**

3. ——— **Vakalatnamah.**—*Criminal Procedure Code, 1872, s. 186.*—An attorney of the High Court when appearing to defend a person in the Criminal Court under section 186 of the Criminal Procedure Code, should not be required to file a vakalatnamah. ANONYMOUS . . **7 Mad., Ap., 41**

4. ——— **Articled clerks.**—*Assignment of articles.*—An attorney may, subject to the sanction of the Court, have any number of articled clerks at one and the same time. Articles, the covenants of which have been released, cannot be assigned. RE ARTICLES OF CLERKSHIP OF CALANOOR SOOBRAMANEYAN . . . **2 Ind. Jur., O. S., 15**

ATTORNEY, LIEN OF—

See SET-OFF—SET-OFF ALLOWED.
[I. L. R., 4 Calc., 742: 4 C. L. R., 122

ATTORNEY AND CLIENT.

See LIMITATION ACT, 1877, ART. 84; 1871, ART. 85.
[I. L. R., 1 Bom., 253, 505
[I. L. R., 7 Mad., 1

See PRIVILEGED COMMUNICATION.
[I. L. R., 3 Bom., 91
I. L. R., 11 Calc., 655
I. L. R., 4 Bom., 631
I. L. R., 12 Calc., 265

See VENDOR AND PURCHASER—INVALID SALES.
[1 B. L. R., A. C., 95: 10 W. R., 128

1. ——— **Negligence, Liability for.**—If a client places himself in the hands of an attorney, he places himself in his hands in regard to all matters having connection with the suit, and the attorney must be held liable for any negligence, even though his client do not take prompt action in the matter. ALLY NUCKEE KHAN *v.* ANLEY . **1 Hyde, 134**

2. ——— **Negligence.**—*Interference of Court, Ground for.*—Where a mate and crew applied to an attorney to obtain for them their wages in a suit against their ship, having first obtained an order for wages from the Magistrate, which order for some reason could not be enforced, the attorney thereupon stated that their case was a good one, and he required no money; but afterwards, finding that the master was suing the ship, and that the proceeds of her sale would not be sufficient to pay the wages of all, the attorney let the proceedings on behalf of the mate and

ATTORNEY AND CLIENT.—Negligence —*continued.*

crew drop, and refused afterwards to go on without funds,—*Held*, that this was negligence and want of skill in the attorney sufficient to justify the summary interference of the Court, and to warrant it in making an order for the attorney to proceed with the suit, and to deprive him of costs already incurred. IN THE MATTER OF AN ATTORNEY AND PROCTOR
[1 Ind. Jur., N. S., 305

3 ——— **Power to compromise.**—*Want of client's consent.*—A decree (embodying the terms of a compromise) made in open Court, upon the consent of counsel duly instructed, is binding as between the parties to the suit, although the attorney of the defendant has no authority from his client to consent to such decree, or even though he is expressly directed not to compromise, provided such want of authority is not known to the other side. *Semble*,—That such decree is binding as between the attorney and his client, provided it embodies a reasonable and proper compromise, and is not made against the express directions of the client. JAGANNATH DAS GURUBAKSHDAS *v.* RAMDAS GURUBAKSHDAS
[7 Bom., O. C., 79

4. ——— **Fiduciary relationship.**—*Agreement to pay pleader remuneration including property in suit.*—Suit by a pleader against his client to enforce a contract which provided for the payment to the former of a large remuneration for his services, including a portion of the property in suit. *Held*, that such a contract stands on a different footing from one between private persons, and that the Court before enforcing it should require the plaintiff clearly to show its fairness, and that no undue advantage has been taken of the client. It is necessary in such a case to look to the whole of the circumstances and the substance of the transaction, and not merely to the language of the agreement. NUTHOO LALL *v.* BUDREE PERSHAD . **1 N. W., 1**

5. ——— *Intervention of third party.—Mooktear.*—The interposition of a third party does not necessarily affect the fiduciary relation between the legal adviser and his client. TAYLER *v.* ASMERDH KOONWAR . . . **4 W. R., 86**

6. ——— *Taxation of bill of costs.—Interest on costs.—Rate of interest.*—The plaintiff, an attorney of the High Court, made advances to the defendant, a banker and merchant, for whom he had been and was then acting in certain litigation in which the defendant was engaged in the High Court. At the time of the first loan in 1869, the defendant was considerably indebted, and one creditor had issued execution against his property, and he also owed the plaintiff a large sum for costs, for which, however, up to that time, no bills of costs had been delivered. Before the first loan the plaintiff delivered bills for all his costs then due, of which some were incurred in completed and others in pending suits, and offered to have them taxed; but the defendant then said there was no need for taxation, which would only increase his expenses. The advances were made on the security of mortgages executed by the defendant. The first was executed in August 1869,

ATTORNEY AND CLIENT.—Fiduciary relationship—*continued.*

and the principal was repayable in February 1871. Interest was to be payable at 12 per cent. per annum, and compound interest at the same rate was also to be charged on all interest in arrear. In September 1870 a further advance on the same terms was made and a further mortgage executed, which included the original sum, with the interest then due, and the further advance. Further advances were made in the same way in October 1871 and March 1876. In all these transactions the defendant had no independent professional advice, and the mortgages were prepared in the plaintiff's office, but not charged for. In a suit to recover the sum due on the mortgages by sale of the mortgaged property, the plaintiff abandoned any accumulation of interest since the date of the third mortgage. *Held* that the defendant, notwithstanding he had declined the offer of the plaintiff in 1869 to tax the bills, and notwithstanding the delay that had taken place, was entitled (having regard to the relation between the parties, and to the fact that a portion of the costs was incurred in suits then pending) to have the bills taxed and to re-open the account. Under the circumstances, the Court would not infer acquiescence from the delay on the part of the defendant, nor did the plaintiff's offer to tax, and the defendant's refusal of that offer, debar the defendant of his right to have the bills taxed in the usual way. *Held*, also, that there is no rule which prevents an attorney from taking security or otherwise arranging with his client for the payment of costs which have actually become due, and that the plaintiff was entitled to sale of the property, to accumulations of interest prior to the date of the third mortgage calculated by allowing annual rests, to interest at 10 per cent. as being a fair rate for the client to have undertaken to pay when the mortgages were executed, and to interest on his costs. MONOHUR DOSS *v.* ROMANAUTH LAW **I. L. R., 3 Calc., 473**

7. ——————— *Trustee.—Purchase by attorney from client.—T.* had acted as trustee and agent for *M.*, and *F.* had acted in the place of *T.* during *T.'s* temporary absence. *T.* and *F.*, as attorneys in partnership, did solicitors' work for *M. T.*, as trustee and agent for *M.*, invested money on a mortgage. The equity of redemption was put up for sale at public auction in execution of a decree obtained by a third party against the mortgagors, and a portion was purchased by *T.* and *F.*, as attorneys in partnership. *Held*, that there was no equity compelling *T.* and *F.* to hold the equity of redemption for the benefit of *M.* *Semble*,—The agentship could not be separated from the attorneyship. *Held*, also, that under the circumstances there was no equity calling for a sale in substitution of the foreclosure claimed by *M.* MACKINTOSH *v.* NOBINMONEY DOSSEE **[2 Ind. Jur., N. S., 160**

8. ——————— *Trustees of insolvent retaining attorney to continue suit.—Costs.*—The contract to be implied from the employment by the trustees of an insolvent, of an attorney to carry on a suit already commenced by the insolvent as plaintiff, and in which such attorney was retained for him, is a contract to pay all subsequent costs, but not the costs incurred prior to such employment. SHAMRAV PANDURANG *v.* TRUSTEES OF BHUGVANDAS PURSHOTOMDAS . . . . **5 Bom., O. C., 163**

ATTORNEY AND CLIENT.—Fiduciary relationship—*continued.*

9. ——————— **Lien.**—*Costs.—Lien on sum recovered by client.—Attachment of fund by creditor.*—The plaintiff obtained a decree against the defendant, but, before satisfaction of the decree, the amount of the decree was attached in the hands of the defendant by a third person, who had obtained a decree in a suit against the plaintiff. On an application by the attorney for the plaintiff that the defendant might be ordered to pay to him his costs of suit out of the sum which had been attached in the defendant's hands, and on which the attorney claimed to have a lien, the Court held that the attorney had a lien for his costs on the sum so attached, but that the only order it could make was an order to the defendant not to pay the sum attached to any one without notice to the attorney. THE NAWAB NAZIM OF BENGAL *v.* HEERALALL SEAL . **10 B. L. R., 444**

10. ——————— *Lien for costs.—Title-deeds delivered for specific purpose.—Right to re-delivery.—D.*, an attorney, who had a lien against *C.* for costs on the title-deeds of certain property belonging to *C.*, for whom he had been acting in negotiations for the sale of the property, delivered the deeds at the request of *C.* to *M.*, who was acting as attorney for *J.*, an intending purchaser. *M.*, on obtaining the deeds, signed a receipt for them, by which he undertook to "return them on demand without claiming any lien for costs or otherwise." *D.* subsequently ceased to act for *C.* in the matter of the sale of the property, of which *J.* became the purchaser. The title-deeds remained with *M.* *Held*, that *D.* was entitled to have re-delivery of the deeds to him from *M.*, even independently of the express contract to return them. He did not give up possession of them to *C.* by delivering them to *M.*, though that was done at *C.'s* request. IN THE MATTER OF MACKERTICH . . . **15 B. L. R., Ap., 15**

11. ——————— *Lien for costs—Lien on documents.—Discharge by dissolution of partnership.—Contract Act (IX of 1872), ss. 1, 171.*—Where a firm of attorneys dissolved partnership after the death of a client, there being at that time papers and documents belonging to the client in their hands, and a debt due in respect of costs from the client to them,—*Held*, that the dissolution of partnership operated as a discharge by the firm, and that the attorneys were not entitled to retain the papers and documents until their costs were paid, but were bound to hand them over to the administrator of the client. Section 171 of the Contract Act does not give an attorney an absolute lien. Section 1 provides that nothing in the Act contained shall affect any usage or custom of trade, and, as no part of the English law is inconsistent with section 171, cases arising in this country must be governed by the English authorities. According to those authorities, while the relation of attorney and client exists, the client may either continue to employ the attorney or change him. When he claims to do the latter, the

ATTORNEY AND CLIENT.—Lien—*continued.*

attorney being willing to act, he cannot ask the attorney to give up papers in his possession without first satisfying the lien. The attorney has his option,—he may, if he chooses, either go on acting for his client, or cease to act; if he adopt the latter course, he must give up the papers. On the death of the client his representative stands in exactly the same position with respect to the attorney as the client did. IN THE MATTER OF MCCORKINDALE

[I. L. R., 6 Calc., 1: 6 C. L. R., 406

12. ——— *Lien for costs.—Lien on translation of documents.*—Messrs. *P.* and *W.* were solicitors for the plaintiff in this suit from its commencement. When the case was about to appear in the list for hearing, Messrs. *P.* and *W.* wrote to the plaintiff, requesting her to send them an advance of R1,000 to enable them to deliver briefs to counsel. They received no reply from the plaintiff, who afterwards obtained leave to sue as a pauper, and appeared by other solicitors. Messrs. *P.* and *W.* were subsequently served with a subpœna to produce, at the hearing, certain translations and other documents relating to the plaintiff's case which had remained in their possession, and upon which they claimed a lien in respect of costs due to them by the plaintiff. *Held*, that Messrs. *P.* and *W.* could not be compelled to produce. A solicitor who is discharged by his client, holds the papers entrusted to him, subject to his lien for costs, and the plaintiff by her conduct had discharged Messrs. *P.* and *W.* from being her solicitors. A solicitor has the same lien upon translations as he has upon other documents, and the fact that they have been made by the Court's interpreters makes no difference. Having got the work done, and paid for it, he need not part with such translations, or produce them, except on terms which will secure him against fraud. BAI KESSERBAI *v.* NARANJI WALJI . . **I. L. R., 4 Bom., 353**

13. ——— Constructive notice.—*Fraud in transaction with client.*—The Court will not presume notice to have been given to his client by an attorney where such notice would involve a confession by the attorney of a fraud practised by himself. HORMASJI TEMULJI *v.* MANKUVARBAI

12 Bom., 262

14. ——— Purchase by attorney from client.—*Benami transaction.*—The principle that in transactions carried out by an attorney for a client, the attorney should derive no benefit to himself, is equally applicable to the relationship of vakil and client; and in transactions of such a nature Courts should be careful not to allow them to be enforced in the name of a third person put forward as the real plaintiff. FUZELUN BIBEE *v.* OMDAH BIBEE

[11 B. L. R., 60, note: 10 W. R., 469

15. ——— Application to restrain attorney changing sides.—An attorney who has acted for a party to a suit and has discharged himself, cannot afterwards act for the opposite party; and the Court will restrain him from doing so on an application made for that purpose. *Earl Cholmondeley* v. *Lord Clinton, 19 Ves., 261,* followed. RAM LALL AGARWALLAH *v.* MOONIA BIBEE

[I. L. R., 6 Calc., 79

16. ——— Delivery of bill of costs.—*Right to maintain suit.—Executor.*—There is no law in force in India to prevent an executor of an attorney from maintaining a suit for business done by the attorney, without having previously delivered a bill of costs to the defendant, and left it with him for a reasonable time before bringing the action; and the fact that the defendant had notice that the bill was to be referred to taxation is immaterial. WILKINSON *v.* ABBAS SIRCAR . **3 B. L. R., O. C., 96**

AUTHORITY TO SIGN ON BEHALF OF OTHERS, PROOF OF—

See EVIDENCE ACT, S. 90.

[I. L. R., 3 Calc., 557

AUTREFOIS ACQUIT, PLEA OF—

See CASES UNDER CRIMINAL PROCEDURE CODE, 1882, S. 403.

1. ——— Former trial illegal and without jurisdiction.—A former trial set aside on the ground of want of jurisdiction and illegality is not a bar to a second trial. QUEEN *v.* MUTHOORAPERSHAD PANDAY . . . . . **2 W. R., Cr., 10**

2. ——— Complaint practically identical.—Where a second complaint, though altered and revised, was practically the same as one on which defendant had been acquitted,—*Held*, the second conviction was illegal. GOVERNMENT, *v.* DOULAT

[2 Agra, Cr., 3

3. ——— Criminal trespass, Trial for, after dismissal of charge of rioting.—The dismissal by one Court of the charge of rioting instituted by the police is no bar to the trial by another Court of a charge of criminal trespass instituted by a third person, although the two charges may substantially refer to the same occurrences. QUEEN *v.* MORLY SHEIKH . . . . . **6 W. R., Cr., 51**

4. ——— Forgery.—*Similarity of signature in different documents.—Criminal Procedure Code, 1861, s. 55.*—*D.* was tried on a charge of forging, &c., document A and acquitted. In order to prove the charge, evidence was given in respect of another document, B, which was also alleged to have been forged, and the prosecutor mainly based his case on the alleged exact resemblance between the signatures to A and B, both of which, it was said, exactly resembled a third sign ture admitted to be genuine. *Held* by PEACOCK, *C. J.*, and KEMP, *J.* (MARKBY, *J.*, dissenting), that the acquittal in respect of the document A did not operate as an acquittal in respect of the document B so as to enable the accused to plead *autrefois acquit.* REG. *v.* DWARKA NAUTH DUTT

[2 Ind. Jur., N. S., 67: 7 W. R., Cr., 15

AUTREFOIS ACQUIT, PLEA OF—*continued.*

5. ——— **Discharge by Sessions Court for irregularity of procedure.**—*Criminal Procedure Code, 1861, s. 55.*—Where a prisoner is released by the Court of Session on the ground that the proceedings had in his case were illegal and irregular, there is no bar under section 55 of the Code of Criminal Procedure to his being subsequently tried and convicted of the same offence. QUEEN *v.* WAHED ALI . . . . . **13 W. R., Cr., 42**

6. ——— **Order for release of accused as guiltless.**—*Acquittal.*—The order for the release of the accused as *mirdosh* (guiltless) was held to be an acquittal and not a discharge, and therefore to have exempted them from a second trial for the same offence. RAMJOY SURMAH *v.* MIRZA ALI **[18 W. R., Cr., 10**

7. ——— **Trial for murder after acquittal of grievous hurt.**—*Criminal Procedure Code, 1872, s. 460.*—*K., P., M., N.,* and *O.,* appellants, were convicted by the Court of Session of attempt at murder. They had previously been tried by a Deputy Magistrate on a charge of voluntarily causing grievous hurt founded on the same facts, and *K., P.,* and *N.* were then acquitted, while *N.* and *O.* were convicted. *N.* and *O.* appealed to the Court of Session, and that Court, considering that the evidence showed that they had been guilty of an attempt at murder, forwarded the record to the High Court, when the conviction was quashed and a new trial ordered. The order referred expressly only to *N.* and *O.,* but proceedings were commenced *de novo* against all the five persons, and they were committed to the Court of Session for trial on a charge of attempt at murder, and convicted, as stated above, by that Court. The pleas of *autrefois convict* and *autrefois acquit* could not be urged as an answer to the charge on which the appellants were convicted by any of them. QUEEN *v.* PANNA . **7 N. W., 371**

8. ——— **Theft and receiving stolen property.**—*Acquittal of charge of theft.*—Although a person who is convicted of theft cannot, in respect of the same property, be convicted at the same time of receiving stolen property, yet a person who is acquitted of the theft of any property, or who is not charged with stealing it, may, in respect of the identical property, be charged with, and convicted of, receiving it knowing it to be stolen; so that the mere fact of a person's having once been acquitted of the charge of stealing any property does not of itself prevent his trial at any future time on the charge of receiving the same property knowing it to be stolen. QUEEN *v.* NYAZ ALI . . **25 W. R., Cr., 47**

9. ——— **Previous trial by competent Court.**—*Trial under Bombay Abkari Act (Bom. Act V of 1878), s. 3, cl. 5, and s. 56.—Criminal Procedure Code, s. 403.*—All offences against the abkari law (Bombay Act V of 1878) being cognizable by a Magistrate of the second class (section 3, clause 5, and section 56), a person tried for any such offence by any such Magistrate, and acquitted, is not liable to be tried again for the same offence (section 403), unless the acquittal has been set aside by the High Court on appeal by the Government. QUEEN-EMPRESS *v.* GUSTADJI BARJORJI **[I. L. R., 10 Bom., 181**

AUTREFOIS ACQUIT, PLEA OF.—**Previous trial by competent Court**—*continued.*

AVA, KINGDOM OF—

See CIVIL PROCEDURE CODE, 1882, ss. 387, 391 (1859, s. 177) . **2 B. L. R., A. C., 73**

AWARD.

See CASES UNDER ACT XIII OF 1848.

See CASES UNDER APPEAL—ARBITRATION.

See CASES UNDER ARBITRATION.

See SPECIAL APPEAL—SMALL CAUSE COURT SUITS . . **4 B. L. R., Ap., 82**

See CASES UNDER SURVEY AWARD.

AWARD, APPLICATION TO FILE—

See COSTS—AWARD. **[2 B. L. R., A. C., 249**

See JURISDICTION—CAUSES OF JURISDICTION—SUITS FOR LAND. **[I. L. R., 2 Calc., 44**

See LIMITATION ACT, 1877, ART. 176. **[I. L. R., 7 Calc., 333 [9 C. L. R., 209**

AWARD, CLAIM UNDER—

See ATTACHMENT—SUBJECTS OF ATTACHMENT—EXPECTANCY. **[7 B. L. R., 186: 14 Moore's I. A., 40**

BAD FAITH.

See CASES UNDER INSOLVENCY—CIVIL PROCEDURE CODE.

BAIL.

1. ——— **Accused person.**—*Criminal Procedure Code, 1872, s. 390.—Convicted person.—Sessions Judge.*—The Court of Session has no power, under section 390, Act X of 1872, to admit a convicted person to bail, a *convicted person* not being an *accused person* within the meaning of that section. QUEEN *v.* THAKUR PERSHAD . **I. L. R., 1 All., 151**

2. ——— *Criminal Procedure Code (Act XXV of 1861), s. 212.—Act X of 1872, s. 389.—Discharge for want of evidence.*—The accused in a case of dacoity and assault were discharged by the Magistrate for want of evidence. At the same time he ordered them to give security to the amount of R250 to appear before him any time within six months if called upon. The Judge referred the question of the legality of the order to the High Court, by whom the order for security was quashed. RAMLAL TEWARI *v.* SUPHARAM **[1 B. L. R., S. N., 26: 10 W. R., Cr., 34**

BAIL.—Accused person—*continued*

3. ——— *Criminal Procedure Code (Act XXV of 1861), ss. 436, 411.—Power of Sessions Court to admit to bail.*—A person sentenced to one month's imprisonment by a Magistrate, from which sentence no appeal is allowed under section 411 of Act XXV of 1861, is not an accused person within the meaning of section 436 of the same Act, so as to be admitted to bail by the Court of Session, when his case is referred to the High Court under section 434 of the same Act. QUEEN *v.* MAHENDRANARAYAN BANGABHUSAN
[1 B. L. R., A. Cr., 7

S. C. BAGDEE MANJEE *v.* MOHINDRO NARAIN
[10 W. R., Cr., 16

4. ——— **Further remand.**—*Evidence of guilt.—Necessity of taking evidence before refusing bail.*—When an accused person is first brought before a Magistrate and a remand is required by the prosecutor, it is ordinarily sufficient to show by the evidence of a police officer that the police are in possession of information, believed to be reliable, that the accused has committed an offence; but when the accused is again brought up after remand and a further remand is needed, some direct evidence of the guilt of the accused should be required to justify the Magistrate in refusing bail, and with each remand the necessity for production of evidence of guilt becomes stronger. PONNUSAMI CHETTI *v.* THE QUEEN
[I. L. R., 6 Mad., 69

5. ——— *Criminal Procedure Code, 1872, ss. 190, 194.—Remand of case for evidence.—Judicial proceeding.—Reasonable ground for remand not supported by sworn testimony.*—The proceeding in which it has to be determined whether an accused person should be admitted to bail by a Magistrate is a judicial proceeding, and, as such, cognizable by the High Court under section 297 of the Code of Criminal Procedure, 1872. Section 194 of the Criminal Procedure Code, 1872, must be read as a proviso to section 190, and authorizes a Magistrate for reasonable cause to remand an accused person to jail without examining any witnesses. Where evidence was available, but it appeared necessary to the Magistrate to defer the examination of witnesses in order that further evidence might be produced (so that the enquiry when commenced might be continuous),—*Held*, that such a reason recorded by the Magistrate, although not sworn to, justified a remand for five days and a further remand for four days. An accused person has a right to have the evidence against him recorded at as early a period as possible, and the fact that there is or may be a great body of evidence forthcoming against him is not a ground for detention for an inordinate period. *Per Kernan, J.*—When a Magistrate defers the examination of witnesses, adjourns the enquiry, and remands the prisoner under section 194 of the Code of Criminal Procedure, 1872, he is bound to express clearly on the record the reasonable cause from which such action became necessary or advisable. MANIKAM MUDALI *v.* THE QUEEN . . . I. L. R., 6 Mad., 63

6. ——— **Power of single Judge of High Court, pending appeal.** — *Release on bail.*—A single Judge of the High Court may order the release of a prisoner on bail, pending the hearing of an appeal. QUEEN *v.* JALOO SIRDAR
[W. R., 1864, Cr., 18

BAIL.—Power of single Judge of High Court, pending appeal—*continued.*

7. ——— **Discretion of Magistrate to accept or refuse bail.**—The refusing or accepting bail is a judicial and not merely a ministerial duty, and a mistake in the performance of that duty without malice will not be sufficient to sustain an action. PARANKUSAM NARASAYA PANTULU *v.* STUART
[2 Mad., 396

8. ——— **Contempt of Court.**—*Criminal Procedure Code, 1861, s. 163.*—In a case of contempt, the Court before which the offence is committed is bound, under section 163 of the Code of Criminal Procedure, to accept bail, if sufficient bail is tendered. QUEEN *v.* CHUNDER SEEKUR ROY
[12 W. R., Cr., 18

9. ——— **Power of Sessions Judge to give bail pending reference to High Court.**—A Sessions Judge has no power to release on bail persons convicted by the Magistrate, pending a reference to the High Court under Act X of 1872, section 296. ARADHUN MUNDUL *v.* MYAN KHAN TAKADGEER
[24. W. R, Cr., 7

10. ——— **Admission to bail after sentence.**—*Criminal Procedure Code, 1872, s. 390.*—Act X of 1872, section 390, refers only to the period during which a case is under enquiry, and when the party concerned is still in the position of an accused The Sessions Judge has no power to admit him to bail after he is sentenced and convicted. QUEEN *v.* RAM RUTTON MOOKERJEE . . 24 W. R., Cr., 8

QUEEN *v.* KANHAI SHAHU
[23 W. R., Cr., 40

MOHESH MUNDUL *v.* BHOLANATH MUNDUL
[3 C. L. R., 404

MOHESH MUNDUL *v.* BHOLANATH BISWAS
[3 C. L. R., 405, note

BAILMENT.

See CONTRACT ACT, s. 178.
[I. L. R., 3 Calc., 264

See DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES—BREACH OF CONTRACT
[I. L. R., 2 All., 756

1. ——— **Law applicable to the Mofussil.**—*English law.*—The general principles of the law of bailment are applicable in the mofussil, and they are substantially the same as those which prevail under English law. DOOMUN PEADAH *v.* SHOOK CHAND PAUL . . . . 17 W. R., 90

2. ——— **Non-delivery of goods.**—*Bailee.—Onus probandi.—A.* sent cotton to *B's* screw-house to be screwed. It was placed in *B's* godowns, in charge of which was a servant of *B.'s* who kept entries of cotton received and given out. *B.'s* durwan kept the key of the godowns. *B.* provided dunnage, no rent was paid for godown room, but it was

BAILMENT.—Non-delivery of goods—*continued.*

shown that, on several occasions when cotton had been left by owners for some time in the godowns and removed unscrewed, rent had been paid; and it was allowed that it was for the mutual interest of both parties that the cotton should be so kept. The custom was that the screwing charges should be paid by the purchasers of cotton, to whom it was delivered by *B.*, by the direction of the vendors. In an action by *A.* for the non-delivery of some of his cotton,—*Held, per* NORMAN, *J.*, that *B.* was a gratuitous bailee of the goods, and that he was only bound to account for the manner in which they had been kept, which he had satisfactorily done. *A.'s* suit must be dismissed. Decree affirmed on appeal; but *per* PEACOCK, *C. J.*, *Quære*,—Was *B.* a bailee at all? *Per* MARKBY, *J.*—*B.* was a bailee for custody, but not a gratuitous bailee. MOOLCHAND *v.* ROBINSON . . . . . **1 B. L. R., O. C., 68**

3. ——— **Seizure of goods.**—*Interpleader suit.—Costs.—Execution of decree of Small Cause Court.—Act IX of 1850, s. 88.*—*A.* obtained a decree in the Small Cause Court against *B.* In execution of the decree, goods belonging to *B.*, but in the possession of a pledgee, were seized by a bailiff of the Small Cause Court. The pledgee brought an interpleader suit, under section 88 of Act IX of 1850, to recover the goods. *Held*, the pledgee was entitled to have the goods released to him and to have the costs of his suit paid by the execution-creditor. BHINJI GOVINDJI *v.* MONOHAR DASS **[5 B. L. R., Ap., 31: 14 W. R., 303**

4. ——— **Bailee's lien for work done.**—*Work done.—Contract.—Quantum meruit.—Act IX of 1872 (Contract Act), s. 170.*—*S.* delivered *J.* an organ to repair, *J.* promising to repair it for R100. *J.* subsequently refused to repair it for that sum, and claimed to be entitled to retain the organ until he received certain remuneration for the work done. *Held*, that as where there is an express contract, it must be performed in its entirety or nothing can be claimed under it, and there is only room for a *quantum meruit* claim where no express contract has been made, *J.* was not entitled to retain the organ until he was paid. SKINNER *v.* JAGER **[I. L. R., 6 All., 138**

BALANCE OF ACCOUNT.

See CASES UNDER LIMITATION ACT, 1877, ART. 64.

See CASES UNDER LIMITATION ACT, 1877, ART. 85 (1859, S. 8).

BALLOT FOR JURY.

See JURY . . **I. L. R., 1 Bom., 462**

BANIAN, LIABILITY OF—

See PRINCIPAL AND AGENT—LIABILITY OF AGENT . . **2 B. L. R., O. C., 7**
[2 Hyde, 129: Cor., 47
Bourke, A. O. C., 117 2 Hyde, 301

BANIAN, LIEN OF, ON GOODS UNDER AGREEMENT WITH FIRM.

See PARTNERSHIP—RIGHTS AND LIABILITIES OF PARTNERS . **3 B. L. R., O. C., 80**

BANK MEMORANDUM.

See STAMP ACT, 1869, SCH. II, CL. 7.
I. L. R., 4 Calc., 829

BANK OF BENGAL.

See PRESIDENCY BANKS ACT.
I. L. R., 8 Calc., 300

1. ——— **Act IV of 1862, s. 10.**—*Loans and advances on security of land.—Security for past loan.*—The prohibition contained in section 30 of Act IV of 1862, which regulates the Bank of Bengal against making loans and advances on the security of land, is no prohibition against the Bank taking land as security for a past loan and an existing debt. IBRAHIM AZIM *v.* CRUIKSHANK
[7 B. L. R., 653: 16 W. R., 203

2. ——— **Act XI of 1876, ss. 17, 21.**—*Registration of transfer.—Right of Bank to refuse to register.*—The Bank of Bengal is entitled to refuse to register a transfer of shares when the application is made during the time the transfer books of the Bank are closed under the powers given by section 21, Act XI of 1876, and after a public notification in accordance therewith. Though the Bank may not have given this reason for not registering at the time of the application being made, they are entitled to avail themselves of it subsequently, when a suit is brought to compel them to register the transfer. Section 17 of Act XI of 1876, which entitles the Bank of Bengal to refuse to register the transfer of shares until payment of any debts due by the person in whose name the shares stand, refers only to debts which are presently payable; therefore, where *R.* was indebted to the Bank, and gave bills as security therefor,—*Held*, the Bank would not be entitled to refuse under section 17 to register the transfer during the currency of the bills. MOTHOORMOHUN ROY *v.* THE BANK OF BENGAL
[I. L. R., 3 Calc., 392: 1 C. L. R., 507

BANKER AND CUSTOMER.

See LIMITATION ACT, 1877, ART. 60 (1859, S. 1, CL. 9) . . **[10 Bom., 300**

BANKERS.

1. ——— **Deposit of money.**—*Obligation to keep funds separate.—Breach of trust.—Commission agents.*—The insolvents carried on business as bankers and commission agents, receiving the money of their constituents on deposit, for investment or for remittance, charging a commission on each transaction, and allowing 4 per cent. interest on deposits. An opposing creditor, one of their constituents, sent them in April 1879 a letter instructing them to invest R40,000 in Municipal debentures. The insolvents failed in November, and it was found on the evidence that they could not have

BANKERS.—Deposit of money—*continued.*

procured the desired quantity of Municipal debentures without paying more than the market price for them. They purchased R18,000 worth of such debentures, and were debtors to the opposing creditor for the balance. *Held*, that the money was in their hands as bankers and not as agents; and this being so, they were not bound to keep the R40,000 separate from their own funds, nor even after the letter received in April to set it apart for investment. IN THE MATTER OF THE PETITION OF COWIE

I. L. R., 6 Calc., 70: 7 C. L. R., 19

2. ——— Loss of hundi.—*Negligence.—Criminal act of Bank servant.—A.* sent a hundi by post to a bank. The bank presented it for payment by one of its servants, *B.*, who brought it back, reporting that payment had been refused. The manager of the bank, with the intention of returning it to *A.*, placed it in an envelope sealed and stamped, which was laid upon the table ready for the post, it being the custom of the bank to post all letters in that manner. The hundi did not reach *A.*, and it afterwards appeared that *B.* presented it for payment the following day, and obtained cash for it. *Held*, that the bank was guilty of such neglect as to render it liable to *A.* for the amount of the hundi. PEOPLE'S BANK *v.* OBBARD

[2 Hyde, 57

BANK NOTE.

See GOVERNMENT PROMISSORY NOTE.

[7 Bom., O. C., 1

BANKRUPTCY ACT, 1869.

See INSOLVENT ACT, S. 40

[13 B. L. R., Ap., 2, 9
I. L. R., 2 Mad., 15

BANNS OF MARRIAGE, PUBLICATION OF—

See BIGAMY. . **I. L. R., 1 All., 316**

BARRED DEBT, AUTHORITY TO PAY—

See ADMINISTRATOR GENERAL.

[I. L. R., 1 Mad., 267

BARRED DEBT, LIABILITY FOR—

See ADMINISTRATION.

[I. L. R., 2 Bom., 75

BARRED DEBT, SUIT ON BOND FOR—

See LIMITATION ACT, 1877, S. 19 (1871, S. 20) . . **I. L. R., 7 Bom., 590**

BARRISTER.

See ADVOCATE. . **5 B. L. R., Ap., 70**
[14 B. L. R., Ap., 12

See COUNSEL . . . **8 B. L. R., 340**
[9 B. L. R. 417, 460

——— Receipt of fees by—

See STAMP ACT, 1879, S. 3.

[I. L. R., 9 Mad., 140

BARRISTER—*continued.*

1. ——— Suspension from practising.—*Malus animus.—Ground for suspension.*—An order of a High Court suspending a barrister from practice for five years set aside, on the ground that, although there had been grave irregularity, there was no *malus animus* to show an intention to commit a fraudulent act. IN RE NEWTON

[10 B. L. R., 88: 17 W. R., 35
14 Moore's I. A., 267

2. ——— Agreement with client as to fees.—*Disability to contract.—Pleader.—Suit by client for fees.—Act I of 1846, s. 8.—A.* engaged *G.*, a barrister practising in the mofussil, to conduct a suit for him, and promised to pay him a sum of money as a present in addition to the fee allowed by Regulation XIV of 1816, provided that the decree awarded to *A.* a sum above R1,000. The condition being fulfilled, *G.* collected moneys for *A.* under the decree and retained the sum promised. It was not proved that *A.* assented to the appropriation by *G.* of the sum retained in payment of the promised present. *A.* sued *G.* to recover the sum retained. *Held* (*1*), that if *G.* was to be regarded as a barrister, he was under a disability to contract with *A.* as to his fees; (*2*), that if *G.* was to be regarded as a pleader, he was prohibited by a Circular Order of the Sudder Adalut from enforcing this contract. *Semble*,—The decision in *Kennedy* v. *Brown, 13 C. B. N. S., 677*, governs all agreements made by members of the English Bar in that character. ACHAMPARAMBATH CHERIA KUNHAMMU *v.* GANTZ . . . **1 L. R., 3 Mad., 138**

3. ——— Right of client to sue for return of fee when barrister was absent.—*Advocate and client.*—Taking it that the rule of English law, that the relation of counsel or advocate and client creates mutual incapacity to make a binding contract of hiring and service either express or implied, governs the relation of advocate and client generally in this country, there must be the relation of advocate and client to give rise to the incapacity, and the incapacity is strictly confined to contracts relating to service as an advocate in litigation and matters ancillary to such service. The degree of barrister is but one of the qualifications for admission and enrolment as an advocate of the High Court. Where the defendant, a barrister who was not admitted an advocate of the High Court, or specially authorized to plead in the superior Court, accepted a vakalatnamah from the plaintiff to defend him upon a charge pending in the Session Court, and the defendant failed to appear on the day to which the trial of the plaintiff was adjourned, and the plaintiff sued the defendant to recover the amount of the fee paid,—*Held*, that the suit was maintainable. KISHTNA ROW *v.* MUTTUKISTNA . . . **4 Mad., 244**

4. ——— Right to sue for fees for professional services.—*Barrister enrolled as advocate.*—A barrister enrolled as an advocate of the High Court is incapacitated from making a contract of hiring as an advocate, and cannot maintain a suit for the recovery of his fees. SMITH *v.* GUNESHEE LAL

[3 N. W., 83

BARRISTER.—Right to sue for fees for professional services—*continued.*

5. ——— *Barrister with right to act as advocate and attorney.*—Where a barrister renders services which go beyond his profession as a barrister, his incapacity to recover fees as a barrister does not extend to such extra-professional services; and where, as in Burma, the law enables an advocate to recover fees, and a barrister acts both as an advocate and in other capacities, the remuneration claimed by him ought to be divided into two parts; and while, in that part of his services in which he acts as attorney, he should be allowed to recover fees not much in excess of those allowed in Calcutta, no attorney's charges whatever should be allowed for that part of his services which are extra-professional; the commission or other allowance made for such services being the only proper and a full remuneration for them. LAND MORTGAGE BANK OF INDIA *v.* ELMES . . . . . **25 W. R., 332**

BAZARS.

See BEN. REG. XXVII OF 1793, S. 5.
[15 W. R., 48
16 W. R., 268
11 W. R., 112
21 W. R., 383

BENAMI LEASE.

See PARTIES—PARTIES TO SUITS—SURETIES . . **2 B. L. R., A. C., 237**
[11 W. R., 120

BENAMI TRANSACTION. Col.

1. GENERAL CASES 469
2. SOURCE OF PURCHASE-MONEY . . 475
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4. CERTIFIED PURCHASERS— . . 481
(*a*) ACTS XII OF 1841, I OF 1845, AND XI OF 1859 . . . 481
(*b*) CIVIL PROCEDURE CODE, 1882, 317 S. (1859, S. 260) . . 482

See ATTORNEY AND CLIENT.
[11 B. L. R., 60, note: 10 W. R., 469

See LIMITATION ACT, 1877, S. 10 (1859, S. 2).
[2 B. L. R., A. C., 284: 11 W. R., 72

See CASES UNDER PARTIES—PARTIES TO SUITS—BENAMIDARS.

See RES JUDICATA—PARTIES—SAME PARTIES OR THEIR REPRESENTATIVES.
[5 B. L. R., 321: 13 B. L. R., 157
B. L. R., Sup. Vol., 759:
2 Ind. Jur. N. S. 327: 8 W. R., 482

1. GENERAL CASES.

1. ——— **Custom.**—*Recognition of benami transactions.*—Benami transactions are a custom of the country, and must be recognised till otherwise ordered by law. Meanwhile the extent of their compatibility with an honest purchase depends upon the peculiar circumstances of each case. KALLY MOHUN PAUL *v.* BHOLANATH CHAKLADAR
[7 W. R., 138

BENAMI TRANSACTION—*continued.*

1. GENERAL CASES—*continued.*

Custom—*continued.*

2. ——— *Presumption as to ownership.*—The habit of holding land benami, though inveterate in India, does not justify the Courts in making every presumption against apparent ownership. JUDOONATH BOSE *v.* SHUMSOONNISSA BEGUM. BUZLOOR RUHEEM *v.* SHUMSOONNISA BEGUM.
[8 W. R., P. C., 3: 11 Moore's I. A., 551

3. ——— **Presumption.**—*Evidence justifying benami purchase.*—Evidence raising presumption of purchase at a sale in execution being made benami for the judgment-debtor discussed. RAM CHUNDER BYSACK *v.* DINO NATH SURMA SIRKAR
[5 C. L. R., 470

4. ——— *Purchase of property by manager of joint family property.*—When the manager of a joint Hindu family re-purchases benami property sold for arrears of revenue, the presumption is that the property so purchased is held by him for the benefit of the joint family. KALEE DOSS MOOKERJEE *v.* MOTHOORANATH BANERJEA
[5 W. R., 154

5. ——— *Use of furzee name.*—In the case of a benami purchase, the mere use of the *furzee* name is sufficiently disposed of if the party whose name is used sets up no claim, and if there appears to have been long-continued possession on the part of the person claiming to be the beneficial owner. HOYMOBUTTY DASSEE *v.* SREEKISSEN NUNDY . . . . . **14 W. R., 58**

6. ——— *Purchase by father in name of son.*—Where the father of a joint Hindu family purchases property in the name of his minor son, the presumption is that it is a benami purchase by the father on whose death it becomes the property of the family. BHAGBUT CHUNDER DEY *v.* HURO GOBIND PAL . . . . . **20 W. R., 269**

7. ——— *Lease taken in name of wife and son.*—Where a father obtained, once and again, a lease in the name of his wife and son, paying the consideration-money out of his own funds; and on the decease of his wife obtained the lease in the joint names of the son and of his daughter by the deceased, and it was found that latterly the possession was not with the father,—*Held*, that there was no error in law in the Judge's coming to the conclusion that the property was not intended by the father for his own benefit, but was given to his wife and children for their maintenance. ZEEMUT ALI *v.* ALIMOONISSA . . . . . **10 W. R., 277**

8. ——— *Purchase in the name of Hindu wife.*—The question for decision was whether a purchase in 1842, in the name of a Hindu wife, of an interest in part of her husband's ancestral estate, was for herself, or for her husband, her name being used benami for him. The High Court, at the hearing in appeal, considered certain previous decisions in cases arising out of benami transactions. But in arriving at its conclusion, which was that the property was the wife's, it proceeded entirely

BENAMI TRANSACTION—*continued.*

1. GENERAL CASES—*continued.*

Presumption—*continued.*

on the evidence in the particular case. The judgment of the Judicial Committee, which also went upon the evidence, was, on the contrary, that the husband was, in fact, the purchaser, the purchase being benami in his wife's name. DHARANI KANT LAHIRI CHOWDRY *v.* KRISTO KUMARI CHOWDHRANI

[I. L. R., 13 Calc., 181: L. R., 13 I. A., 70

Reversing decision of High Court in CHOWDHRANI *v.* TARINY KANT LAHIRY CHOWDRY

[I. L. R., 8 Calc., 545: 11 C. L. R., 41

9. ——————— *Purchase by husband in name of wife.—Claim by husband when property is attached.*—A husband who puts his wife into the position of being the true owner of an estate and allows her to deal with the world as the true owner, deprives himself of the right to set up, or rely on, his benami title. NIDHEE SINGH *v.* BISSONATH DOSS . . . . **24 W. R., 79**

10. ——————— *Property of husband bought from wife.*—Where property is bought from a wife as the ostensible owner, the husband consenting to the sale, and the transaction is *bonâ-fide* on the part of the purchaser for a consideration, the purchase is a good one, even if the property is not the wife's but the husband's. GOLAM RUSSOOL *v.* ABDOOL RUHEEM . . . **15 W. R., 19**

11. ——————— *Property of husband standing in name of wife.*—Certain property standing in the name of a wife was mortgaged by her. The mortgage debt was paid off. The mortgagee having a decree against the husband attached and sold the property. *Held* that, though payment of the mortgage debt by the wife might have given her a lien on the property to the extent of any money paid by her out of her own fund, the mortgagee's acting on the wife's assertion of title did not prevent him, when he subsequently discovered that the property was really the deceased husband's, from making it available for the satisfaction of his decree against the husband. AMEEROONISSA BEEBEE *v.* BENODE RAM SEIN . . . . . **2 W. R., 29**

12. ——————— *Property acquired by Mahomedan married woman.*—Where property is acquired by a Mahomedan lady living in a state of wedlock, and also by her legitimate daughter, a very small amount of evidence would suffice to dispose of the presumption arising from the fact of the title-deeds being with the lady, against the supposition of a benami purchase. KUDEERUN *v.* LALLUN

[14 W. R., 366

13. ——————— *Purchase in name of daughters.—Right of bonâ fide purchaser from daughter.*—*A.* having two daughters, *B.* and *C.*, granted a putni talook of certain lands in his zemindari to them in their infancy, and transacted the business connected therewith as manager down to the time of his death. After his death *B.* sold her interest to her sister *C.*, and *C.* sold the putni talook to *D.* The heirs of *A.* brought a suit against *D.* for the lands. *Held* that the lower Court might, upon these facts, infer that the grant of the putni talook by *A.* to his daughters was by way of provision for them, and that it was not a case in which the daughters held benami for the father. Secondly, that even if it were so, *D.*, acquiring by a *bonâ fide* purchase and without notice, had a good title against the heirs of *A.*, since they claimed through the person by whose act the apparent ownership was vested in his vendor. OBHOY CHURN MOOKERJEE *v.* PUNCHANUN BOSE . . **Marsh., 564: 2 Hay, 630**

14. ——————— *Person allowing another to appear as real owner.*—Where a person allows another to hold himself out to the world as the real proprietor of an estate, the Court will not consider him entitled to any consideration as against a person who may have advanced money upon the confidence so created. NUNDELALL *v.* TAYLER

[1 Ind. Jur., N. S., 55: 5 W. R., 37

15. ——————— *Benami purchase.—Alienation by benamidar.*—Property bought by *P.* in the name of *S.* was mortgaged by *P.* through his benamidar, *S.*, by conditional sale to *L.*, who, dying after foreclosure, left it in possession of his widows, defendants Nos. 3 and 4, from whom plaintiff purchased it at a sale in execution of a decree against them. Defendants Nos. 1 and 2 resisted on the ground that *S.'s* conditional sale did not pass the rights and interest of *P.*, which they bought at an auction sale in execution of a decree against *P.* *Held*, that the decree of foreclosure was good and binding against Nos. 1 and 2, unless they could show fraud. If property is purchased in the name of a benamidar, and the *indicia* of ownership are placed in his hands, the true owner can only get rid of the effect of an alienation by showing that it was made without his acquiescence, and the purchaser took with notice of the fact. BHUGWAN DOSS *v.* UPOOCH SINGH . . . . . **10 W. R., 185**

16. ——————— *Benami possession.*—Where the property belonging to one family is conveyed to another by a deed of such a nature as secures the continuance of the profits to the former, the possession by the latter must be held to be on behalf of the former, until by some unequivocal act they show a distinct intention to hold on their own behalf. JUGGERNATH PERSHAD DUTT *v.* HOGG

[12 W. R., 117

17. ——— **Covenants by benamidar.**—*Effect of, on beneficial owners.*—All the covenants made by a benamidar in the sale of a property are not necessarily binding upon the true owners, though there may be circumstances under which a person whose name does not appear upon a contract may be liable to perform its conditions. BISSESSUREE DEBIA *v.* GOVIND PERSHAD TEWAREE

[21 W. R., 398

18. ——— **Assignment of decree.**—*Allegation of benami transaction.*—Before shutting out

BENAMI TRANSACTION—*continued.*

1. GENERAL CASES—*continued.*

Assignment of decree—*continued.*

a decree-holder who has taken by assignment, on the ground that he is a mere benami holder from one of the judgment-debtors, it is necessary to be very careful, and to ascertain beyond a doubt that the fact is so. MAHOMED ISSA KHAN *v.* ONRAET [8 W. R., 26

19. ——— *Execution of decree.*—When a decree is assigned to *A.* for his benefit in the name of *B.*, *B.*, the ostensible decree-holder, may take out execution. PURNA CHANDRA ROY *v.* ABHAYA CHANDRA ROY [4 B. L. R., Ap., 40

20. ——— **Evidence of ownership.**—*Title to property seized in execution.—Evidence.—Suspicion.*—In determining the right to property seized in execution, the Court must not declare a person claiming as purchaser to be a benamidar for the debtor upon suspicion merely, but its decision must rest upon legal grounds established by legal testimony. FAEZ BUX CHOWDHRY *v.* FAKIRUDDIN MAHOMED AHASAN CHOWDHRY [9 B. L. R., 456: 14 Moore's I. A., 234

Reversing decision of Lower Court in FUKEEROODDEEN MAHOMED AHSUN CHOWDHRY *v.* KUREEM BUKSH CHOWDHRY . . 5 W. R., 43

21. ——— **Breach of covenant.**—*Cause of action.—Plaint.—Consent of benamidar.*—The plaint alleged that the three first defendants with a brother, since deceased, purchased a putni mehal therein described; that the same was thereafter sold for arrears of rent, and purchased by the said three defendants with their own funds; but that the Collector, in compliance with their petition, entered the name of their mother, the fourth defendant, as the purchaser. The plaint then alleged a subsequent sale by the three first defendants to the plaintiff; that they, the said defendants, caused a kobala to be executed by the fourth defendant, and that they, being the real owners, became witnesses to the deed, and received the whole of the consideration-money; and prayed by reason of ouster and disturbance alleged for damages against all the defendants for breach of the following covenant contained in the kobala: "If any one making any objection to the sale by me of the said mehal give you trouble in any way, then I will put matters straight. If I fail to do so, I will return the consideration-money. If I do not return it, you will realize it by means of a suit." The Civil Judge in whose Court the plaint was filed held that no cause of action was shown, and the High Court on appeal remanded the case to try whether there had been the ouster and disturbance alleged, and whether, under the circumstances, they constituted a breach of the contract. The High Court, however, dismissed the suit against the three first defendants, holding that the mother only was bound by the contract. *Held* by the Privy Council, that the plaint disclosed a cause of action against all the defendants, and that the case must be remanded accordingly. One issue raised by the plaint was whether the kobala

BENAMI TRANSACTION—*continued.*

1. GENERAL CASES—*continued.*

Breach of covenant—*continued.*

was really entered into by the mother as the agent and on behalf, of the three first defendants, and by their authority. BISHESWARI DEBYA *v.* GOVIND PRASAD TEWARI [L. R., 3 I. A., 194: 26 W. R., 32

Varying the decree of the High Court in [S. C. 21 W. R., 398

22. ——— **Suit on bond executed benami.**—*Money lent by wife for husband.*—Where a woman sues to recover money advanced on a bond executed in her name, it is open to the obligor to plead that the money was not lent by the woman, but that the bond was merely an acknowledgment of indebtedness from him to her husband. BHOOBUNESSUR ROY CHOWDHRY *v.* JUGGESSUREE CHOWDHRANI [22 W. R., 413

23. ——— *Money lent by person other than holder of bond.*—In a suit upon a bond where defendant pleads that the bond, though executed in the name of the plaintiff, was really executed in favour of a third party, if it is found that plaintiff is not the real holder of the bond, the suit must be dismissed. JUDOONAUTH DEY *v.* GIRIJA BHOOSUN MITTER . . 23 W. R., 446

24. ——— **Benami purchase by judgment-debtor of property subject to mortgage decree.**—*Effect of.*—*P. L.* brought a suit against *H.*, and while it was pending executed a bond in favour of *R. C.* hypothecating the property in dispute. The suit was dismissed with costs; and another suit was brought by one *P. M.* upon the bond, and while it was pending the property in dispute was sold in execution of *H.*'s decree for costs, and purchased by *S.* The day after this,—*i.e.*, on 10th November 1868,—*P. M.* obtained a mortgage decree, which he transferred to *R. B.*, who executed it and attached the property in dispute, when *S.* intervened, objecting that the mortgage, the mortgage decree, and the transfer of the decree were all fictitious and collusive, and brought about by *P. L.* This objection having been rejected, a suit was brought on the same ground against *R. B.*, *P. M.*, and the widow of *P. L.* to establish *S.*'s rights and to stop the pending sale. The property was, however, sold, and purchased by *D.*, who was then made a defendant in the suit. Both the lower Courts found that *R. B.* was a benamidar for *P. L.*, and upheld the title of *S.*, in preference to that of *D.* *Held*, on the principle of *In re Suroop Chunder Hazra, B. L. R., Sup. Vol. 938: 9 W. R.*, 230,—*viz.*, that the purchase by a judgment-debtor extinguishes the decree,—that the same result followed in a benami transaction when the decree was a mortgage decree, and therefore, although *S.* by virtue of his auction-purchase was not entitled to the property in dispute, yet he was entitled to a declaration that, so far as the amount of his purchase-money went to satisfy the decree of November 1868, it should be considered a charge on the property. DHONDHAI SINGH *v.* SULEEMOODDEEN HOSSEIN . . . . 24 W. R., 359

BENAMI TRANSACTION—*continued.*

1. GENERAL CASES—*continued.*

25.——— **Person allowing property to be purchased benami.**—*Sale by ostensible owner*—If a person allows property to be purchased for him in the name of another, and takes no steps to show to the world that he is the owner, he must make out a clear right to relief against any one who purchases that property *bonâ fide* from the ostensible owner. NIDRA DOSSEE *v.* ABDOOL WAHED . [25 W. R., 532

26.———**Suit on bond, the consideration for which was advanced benami.**—*Right of assignee of bond.*—Where, in a bond given by *A.* to secure the repayment of money lent by *B.* to *A.*, it is stated that the money was lent by *C.*, it is no answer to a suit on the bond, brought against *A.* by a person who has purchased the bond from *C. bonâ fide* without notice, that the money advanced belonged to *A.* A person who lends money in the name of another must accept the consequences, if an innocent purchaser deals with the person whose name appears upon the document as the party really entitled to the receipt of the money. DOKHINA KALLY DEBEE *v.* DENO NATH ROY CHOWDHRY . . 3 C. L. R., 9

2. SOURCE OF PURCHASE-MONEY.

27. ——— **Source of purchase-money.**—*Evidence of beneficial ownership.*—It is not a principle of law that the issue to be framed in a case of benami purchase is, from what source the purchase-money came, though that is an excellent criterion and test for determining the character of the purchase. BRIJO BEHAREE SING *v.* WAJED HOSSIEN [14 W. R., 372

28. ——— *Evidence of beneficial ownership.*—In cases of benami purchase in India, the criterion of beneficial ownership is the source from which the purchase-money is derived. GOPEEKRIST GOSSAIN *v.* GUNGAPERSAUD GOSSAIN [6 Moore's I. A., 53

AKBUR ALI *v.* MAHOMED FAIZ BUKSH [15 W. R., 12

29. ——— *Possession.*—In coming to a conclusion in a case of a benami purchase, the circumstances and probabilities are to be carefully considered and weighed,—*e.g.*, the object of the purchase, whether the purchase-money really belonged to the purchasers, and whether possession was taken after purchase; and, if not, why possession was not taken. BHOOBUN MOHUN BURRAL *v.* NAGOREE DOSSIA . . . . . 15 W. R., 15

30. ——— *Proof of consideration.*—Where a deed of sale is executed benami under circumstances which suggest an intention to defraud creditors, it is not sufficient that the sale was formally made and the deed duly registered; the Court must be satisfied as to consideration having actually passed from the purchaser to the former owner, and as to the source from which the purchase-money was derived. MUTHUROOLLAH *v.* TORABOODEEN . . . . . 15 W. R., 305

BENAMI TRANSACTION—*continued.*

2. SOURCE OF PURCHASE-MONEY—*continued.*

Source of purchase-money—*continued.*

See LUCHMEE KOER *alias* BHUGOBUTTY KOER *v.* FUTTEH SINGH . 24 W. R., 400

31. ——— *Mahomedan, Purchase by.*—Where a Mahomedan husband was found to have paid the purchase-money for a putni talook standing in the name of his wife, it was held that his having been in possession of the money was *primâ facie* evidence that the putni talook belonged to himself and not to his wife, and that presumption was not rebutted by the fact that he purchased the putni in the name of his wife. SURNOMOYEE *v.* LUCHMEEPUT DOOGUR . . 9 W. R., 338

32. ——— *Property acquired by separate funds.*—In a suit for certain property as belonging to plaintiff's judgment-debtor, in which the defendant, the adoptive mother of the judgment-debtor, claimed the property as purchased by her *bonâ fide* in the name of her son, but with her own funds,—*Held*, that this case could not be judged by the criterion laid down by the Privy Council in the case of *Gossain* v. *Gossain*,—*viz.*, whence came the purchase-money; for the question in that case related to property acquired by a member of a joint Hindu family, where the presumption would ordinarily be that all the property is joint. NADIRJAN BIBEE *v.* KUREEMOONISSA CHOWDHRAIN [12 W. R., 122

33. ——— *Hindu and Mahomedan Law.—Presumption.*—In cases where the question is, whether property bought and held in the name of another than the party claiming as the real purchaser, is the property of that other, or merely bought and held in his name (benami) for the claimant, the criterion is to consider from what source the purchase-money came: the presumption is, that a purchase made with the money of *A.* in the name of *B.* is for the benefit of *A.*; and where the purchase is by a father, whether Mahomedan or Hindu, in the name of his son, there is no presumption of an advancement in favour of the son. Upon the facts, the decision of the Courts below reversed. AZHAR ALI *v.* ALTAF FATIMA [4 B. L. R., P. C. 1: 13 W. R., P. C., 1

S. C. UZHAR ALI *v.* ULTAF FATIMA [13 Moore's I. A., 232

3. ONUS OF PROOF.

34. ——— **Onus probandi.**—*Purchase by member of joint Hindu family in name of son.—Presumption.—Conveyance in English form.*—Where a purchase of real estate is made by a Hindu in the name of one of his sons, the presumption of the Hindu law is in favour of its being a benami purchase, and the burden of proof lies on the party in whose name it was purchased, to prove that he was solely entitled to the legal and beneficial interest in such purchased estate. Purchase of a talook in Bengal by a Hindu in his eldest son's name, the conveyance, though in the English form of lease and release,

BENAMI TRANSACTION—*continued.*

3. ONUS OF PROOF—*continued.*

Onus probandi—*continued.*

held to be a benami purchase, and the son in whose name it was purchased declared to be a trustee for the father, and the talook, part of the father's estate. GOPEEKRIST GOSAIN *v.* GUNGAPERSAUD GOSAIN . . . . **6 Moore's I. A., 53**

35. ——————— *Registration of name.*—The benami system being one of the recognized institutions of the country, a purchaser does not discharge himself of the *onus* which lies upon him, by looking only to the apparent title. Nor is the *onus* discharged by the mere fact of the name of the defendant's vendor being alone registered in the zemindar's books as the exclusive owner of the putni, or of the vendor only being sued by the zemindar for the rent of the putni. JEBBUNISSA *v.* UMUL CHUNDRA CHACKLANUVIS . **18 W. R., 151**

36. ——————— *Evidence of ownership.*—In cases of alleged benami sales effect should be given to the evidence of possession and enjoyment since the purchase, as showing who is the substantial owner. The burden of proof lies on the person who maintains that the apparent state of things is not the real state of things, and the apparent purchaser must be regarded as the real purchaser until the contrary be proved. DEO NATH *v.* PEER KHAN . . . . . **3 Agra, 16**

37. ——————— *Parol evidence.*—*Proof of purchase.*—As between Hindus oral evidence is admissible to show that land nominally purchased for *A.* and conveyed to him by an instrument in writing was really purchased for *A., B.,* and *C.* POLINAYAPPA CHETTI *v.* ARUMGAM CHETTI **[2 Mad., 26**

Following in this GOPEEKRISTO GOSSAIN *v.* GUNGAPERSAUD GOSSAIN . . **6 Moore's I. A., 53**

38. ——————— *Purchase at sale in execution of decree, Assignment of.*—Where a person became the purchaser of a talook under a decree for sale obtained by judgment-creditors of the owner, and an assignee of a judgment-creditor sued to have it declared that the purchase did not affect any transfer of the ownership of the talook,—*Held,* that the *onus* was on the plaintiff to prove that the talook in question was still the property of the judgment-debtors, and not the property of the purchaser. In matters of this description, it is essential to take care that the decision of the Court rests, not upon suspicion, but upon legal grounds established by legal testimony. SEERAMUNCHUNDER DEY *v.* GOPAL CHUNDER CHUCKERBUTTY **[7 W. R., P. C., 10**

KADERNATH DUTT *v.* OKHOY COOMAR BHUTTACHARJEE . . . . . **9 W. R., 202**

39. ——————— *Benami lease.*—*Proof of beneficial interest.*—Where there is an allegation that a lease is held benami, it is not sufficient for the party in whose name the lease is drawn out to produce the document, but it is necessary for him to prove that he has the beneficial interest in the property. SARODAMOHUN ROY CHOWDHRY *v.* SHAMA SOONDERY DOSSIA **[7 W. R., 209**

40. ——————— *Property purchased at sale in execution of decree.*—A decree-holder, in execution of his decree, put up for sale certain property of his judgment-debtor which was purchased by plaintiff ostensibly on his own account. Having reason, however, to believe that the purchase was benami for the judgment-debtor, the decree-holder again took out execution against the same property, and advertised it for sale. Plaintiff intervened, but his objections were disallowed by the Court, which found the judgment-debtor in *bonâ fide* possession on his own account. The property was then sold, and one of the defendants bought it. Plaintiff then sued to have the execution proceedings set aside, and to have it declared that the property had been bought on his own account and with his own money. *Held,* that the *onus* of proof lay on the plaintiff. MUDDUN MOHUN SHAHA *v.* BHARUT CHUNDER ROY . . . **11 W. R., 249**

41. ——————— *Presumption.*—*Creditors claiming against benamidar.*—*Evidence.*—Although a purchase by a Mahomedan with his own money of an estate in the name of his son raises a presumption of the son's name being used benami for his father, proof that the father's object was to effect the ordinary rule of succession as from him to that property is sufficient to give, as respects strangers, a title to the son independent of, and adverse to, the father. Where *bonâ fide* creditors of the ostensible owner of property are claimants on that property, the Court will require strict proof on the part of any one seeking to have it declared that he held it only benami. RUKNADAWLA NOWAB AHMED ALI KHAN *v.* HURDWARI MULL . . **5 B. L. R., 578**

S. C. AZMUT ALI KHAN *v.* HURDWAREE MULL **[14 W. R., P. C., 14: 13 Moore's I. A., 395**

42. ——————— *Proof of beneficial ownership.*—*Presumption from possession on receipt of rents.*—Where there are benami transactions, and the question is, who is the real owner, the actual possession on receipt of the rents of the property is most important. In a suit against a purchaser at a sale under Act XI of 1859, section 13, the plaintiff claimed to have an incumbrance by virtue of two mokurari pottahs, executed by the heirs of the last of a series of benamidars, and it appearing that the last benamidar had actual ownership of one fourth of the property comprised therein,—*Held,* that the incumbrance was good to the extent of such fourth. IMAMBANDI BEGUM *v.* KUMLESWARI PERSHAD **L. R., 13 I. A., 160: I. L. R., 14 Calc., 109**

43. ——————— *Purchase by Hindu widow for a relation.*—A step-son made over property to his step-mother for her support. Out of the produce she bought properties for her nephew

BENAMI TRANSACTION—*continued.*

3. ONUS OF PROOF—*continued.*

Onus probandi—*continued.*

in the name of other parties. *Held*, under the circumstances, that the purchased property, on her death, went to the nephew, and not to the step-son as heir of her husband. Although the defendant, by his written statement, denied the fact of the purchases being with the widow's money, and it was proved that they were made with her money,—*Held*, that this did not remove from the plaintiff the burden of proving that the purchases were made benami for her. CHANDRANATH ROY *v.* RUMJAI MUZUMDAR [6 B. L. R., 303: 15 W. R., P. C., 7

44. ——————— *Creditors of benamidar, Right of.—Credit given to benamidar in good faith.*—Certain property having been attached in execution of a decree against *B.*, the plaintiff instituted a suit claiming the property and alleging that *B.* was his benamidar. The allegation was established. It was contended that the public, and the creditor at whose instance the attachment was made in execution of a decree for money advanced to *B.*, had been misled by the benami transaction. *Held*, that the creditor was bound to prove that he had actually advanced the money believing in good faith that the property belonged to *B.* GOLUK CHUNDER DASS *v.* BHAGMUT DASS [11 C. L. R., 106

45. ——————— *Benami purchase by Hindu or Mahomedan.—Property bought by a father in his son's name.—Advancement.—Presumption.—Evidence.—Nature of evidence to rebut.*—When purchase is made by a Hindu or a Mahomedan in the name of his son, the presumption is in favour of its being a benami purchase; and it lies on the party in whose name it was purchased to prove that he is solely entitled to the legal and beneficial interest in the estate. When the rights of creditors are in issue in such a transaction, very strict proof of the nature of the transaction should be required from the objector to such rights, and the burden of proof lies with more than ordinary weight on the person alleging that the purchase was intended for the benefit of the son. NAGINBHAI *v.* ABDULLA [I. L. R., 6 Bom., 717

46. ——————— *Allegation of benami conveyance.*—*A.* and *B.* were co-sharers. *B.* leased his share to *D.*, taking rent separately from him; and *A.* sold his share to *C.*, so that *B.* and *C.* became co-sharers. Afterwards *B.* conveyed his share to *E.* and delivered *D.'s* kabuliat to him, the conveyance which was registered, reciting payment of the consideration. Subsequently *E.* sold the share to *C.* for valuable consideration. In a suit brought by *C.* for possession, *B.* alleged that his conveyance to *E.* was a benami transaction of which *C.* was cognizant. *Held*, that the onus of showing that was on *B.*, and that, *primâ facie*, *C.* was justified in supposing that *E.* had a good title to convey. SATYA MONI DASSI *v.* BHUGGOBUTTY CHURUN CHATTOPADHYA . . . . . 1 C. L. R., 466

BENAMI TRANSACTION—*continued.*

3. ONUS OF PROOF—*continued.*

Onus probandi—*continued.*

47. ——————— *Husband and wife.—Proof of bonâ fide purchase.*—In a case of purchase after a decree, where the vendor is only a benamidar, and the vendor's husband (supposed to be the real owner) wrote the deed and received the purchase-money (thereby making himself a consenting party), the *onus* lies on the plaintiff to prove that he is a *bonâ fide* purchaser for value, exercising due care and diligence. MAN TURUNGINEE DABEE *v.* BOISTUB CHURN BHUDDER . . 1 W. R., 110

See ALLI KHAN *v.* MEER NASSER ALI [1 W. R., 115

48. ——————— *Benami advance of money for mortgage.*—Where a plaintiff sued alleging that a certain deed of mortgage was executed by *M. B.* benami for the benefit of *H. B*, through whom the plaintiff claimed, and also alleging that *H. B.* had advanced the money for the mortgage out of her own moneys, it was held that if it could be shown that the money advanced was the money of *M. B.*, who executed the mortgage, it was immaterial to consider who was the nominal mortgagee, as the plaintiff could not set up a title inconsistent with the title set up in the lower Courts. In the absence of proof sufficient to establish the title of *H. B.*, and to show that the money was advanced by *H. B.*, the plaintiff's suit was dismissed. BHAWUN DOSS *v.* MAHOMED HOSSEIN [13 W. R., P. C., 38: 13 Moore's I. A. 346

See ROOP CHAND ASWAL *v.* KARFOOL [25 W. R., 54

49. ——————— *Suit for declaration of title.*—When defendants admitted the execution of a document purporting to be a conveyance by them of certain land to the plaintiff for valuable consideration, but contended that the deed was not intended to have any effect, and was merely a benami transaction,—*Held*, in a suit for declaration of his right by a plaintiff in possession of the land, that, under the circumstances of the case, the *onus* was on the plaintiff to show that the deed was what it appeared to be, and not a mere paper transaction. MOOKTO KESHEE DEBEE *v.* ANUNDO CHUNDER CHATTOPADHYA . . . . . 2 C. L. R., 48

50. ——————— *Bonâ fide purchase.—Certified purchaser.*—The burden of proof is upon him who alleges that the certified purchaser and registered owner is a benamidar. BAIJ NATH SAHAY *v.* RUGHO NATH PERSHAD SINGH [12 C. L. R., 186

51. ——————— *Purchaser bonâ fide from benamidar.*—Where a plaintiff claims land as purchaser in good faith from a benamidar who has been registered as owner, and who by the act of the true owners had been allowed to become the apparent owner, the burden lies upon him. RUPTO SINGH *v.* BAJRANG SINGH . . . 13 C. L. R., 280

BENAMI TRANSACTION—*continued.*

4. CERTIFIED PURCHASERS.

(*a*) ACTS XII OF 1841, I OF 1845, AND XI OF 1859.

52. ——— Act XII of 1841.—*Suit to oust certified purchaser at sale for arrears of revenue.*—Section 22, Act XII of 1841, did not apply to a suit for a declaration of the plaintiff's title in right of inheritance as against other members of the family. MAHOMED WAYEZ *v.* SUGEEROONISSA [6 W. R., 38

53. ——— Act I of 1845.—*Purchaser at sale for arrears of revenue.*—The ruling of the Full Bench in *Bihary Kunwar* v. *Bihari Lall, 3 B. L. R., F. B., 15 : 11 W. R., F. B., 16,* that a benami purchaser is debarred from setting up his title in opposition to a certified purchaser was held not to apply in a suit in which the plaintiff was a certified purchaser who had bought at a sale for arrears of revenue under Act I of 1845. BIRJO BEHAREE SINGH *v.* WAJID HOSSEIN [14 W. R., 372

54. ——— s. 21.—*Purchases made benami.*—Section 21, Act I of 1845, does not protect purchases made in the name of third parties from the operation of decrees against the persons beneficially entitled to the purchased property. AMEEROONISSA BEEBEE *v.* BENODE RAM SEIN [2 W. R., 29

55. ——— *Property purchased by member of joint family.*—Property purchased by a member of a joint family with money out of the common estate, is family property even if purchased in the name of his son. Even if the son is a certified purchaser at a sale under Act I of 1845, the other members of the family are not debarred by section 21 from claiming a share of the purchase as joint property. BOONIADI LALL *v.* DEWKEE NUNDUN LALL . . . . . 19 W. R., 223

56. ——— *Onus probandi.*—In a suit to recover possession by the ostensible purchaser of an estate sold for arrears of revenue under Act I of 1845, where it was found that plaintiff had stood by ever since his purchase, and had for 11 years allowed defendants to remain in possession and enjoy the usufruct as proprietors,—*Held,* that the burden of proof was rightly thrown on the plaintiff. *5 W. R., 56;* and *Bihary Kunwar* v. *Bihari Lall, 3 B. L. R., F. B., 15 : 11 W. R., F. B., 16,*—the former on section 36, Act XI of 1859, and the latter on section 260, Act VIII of 1859,—considered and applied to a case under section 21, Act I of 1845. JOHUR ALI *v.* BRINDABUN CHUNDER . 14 W. R., 10

57. ——— *Certified purchaser.*—Section 21, Act I of 1845, does not apply to a suit brought to oust the certified purchaser on the ground that the purchase was made on behalf of another person, but to make void a pottah granted by his mother. BISSONATH SURMA BHUTTACHARJEE *v.* MORAN . . . W. R., 1864, 353

BENAMI TRANSACTION—*continued.*

4. CERTIFIED PURCHASERS—*continued.*

(*a*) ACTS XII OF 1841, I OF 1845, AND XI OF 1859—*continued.*

Act I of 1845, s. 21—*continued.*

58. ——— *Fraudulent purchase.*—Act I of 1845 was not intended to afford statutable protection to a purchaser at a sale brought about by fraudulent default on a preconcerted arrangement, for the purposes of title. MUNSOOR ALI KHAN *v.* OJOODHYA RAM KHAN . . 8 W. R., 399

59. ——— *Sale for arrears of revenue.—Purchase by manager of joint Hindu family.—Suit by one member to recover his share.*—A purchase by a managing member of a joint Hindu family, in his own name, at a revenue sale held under Act I of 1845, is not affected by section 21 of the Act. A suit by one of the members for recovery of possession of his share of the property, purchased by the managing member in his own name, but for the use of the family, is not a suit to oust a certified purchaser, and, therefore, not affected by section 21, Act I of 1845. TUNDAN SING *v.* PUKH NARAYAN SING . . 5 B. L. R., 546 : 13 W. R., 347

Confirmed by P. C. on 9th June 1874 [22 W. R., 199 : L. R., 1 I. A., 342

60. ——— *Act XI of 1859, s. 36.—Act XII of 1841.—Held* (by MITTER, *J.*), that section 21 of Act I of 1845, and section 36, Act XI of 1859, do not apply to a purchase under Act XII of 1841. BOOA RUSSOOLEE *v.* THE NAWAB NAZIM OF BENGAL . . . 11 W. R., 382

61. ——— Act XI of 1859, s. 36, Construction of.—*Title of benami purchaser, how limited.—Benami property, its liability to claims against true owner.*—The object of section 36 of Act XI of 1859 is to prevent the true owner from disputing the title of his benamidar (certified purchaser), and not to preclude a third party from enforcing a claim against the true owner in respect of the benami property. CHUNDRA KAMINY DEBEA *v.* RAMRUTTUN PATTUCK . I. L. R., 12 Calc., 302

(*b*) CIVIL PROCEDURE CODE, 1882, s. 317 (1859, s. 260).

62. ——— Civil Procedure Code, 1859, s. 260.—*Party not a certified purchaser.*—Section 260 of Act VIII of 1859 does not preclude a person purchasing benami from setting up his title against a person not being the certified purchaser, or claiming through him. SHOROSUTTY DASSEE *v.* GOPEESOONDARY DASSEE . Marsh., 423 : 2 Hay, 512

63. ——— *Suits between benamidar and beneficial owner.*—Suits between the benamidar and the beneficial owner are alone referred to in section 260, Act VI of 1859. SEETANATH GHOSE *v.* MADHUB NARAIN ROY CHOWDHRY [1 W. R., 329

64. ——— *Purchase in another's name at Court sale.—Liability of property to creditors of benamidar.*—The immoveable pro-

BENAMI TRANSACTION—*continued.*

4. CERTIFIED PURCHASERS—*continued.*

(*b*) CIVIL PROCEDURE CODE, 1882, s. 317 (1859, s. 260)—*continued.*

Civil Procedure Code, 1849, s. 260—*continued.*

perty of *A.* at a Court's sale was purchased by *B.* with the money and on behalf of *A.* *B.* subsequently conveyed the property to *C.* for the benefit of *A.* *Held*, that the property could be taken in execution by the creditors of *A.* *Quære*,—Whether, but for the subsequent conveyance, *B.*, under the operation of sections 259 and 260 of the Civil Procedure Code, would not have had a good title against the creditors of *A.* SATAPU VALAD DAU DONGRE *v.* KARBASAPA [7 Bom., A. C., 21

65. ——— *Agreement to re-convey.*—*A.'s* property was sold under a decree to *B.*, a *bonâ fide* purchaser, who offered to *A.* to re-convey to him on being repaid the purchase-money. *Held*, that if *A.* accepted the proposal, section 260 of the Civil Procedure Code did not preclude a contract from arising. MOR JOSHI *v.* MUHAMMAD IBRAHIM [10 Bom., 344

66. ——— *Suit for possession against certified purchaser.*—Suit for possession by purchaser from certified purchaser at an execution sale. Defendant in possession not only denied plaintiff's title, but that of his vendor, whose purchase was clearly fraudulent, being made in collusion with the judgment-debtor to defraud creditors. *Held* that section 260, Act VIII of 1859, did not prohibit a defendant under such circumstances from questioning the plaintiff's title; that it provided for the dismissal of a suit brought to question the title of the certified purchaser, but did not prohibit a defendant from questioning that title when the auction-purchaser sought to oust him. KHYRAT ALI *v.* SEYFULLAH KHAN . . . 8 W. R., 130

67. ——— *Previous possession of party claiming to be the real purchaser.*—The correct interpretation of section 260, Act VIII of 1859, is to the effect that a suit by a party claiming to be the real purchaser of immoveable property sold in execution of a decree, cannot be brought against the certified auction-purchaser, even though the claimant has had previous possession. BYKUNT CHUNDER MOOSTAFEE *v.* KHEMA MOYEE DEBIA . . . . . 9 W. R., 360

68. ——— *Certified purchase—Purchaser under second sale in execution of decree.*—The certified purchaser of property which had been a second time attached and sold in the execution of a decree as the property of the judgment-debtors, sued to be confirmed in possession of the property by virtue of his certificate of sale and to obtain the cancelment of the second sale and the order disallowing his objections to that sale. *Held*, that the provisions of section 260 of Act VIII of 1859 did not prohibit the consideration of the circumstances of the first sale, when the question for determination was whether, at the time of the second attachment, the judgment-debtors were in possession as owners of the property, or merely as lessees of the certified purchaser. GANESH PERSHAD *v.* SHEO CHURUN LALL . . . 6 N. W., 197

69. ——— *Suit by decree-holder against certified purchaser.*—Section 260 of Act VIII of 1859 does not preclude the Courts from entertaining a suit brought by a decree-holder against the certified purchaser of property to bring the property to sale in execution of his decree as the property of his judgment-debtor, on the allegation that the certified purchaser had purchased the property benami for the judgment-debtor, who had remained in possession as owner from the date of purchase, and was in possession as such at the time of attachment. SOHUN LALL *v.* LALA GYA PERSHAD [6 N. W., 265

70. ——— *Onus probandi.*—Where plaintiff, as heir of the ostensible auction-purchaser, sued to oust defendant, who had been twelve years in possession, and the latter pleaded that the sale was made benami,—*Held*, that the long possession would go to prove the truth of defendant's allegation that the auction-purchaser was merely a trustee for him, and it would be for plaintiff to show that his ancestor paid for the purchased property. *Held* that sections 259 and 260, Act VIII of 1859, did not apply, as the sale was made before that law came into operation. ZOOLFEKAR ALI *v.* MAHOMED TUKEE . . 9 W. R., 438

71. ——— *Certified purchaser.*—The purchaser of immoveable property, sold in execution of a decree of a Civil Court, got a certificate under section 259 of Act VIII of 1859, and subsequently sued for possession of that which he had purchased. *Held*, that the defendant (who was in possession) was by section 260 debarred from pleading that he himself was the real purchaser, and that the purchase was made benami for him in the name of the plaintiff, the "certified purchaser" JOKHEE LALL *v.* HUNS KOOER . 10 W. R., 167

72. ——— *Certified purchaser.—Certificate of sale, Form of.—Liability of property to son's creditors.*—There is nothing fraudulent or illegal in a father making provision that property over which he has complete control shall not go into the hands of an insolvent son; but a benami conveyance to female members, the father continuing the absolute and uncontrolled owner during his life, and the son entering into possession after his death, cannot exclude the claim of the son's creditors. Where a purchaser at a sale in execution was named in the sale certificate as "mother and guardian of her infant son," the title to the property was held to be vested by the certificate in the minor absolutely. HEMANGINEE DOSSEE *v.* JOGENDRO NARAIN ROY [12 W. R., 236

BENAMI TRANSACTION—*continued.*

4. CERTIFIED PURCHASERS—*continued.*

(*b*) CIVIL PROCEDURE CODE, 1882, s. 317 (1859, s. 260)—*continued.*

Civil Procedure Code, 1849, s. 260—*continued.*

73. ——————— *Certified purchaser.—Fraud.*—Section 260, Act VIII of 1859, does not apply when the name of the certified purchaser has been inserted by fraud and contrary to the wishes of the purchaser. KOOSUMBA *v.* TUFUZZUL HOSSEIN . . . . . **13 W. R., 85**

74. ——————— *Suit by purchaser.*—In a suit for possession of a tank, on the allegation that plaintiff purchased it in execution of a decree against one *S. D.*, and that, after being put in possession, she was subsequently ousted, defendant's plea being possession after prior purchase at an execution sale under a decree against the same *S. D.*; the lower Court found that the defendant's purchase was a fictitious transaction, being in reality for the benefit of *S. D.*, who was in actual possession and enjoyment of the property at the time of the plaintiff's purchase. *Held*, that the case did not come under the purview of section 260, Act VIII of 1859. TARA SOONDUREE DABEE *v.* OOJUL MONEE DASSEE **[14 W. R., 111**

75. ——————— *Right of suit.—Fraud.*—*J.* and *B.* borrowed a sum of money on a mortgage of property. Shortly after this they granted a mokurrari of the property to plaintiff and afterwards sold their rights as proprietors to one *R. R.* Subsequently to this the mortgagee brought a suit against the mortgagors, and obtained a decree declaring the property liable to be sold in satisfaction of his debt. The property was accordingly sold in execution and purchased by one *R. D.*, and the sale proceeds were made over to the judgment-creditor. Plaintiff as mokurraridar now sues to obtain possession on the ground that the debt being paid off the mortgage is no longer in existence. The Judge having found that the purchase by *R. D.* was not *bonâ fide*, but for and on the part of *R. R.*, who was in actual possession,—*Held*, that section 260 of the Code of Civil Procedure was no bar to the suit, the ground of fraud alone giving plaintiff sufficient right to question the legality of the sale. SHAMA KESHEE *v.* RAJ KISHORE . . . **14 W. R., 179**

76. ——————— *Suit against certified purchaser.*—If a person is the person to whom, under section 259, Act VIII of 1859, a Court is directed to grant a sale certificate, he is entitled to be regarded as the "certified purchaser" at any time after the acceptance of his bid at the execution sale, even though the certificate may not actually have been granted to him before any suit against him, in connection with the property purchased by him, has been instituted; and section 260 applies so as to bar a suit by the alleged real purchaser against him. BUNDA ALI KHAN *v.* AMEERUN . . . **25 W. R., 493**

77. ——————— *Suit by certified purchaser.*—Section 260 of Act VIII of 1859 must be construed strictly and literally, and is applicable only to a suit brought against a certified purchaser to assert a benami title against him. Where the certified purchaser is a plaintiff, the real owner, if in possession, and if that possession has been honestly obtained, may show in defence that the holder of the certificate is a mere trustee. LOKHEE NARAIN ROY CHOWDHRY *v.* KALYPADDO BANDOPADHYA **[L. R., 2 I. A., 154: 23 W. R., 358**

78. ——————— *Sale in execution of decree.—Certified purchaser.—Benami purchase.*—A talook in possession of a mortgagee was put up for sale under an execution against the mortgagor, and was bought by *A.* in his own name, but benami for the mortgagee. *A.* obtained a certificate as purchaser, and was put formally in possession, the mortgagee remaining in actual possession. In a suit by *A.* in ejectment to recover possession of the property purchased,—*Held* (*dissentiente* L. S. JACKSON, *J.*), that the defendant was debarred not only by section 260, but by the general provisions of the Act, from pleading that the plaintiff, the certified purchaser, purchased not on his own behalf but benami for him, the defendant. Such defendant must show a transfer of title to him from the purchaser, in whom alone, under the certificate, the title of the judgment-debtor has vested. The object of section 260 is to prevent any enquiry between the purchaser *de facto* and any person on whose behalf he is alleged to have purchased. *Held*, on appeal (reversing the decision of the High Court), that section 260 of Act VIII of 1859 is to be construed strictly, and that no suit would lie by *A.* against the mortgagee to redeem. BIHANS KUNWAR *v.* BEHARI LAL **[3 B. L. R., F. B., 15: 11 W. R., F. B., 16 S. C. on appeal, 10 B. L. R., 159 18 W. R., 157: 14 Moore's I. A., 496**

MUTHOORA NATH DASS *v.* RAIKOMUL DOSSEE **[24 W. R., 278**

79. ——————— *Suit for declaration that the name of certified purchaser was inserted fraudulently.*—Section 260, Act VIII of 1859, is no bar to a suit for a declaration that the name of the certified purchaser was inserted in the certificate of sale fraudulently and without the consent of the real purchaser. GOSMIAH *v.* TAFFUZZUL HOSSEIN **[4 B. L. R., Ap., 32**

80. ——————— *Purchase by member of joint family in his own name with joint funds.*—The provisions of section 260, Act VIII of 1859, apply to ordinary benami purchases at execution sales, but do not affect purchases of property by one member of a joint Hindu family in his own name, but with the joint funds. BODH SINGH DOODHOORIA *v.* GUNESH CHANDRA SEN **[12 B. L. R., P. C., 317: 19 W. R., 356**

BENAMI TRANSACTION—*continued.*

4. CERTIFIED PURCHASERS—*continued.*

(*b*) CIVIL PROCEDURE CODE, 1882, s. 317 (1859, s. 260)—*continued.*

Civil Procedure Code, 1849, s. 260—*continued.*

81. ——————— *Execution of decree.—Certified purchaser.*—*A.* sued for a declaration that *P.*, the certified auction-purchaser of certain immoveable property, was merely a trustee for *R.*, *P.'s* judgment-debtor; that the purchase in *P.'s* name was made with the intent of defeating or delaying him in the execution of his decree; and that he was at liberty to apply for execution against the property as the property of his judgment-debtor. *Held*, following *Sohun Lall* v. *Gya Pershad*, that section 260, Act VIII of 1859, was in no way a bar to the suit. PURAN MAL *v.* ALI KHAN . . . **I. L. R., 1 All., 235**

82. ——————— *Suit by certified against actual purchaser.*—The certified purchaser of certain property at a sale in execution of a decree sued to establish his right to the property and for possession thereof. *Held*, that the defendant in the suit was not precluded by section 260, Act VIII of 1859, from resisting the suit on the ground that he was the actual purchaser of the property. JAN MUHAMMAD *v.* ILAHI BAKHSH **[I. L. R., 1 All., 290**

83. ——— **Civil Procedure Code, 1877, s. 317.**—*Suit by member of Hindu family against his father and a purchaser who has bought benami for him, for partition.*—The provisions of section 317 of the Code of Civil Procedure are no bar to a suit for partition brought by a Hindu son against his father and a certified purchaser of family property, who has bought benami for the father with the family funds at a sale in execution of a decree against the father. NATESA AYYAR *v.* VENKATARAMAYYAN . . . **I. L. R., 6 Mad., 135**

84 ——————— *Certified purchaser.—Suit against certified purchaser.—Grant of sale-certificate after institution of suit.*—*A.* sued *K.*, the purchaser of certain immoveable property sold in execution of a decree under Act VIII of 1859, for a declaration that *K.* had purchased such property on her behalf. The suit was instituted after Act VIII of 1859 was repealed and Act X of 1877 came into force. When the suit was instituted, *K.* did not hold a sale-certificate. After it was instituted he applied for and obtained a sale-certificate under section 317 of Act X of 1877. *Held*, that when the suit was instituted, it was maintainable, as, the defendant not being a certified purchaser under section 260 of Act VIII of 1859, that section did not apply; and that when the defendant obtained a certificate under section 317 of Act X of 1877, he became a certified purchaser, and the suit would only be maintainable if the plaintiff made out a case falling within the provisions of the last part of section 317. ALDWELL *v.* ILAHI BAKHSH . . **I. L. R., 5 All., 478**

85. ——————— *Benami purchaser.—Stranger to the transaction not affected.*—

BENAMI TRANSACTION—*continued*

4. CERTIFIED PURCHASERS—*continued.*

(*b*) CIVIL PROCEDURE CODE, 1882, s. 317 (1859, s. 260)—*continued.*

Civil Procedure Code, 1877, s. 317—*continued.*

In a suit by *A.* against *B.* and *C.* to recover land, *A.* alleged that *B.* bought the land at a Court-sale on his behalf. *B.* did not contest the suit. *C.*, who did not claim under *B.*, pleaded that *A.* could not recover by reason of the provisions of section 317 of the Code of Civil Procedure. *Held*, that section 317 only enabled the certified purchaser and those claiming under him to avoid arrangements made with him in the nature of a trust, and was no bar to the suit. RAMAKRISHNAPPA *v.* ADINARAYANA **[I. L. R., 8 Mad., 511**

86. ——————— *Suit for property purchased at execution sale.*—In a suit to obtain possession of certain property purchased at an execution sale, the plaintiff, who alleged that the purchase had been made for his benefit, and that the certified purchaser was his benamidar, made the certified purchaser, who admitted his allegation, a defendant along with the person in possession. *Held*, that the case came within the rule laid down in *Buhuns Koowar* v *Lalla Buhooree Lall, 14 Moore's I. A., 496 : 10 B. L. R., 159 :* and that the suit was not barred by section 317 of the Civil Procedure Code. HAZI ARJUN MULLICK *v.* FARUTULLA **[9 C. L. R., 295**

87. ——— **Civil Procedure Code, 1882, s. 317.**—*Benami transaction.—Fraud.—Suit against purchaser buying benami.—Sale certificate granted in name of benamidar.*—Certain property belonging to a judgment-debtor was brought to sale and purchased by a person in the benami name of her daughter, then an infant, and the sale certificate was made out in the name of the latter. Subsequently the mother mortgaged the property, and the mortgagee brought a suit, obtained a decree, and had the property sold and purchased it himself. Upon his being resisted by the daughter in attempts to get his name registered as proprietor, he instituted a suit against both mother and daughter to establish his rights to the property. The daughter thereupon objected that such would not lie by reason of the provisions of section 317 of the Civil Procedure Code. *Held*, that the provisions of that section, which were intended to prevent fraud, were inapplicable to the facts of the case, and that the suit was maintainable. KANIZAK SUKINA *v.* MONOHUR DAS **[I. L. R., 12 Calc., 204**

88. ——————— *Suit by benamidar.—Effect of decision in suit on beneficial owner.—Proof of benami transaction.*—So long as the benami system is recognised in this country, it is to be presumed, in the absence of any evidence to the contrary, that a suit instituted by a benamidar has been instituted with the full authority of the beneficial owner, and any decision made in such suit will be as much binding upon the real owner as if the suit had been brought by the real owner himself. *Meheroo-*

BENAMI TRANSACTION—*continued.*

4. CERTIFIED PURCHASERS—*continued.*

(*b*) CIVIL PROCEDURE CODE, 1882, s. 317 (1859, s. 260)—*continued.*

Civil Procedure Code, 1882, s. 317—*continued.*

nissa Bibee v. *Hur Churn Bose, 10 W. R., 220; Kalee Prosunno Bose* v. *Dino Nath Mullick, 11 B. L. R., 56 : 19 W. R., 434;* and *Sita Nath Shah* v. *Nobin Chunder Roy, 5 C. L. R., 102,* discussed. Where an application made by *C.* and *D.* to have their names registered in respect of certain malikana, as to right to which there was a dispute between *A.* and *B.*, was opposed by *E.*, who alleged that *A.* had been acting throughout as his benamidar, and was eventually rejected in 1876, on reference by the Collector to the Civil Court,—*Held* in a suit brought by *C.* and *D.* against *E.* for a declaration of their right to the malikana, and for a reversal of the order refusing to allow their names to be registered in respect thereof that, inasmuch as the allegation made by *E.* in the proceedings held in 1876 on the application by *C.* and *D.* before the Collector, and afterwards upon the reference before the Civil Court, that *A.* had been acting in the matter merely as his benamidar, was uncontradicted by *C.* and *D.* in their plaint in the present suit, there was sufficient evidence upon which to hold that that fact was true. GOPI NATH CHOBEY *v.* BHUGWAT PERSHAD **[I. L. R., 10 Calc., 697**

BENCH OF MAGISTRATES.

1. ——— *Criminal Procedure Code, s. 530, Trial of cases under.*—A Bench of Magistrates has no power to deal with cases coming under section 530 of the Criminal Procedure Code. A Bench may be empowered under section 50 of the Code "to try such cases or such class of cases only and within such limits as the Government may direct." The definition of the term "trial" shows that it refers to trials for offences, and these do not come within the miscellaneous matters mentioned in section 530. SUFFERUDDIN *v.* IBRAHIM . **I. L. R., 3. Calc., 754**

2. ——— **Salaried officer of Municipality, Disqualification of.**—*Criminal Procedure Code (Act X of 1882), s. 555.—Municipal offence.*—Notwithstanding anything contained in section 555 of the Criminal Procedure Code, a conviction for an offence against any municipal law or regulation, had before a Bench of Magistrates which includes a salaried officer of the Municipality, is bad. IN THE MATTER OF THE PETITION OF NOBIN KRISHNA MOOKERJEE. NOBIN KRISHNA MOOKERJEE *v.* THE CHAIRMAN, SUBURBAN MUNICIPALITY **[I. L. R., 10 Calc., 194**

3. ——— **Power of Bench.**—*Criminal Procedure Code, 1872, ss. 222, 224, 225.*—A Bench of Magistrates, whether empowered under section 224 or 225, cannot try a case of breach of the peace or any offence except those mentioned in sections 222 and 225 of the Criminal Procedure Code, 1872. QUEEN *v.* BEBHEKI PATHAK . . **21 W. R., Cr., 12**

BENCH OF MAGISTRATES—*continued.*

4. ——— **Jurisdiction of Bench.**—*Offence of lurking house-trespass.—Penal Code, s. 457.*—A Bench of Magistrates has no jurisdiction to try a charge for lurking house-trespass by night or house-breaking by night, under section 457 of the Penal Code. QUEEN *v.* BACHUN KADIR **[23 W. R., Cr., 6**

5. ——— **Conviction on proper materials.**—*Interference by High Court.*—Where a Bench of Magistrates has before it materials which are sufficient in law to support a conviction, the High Court has no authority to disturb it. ABDOOL HUQ CHOWDHRY *v.* IDRAK . **21 W. R., Cr., 57**

See QUEEN *v.* DWARKANATH MULLICK **[21 W. R., Cr., 45**

6. ——— **Irregularity in trial.**—*Absence at adjourned trial of some members of the Bench before whom the case first came.*—A case triable only by a Magistrate exercising powers of the 1st class, came before a Bench of Magistrates, neither of whom individually exercised those powers, but sitting together the Bench was so invested. At the adjourned trial only one of these Magistrates was present. *Held,* that he was not competent to try the case alone, and the orders passed by him were set aside as illegal. IN THE MATTER OF BARODA PROSONNO CHUCKERBUTTY . . . . **2 C. L. R., 348**

7. ——— *Absence of member from sitting and signature by him of final order.*—In a trial before a Bench originally constituted of a stipendiary and two Honorary Magistrates, one of the latter after the commencement of the trial was absent and important evidence was recorded in his absence. On the following day he returned to the Bench and signed the final order convicting the accused. *Held,* that the conviction was bad on the ground of irregularity. SHUMBHU NATH SARKAR *v.* RAM KOMUL GUHA . **13 C. L. R., 212**

8. ——— *Order irregularly made.—Hearing of part of case by one Bench and decision by another.*—Where in a summary case a Bench of Magistrates, after recording the evidence for the prosecution, postponed the case for the hearing of evidence for the defence; and on the day fixed for hearing another Bench of Magistrates, none of whom had been members of the former Bench, recorded the evidence for the defence and acquitted the accused,—*Held,* on a reference to the High Court, that the order must be set aside as being irregularly made. RAM SUNDER DE *v.* RAJAB ALI **[I. L. R., 12 Calc., 558**

BENGAL ACT—1862—VI.

See UNDER BENGAL RENT ACT, 1869, ss. 25, 31, 37, 38, 41, 43-49, 58.

——— **s. 9.**

See CASES UNDER APPEAL—MEASUREMENT OF LANDS.

See BENGAL RENT ACT, 1869, ss. 25, 37

See CASES UNDER MEASUREMENT OF LANDS.

BENGAL ACT—1862—VI, s 10.

See BENGAL RENT ACT, 1869, ss 37 AND 38.

See CASES UNDER MEASUREMENT OF LANDS.

——————— s. 11.

See APPEAL—MEASUREMENT OF LANDS.
[5 W. R., Act X, 17
7 W. R., 239
6 B. L. R., 1: 14 W. R., F. B., 4

See CASES UNDER MEASUREMENT OF LANDS.

——————— s. 16.

See CLAIM TO ATTACHED PROPERTY.
[10 W. R., 21

——————— VIII.

See ZEMINDARI DAKS . 4 W. R., 6
6 W. R., 100
8 W. R., 45

——————— IX—Mohurrir appointed under—

See PUBLIC SERVANT.
[20 W. R., Cr., 49

——————— 1863—III.

See COMPANY—WINDING UP—COSTS AND CLAIMS ON ASSETS.
[2 Ind. Jur., N. S., 180

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—BENG. ACT III OF 1863.
[10 W. R., Cr., 30

——————— V., ss. 4 and 8.

See NAZIR.
[11 W. R., 256: 19 W. R., 335

——————— ss. 12 and 3.

See PEONS, APPOINTMENT OF—
[9 W. R., 333:
11 W. R., 158, 159

——————— VI.

See CALCUTTA MUNICIPAL ACT, 1863.

——————— s. 180.

See MANDAMUS
[2 Ind. Jur., N. S., 182

——————— 1864—III.

See BENGAL MUNICIPAL ACT, 1864.

——————— s. 33.

See JURISDICTION OF CIVIL COURT—MUNICIPAL BODIES.
[I. L. R., 1 Calc., 409

BENGAL ACT—1863—V, s. 16.

See OBSTRUCTING NAVIGATION.
[2 B. L. R., A. C., 23: 11 W. R. Cr., 18

——————— VII.

See SALT, ACTS AND REGULATIONS RELATING TO,—BENGAL.

——————— 1865—VI.

See COMPANY—WINDING UP—COSTS AND CLAIMS ON ASSETS.
[2 Ind. Jur., N. S., 180

——————— ss. 31 and 32.—*Protector of Labourers, Powers of.—Wages of labourers.—Mode of taking account.—Criminal Procedure Code (XXV of 1861), s. 444.—Held,* that until an enquiry is made under section 31, Bengal Act VI of 1865, the Protector of Labourers is not competent to act under section 32; that the procedure under section 31 must be conducted in accordance with section 444 of the Criminal Procedure Code, 1861; that to support a conviction under section 32, Bengal Act VI of 1865, it must be shown that the wages or part of the wages due have remained unpaid for more than six months. But in an account current, the payments are not to be appropriated for the wages of the month in which the payment was made. IN THE MATTER OF THE NORTHERN ASSAM TEA COMPANY
[3 B. L. R., A. Cr., 39: 12 W. R., Cr., 29

——————— VII.

See SLAUGHTER-HOUSE.
[6 W. R., Cr., 77
16 W. R., Cr., 4
6 B. L., R., Ap., 28: 14 W. R., Cr., 67

——————— VIII.

See SALE FOR ARREARS OF RENT—UNDER-TENURES, SALE OF—

See SALE FOR ARREARS OF RENT—INCUMBRANCES.

——————— 1866—II.

See CONTRACT ACT, s. 23—ILLEGAL CONTRACTS—AGAINST PUBLIC POLICY
[21 W. R., 289

——————— IV.

See POLICE MAGISTRATE.
[1 B. L. R. O. C. 39

——————— ss. 36, 37, 39, 40.

See OPIUM . . 13 C. L. R., 336

——————— VI.

See CONVICTION.
[1 B. L. R., O. Cr., 41

——————— 1867 II—ss. 5 & 6.

See GAMBLING.
[I. L. R., 4 Calc., 659, 710
21 W. R., Cr., 23

BENGAL ACT—1868—VI, sch. K.

See JUDICIAL OFFICERS, LIABILITY OF—
[14 B. L. R., 254: 21 W. R., 391

——————— VII.

See CIVIL PROCEDURE CODE, 1882, s. 344.
[3 C. L. R., 508

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—OTHER GROUNDS.
[8 B. L. R., 230

——————— s. 8.

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—IRREGULARITY.
[I. L. R., 11 Calc., 200

——————— s. 18.

See JURISDICTION OF CIVIL COURT—REVENUE COURTS—ORDERS OF REVENUE COURTS.
[I. L. R., 3 Calc., 771

——————— 1869—II.

See CHOTA NAGPORE TENURES ACT, 1869.

——————— VIII.

See BENGAL RENT ACT, 1869.

——————— 1870—III s. 3.

1. ——— **Object of section.**—*Transfer of decree for execution.*—The object of section 3, Bengal Act III of 1870, was that a person against whom a decree was passed should not be harassed by two sets of proceedings in execution simultaneously carried on in two different Courts. MUDDEN MOHUN BISWAS *v.* PUDDO MONEE DASSEE . . 17 W. R., 139

2. ——— **Decree pending when Act came into operation.**—A decree in which no actual proceedings were pending in the Collector's Court at the commencement of Bengal Act III of 1870 (*i.e.*, where an order for attachment had been issued, but the attachment came to an end), was held to have been properly transferred to the Civil Court under section 3 of that Act. HURO PERSHAD ROY CHOWDRY *v.* FOOL KISHOREE DASSEE
[16 W. R., 308

3. ——— **Decree transferred to Civil Court for execution.**—*Appeal.—Bengal Act VIII of 1869, s. 108.—Act X of 1859, ss. 153, 155.*—In a suit brought for recovery of R75 for arrears of rent, the plaintiff obtained an *ex parte* decree on 18th March 1869, in the Court of the Deputy Collector. In October 1871, he applied to the Munsif for and sued out execution of his decree. In January 1872, one of the defendants applied to the Deputy Collector for a review of his judgment, and the Deputy Collector admitted the review and dismissed the plaintiff's suit. On appeal, the Judge held that the Deputy Collector had no jurisdiction to entertain the application for review or to hear the case, the decree having been transferred under Bengal

BENGAL ACT,—1870—III, s. 3.—Decree transferred to Civil Court for execution —*continued.*

Act III of 1870 to the Munsif for execution, and reversed the judgment of the Deputy Collector. *Held*, that the suit having been decided by the Deputy Collector before Bengal Act VIII of 1869 came into operation, the procedure, therefore, would be that laid down by section 108 of the Act, *i.e.*, under Act X of 1859, and the appeal would lie to the Collector, not to the Judge, under sections 153 and 155 of that Act. The decree alone was transferred to the Civil Court, and the application for review was rightly made to the Court of the Deputy Collector. IN THE MATTER OF RAMSOONDER BANDOPADHYA
[10 B. L. R., Ap., 21

S. C. RAM SOONDER BANERJEE *v.* DOORGA CHURN BARUI . . . . 19 W. R., 128

IN RE JUGGODUMBA DASSEE
[10 B. L. R., Ap., 22, note
15 W. R., 75

4. ——— **Decree transferred to Civil Court for execution.**—*Application to set aside decree.—Jurisdiction.*—When an *ex parte* decree of a Revenue Court has been transferred to the Civil Court under the provisions of section 3 of Bengal Act III of 1870, an application to set aside the decree must be made to the Civil Court, and not to the Revenue Court. KRISHNA KISHORE PODDAR *v.* WOOMESH CHUNDER ROY
[13 B. L. R., F. B., 214: 21 W. R., 448

IN RE WOOMA CHURN ROY MOZOOMDAR
[13 B. L. R., 215, note

S. C. WOOMA CHURN MOZOOMDAR *v.* CHUNDER KANT ROY CHOWDHRY . 16 W. R., 255

OODWUNT MAHTOON *v.* BIDDHI CHAND CHOWDRY . . . 13 B. L. R., 216, note
[18 W. R., 207

MOHESH CHUNDER SINGH SURMA *v.* BHOOBUN MOYEE DEBIA
[13 B. L. R., 217, note: 18 W. R., 252

5. ——— **Decree transferred to Civil Court for execution.**—Where a decree of the Collector was by the operation of Bengal Act III of 1870, section 3, transferred to a Civil Court for execution, the effect was to make it as it were a case of execution, or a decree of that Court; and in dealing with an order in such a case made by the Civil Court in execution, the High Court was bound to assume that the lower Court had acted properly and with jurisdiction, and its appellate jurisdiction followed as a matter of course. DINDYAL PARAMANICK *v.* DINOBUNDHOO CHOWDRY . . . 21 W. R., 412

——————— IV.

See COLLECTOR . . 18 W. R., 466

See COURT OF WARDS . 23 W. R., 348
[17 W. R., 560

See LUNATIC . 8 B. L. R., Ap., 50
[17 W. R., 180

BENGAL ACT—1870—IV, s. 75.

——— **Sale for arrears of rent.**—*Power of Collector.—Tenure created under Court of Wards.—Previously existing tenure.*—The provisions of section 75 of Bengal Act IV of 1870 apply only to tenures created by the Collector during the time the estate has been in the hands of the Court of Wards, and not to tenures created previously. A Collector, therefore, has no power to sell for arrears of rent a tenure created before he took charge of the estate without previously obtaining a decree for such arrears in the regular way. COLLECTOR OF CHITTAGONG *v.* KALA BIBI . **15 B. L. R., 343: 24 W. R., 149**

Upholding on appeal under Letters Patent the decision of MARKBY, *J.*, differing from MITTER, *J.*, in KALA BIBEE *v.* COLLECTOR OF CHITTAGONG **[23 W. R., 362**

——— **s. 79.**

See COURT OF WARDS . **17 W. R., 560**

——— **VI., ss. 58, 61.**

——— **Decision of Commission.**—*Village chowkidars.—Chowkidari chakran lands.—Civil suit.*—The words "final and conclusive" used in section 61 of Bengal Act VI of 1870 must be taken to be used in their ordinary and literal sense. Where, therefore, a Commission has been appointed under section 58 for the purpose therein mentioned, and such Commission has ascertained and determined that certain lands are chowkidari chakran lands, in the absence of fraud or non-compliance by the Commissioners with the provisions of the Act, their decision is conclusive evidence in any civil suit of the fact that the lands are what they have found them to be. NOBOKRISTO MUKERJEE *v.* SECRETARY OF STATE FOR INDIA **[I. L. R., 11 Calc., 632**

——— **1871—X.**

See ROAD CESS ACT, 1871.

——— **1872—II, s. 34.**

See STORING JUTE . **19 W. R., Cr., 4**

——— **1873—III.**

See MANDAMUS . **11 B. L. R., 250**

——— **1875—V, s. 45, cl. b, and s. 62.**

——— *Survey proceedings not taken for public purposes.—Right of suit.*—Section 45, clause (*b*) of Bengal Act V of 1875 applies only to a survey or some similar proceeding taken by a revenue officer "for some public purpose," and against which any party who may be affected by the boundary laid down by such officer would have a right to object. Therefore, where such a proceeding, although initiated under Bengal Act V of 1875, has been taken for the purpose of settling the boundaries of private property as between the owners of it, the party aggrieved by the order of the Collector in such proceeding is not debarred by section 62 of the Act from bringing a suit in the Civil Court to have the boundaries ascertained. HURRI PRASAD *v.* JAUMNA PRASAD **[I. L. R., 6 Calc., 453: 7 C. L. R., 491**

BENGAL ACT—1875—V—*continued.*

——— **s. 62.—Boundary dispute.**—*Possession, Evidence of.—Suit based on title.*—A formal decision on the question of boundary in a boundary dispute under section 62 of Bengal Act V of 1875, although conclusive as to possession, is no bar to a suit based upon title. KALA CHARA TEA CO., LD., *v.* SUKUL SINGH . . **I. L. R., 13 Calc., 280**

——— **1876—I.**

See EVIDENCE—CIVIL CASES—MARRIAGE, REGISTRATION OF— **[I. L. R., 10 Calc., 607**

——— **II.**

See OPIUM . . **13 C. L. R., 336**

——— **IV.**

See CALCUTTA MUNICIPAL ACT, 1876.

——— **V.**

See BENGAL MUNICIPAL ACT, 1876.

——— **VII—**

See DECLARATORY DECREE, SUIT FOR—DECLARATION OF TITLE. **[12 C. L. R., 139**

See EVIDENCE ACT, 1872, s. 35. **[I. L. R., 9 Calc., 431**

See LAND REGISTRATION ACT (BENGAL), 1876.

See POSSESSION—EVIDENCE OF POSSESSION . . **I. L. R., 8 Calc., 853 [I. L. R., 9 Calc., 431**

See RELIEF . **I. L. R., 10 Calc., 525**

See TITLE—EVIDENCE OF TITLE. **[I. L. R., 8 Calc., 853 I. L. R., 9 Calc., 731**

——— **VIII, s. 10.**

See PARTITION—RIGHT TO PARTITION—GENERAL CASES. **[I. L. R., 9 Calc., 244**

——— **1879—I.**

See CHOTA NAGPORE LANDLORD AND TENANT ACT . **11 C. L. R., 480**

——— **1880—VII.**

See PUBLIC DEMANDS RECOVERY ACT, 1880.

——— **IX.**

See ROAD CESS ACT, 1880

——— **s. 56.**

See CESS . **I. L. R., 10 Calc., 743**

——— **1882—II, ss. 61, 76, and 80.**

See EMBANKMENTS. **[I. L. R., 11 Calc., 570**

BENGAL CIVIL COURTS ACT, 1871.

See SUBORDINATE JUDGE, JURISDICTION OF— . . . 5 C. L. R., 128

——— **Power of High Court to hear appeals.**—*Per* JACKSON, *J.*—The power of the High Court to hear appeals from the Civil Courts in the interior is regulated by Act VI of 1871. RUNJIT SINGH *v.* MEHARBANS KOER

[I. L. R., 3 Calc., 662: 2 C. L. R., 391

——— **s. 11.—Court of Subordinate Judge and District Judge.**—The Court of a Subordinate Judge is inferior to the Court of a District Judge within the meaning of section 11 of the Bengal Civil Courts Act. PROSAD DOSS MULLICK *v.* RUSSICK LALL MULLICK; PROSAD DOSS MULLICK *v.* KEDAR NATH MULLICK . I. L. R., 7 Calc., 157

[8 C. L. R., 329

——— **s. 15.**

See CIVIL PROCEDURE CODE, 1882, s. 2.

[3 C. L. R., 508

See CIVIL PROCEDURE CODE, 1882, s. 344.

[3 C. L. R., 508

——— **s. 19.**

See TRANSFER OF CIVIL CASE—GENERAL CASES . . . 25 W. R., 219

——— **ss. 19 and 20.**

See SUBORDINATE JUDGE, JURISDICTION OF— . . I. L. R., 7 All., 230

——— **ss. 20, 22.**

See VALUATION OF SUIT—SUITS.

[I. L. R., 4 All., 320
I. L. R., 13 Calc., 255
I. L. R., 8 All., 438

1. ——— **s. 22.—Valuation of appeal.**—*Subject-matter in dispute.—Jurisdiction of the High Court.*—The appeal from the decree or order of a Subordinate Judge or Munsif, where the amount or value of the subject-matter in dispute in a suit exceeds R5,000, lies to the High Court, although the amount or value of the subject-matter in dispute in appeal is less than R5,000. IN THE MATTER OF THE APPEAL OF DULI CHAND . . 9 B. L. R., 190

S. C. DOOLY CHAND *v.* MIRBAN SINGH.

NURRENDER NARAIN SINGH *v.* SRINARAIN DOSS.

NEERBHOY SINGH *v.* RAM PERSHAD SINGH

[18 W. R., 261

So also held, under section 18, Act XVI of 1868, by the majority of the Court (PEARSON, *J.*, dissenting) of the North-Western Provinces in MAHOMED HOSSEIN KHAN *v.* SHIB DYAL

[5 N. W., 108: Agra, F. B., Ed. 1874, 276

MASOOMA BEBEE *v.* NAZUR FATMA

[1 N. W., 117, Ed. 1873, 203

CHUNDER BHAN SINGH *v.* JAIRAM GEER

[5 N. W., 175

But *see* SRIMATI DASI *v.* SOUDAMINI DOSSEE

[9 B. L. R., 192, note

BENGAL CIVIL COURTS ACT, 1871, s. 22.—Valuation of appeal—*continued.*

2. ——— *Appeal where one suit has been split up into several.*—Where a suit for R13,777 was brought against defendants whose interests were not identical, and the Judge ordered separate trials of the different causes involved, as provided in section 9, Act VIII, 1859, an appeal by the defendants from the decision in one of the suits valued at R149 was held not to lie to the High Court. RAM COOMAR DOSS *v.* BIDHOO MOOKEE DASSEE . . . . . 15 W. R., 31

3. ——— *Interest on amount of appeal.*—Where an appeal was brought from an order in execution of the decree in a suit in which both the amount sued for and the amount of the decree were below R5,000, but by reason of interest the appeal was valued at more than that sum, the case was held to come within the principle of *In re Duli Chand.* RAI DHANPAT SINGH BAHADOOR *v.* MADHUMATI DEBI

[9 B. L. R., 197, note: 18 W. R., 316

4. ——— *Subject-matter in dispute.—Jurisdiction of High Court.—Execution of decree.—Act XXIII of 1861, s. 11.*—The appeal from an order of a Subordinate Judge directing execution to issue lies to the District Judge, and not to the High Court, where the amount claimed in a suit is under R5,000, although the amount sought to be recovered in execution has, by the addition of interest since decree, grown to a sum exceeding R5,000. RUTTANJOTE KOOER *v.* RAM DASS

10 B. L. R., 290: 19 W. R., 131

5. ——— *Execution of decree.*—When the High Court called up an appeal to the Zilla Judge, and tried it as a regular appeal, and passed a decree thereon,—*Held*, that this did not entitle the parties to prefer an appeal to the High Court in the proceedings in execution of that decree. Such appeal would lie to the Zilla Judge. RAMANOOGRA SAHOY *v.* BYJNATH LAL

[10 B. L. R., 291, note: 15 W. R., 164

6. ——— *Suit in value over R5,000.—Appeal heard by Judge without jurisdiction.*—The High Court, in special appeal, remanded a case to the Subordinate Judge for re-trial. The case having been re-tried, an appeal against the second decree of the Subordinate Judge was filed in the Court of the District Judge, who declared that it was not cognizable by him, as the value of the property in dispute exceeded R5,000. A regular appeal was preferred to the High Court. *Held*, that the entire proceedings subsequent to the first decree of the Subordinate Judge were *ultra vires* and could not be recognized, and that the appeal would not lie. THAKOOR PERSHAD SINGH *v.* MAHADEO SINGH

[5 N. W., 210

7. ——— **Order passed under Act IX of 1861.**—An appeal lies, under Act VI of 1871, to the Judge from an order of the Subordinate Judge passed under Act IX of 1861. SONAMONEE DOSSEE *v.* JOY DOORGA DOSSEE . . 17 W. R., 551

BENGAL CIVIL COURTS ACT, 1871, s. 24.

See MAHOMEDAN LAW—DEBTS.
[I. L. R., 11 Calc., 421

See MAHOMEDAN LAW—GIFT—LAW APPLICABLE TO—
[6 N. W., 2: Agra F. B., Ed. 1874, 286

See MAHOMEDAN LAW—GIFT—VALIDITY.
[6 N. W., 338

See MAHOMEDAN LAW—PRE-EMPTION.
[I. L. R., 7 All., 775

See MAHOMEDAN LAW—PRESUMPTION OF DEATH . . I. L. R., 7 All., 297

See RELIGION, OFFENCES RELATING TO—
[I. L. R., 7 All., 461

See RIGHT OF SUIT—CHARITIES.
[I. L. R., 5 All., 497

See TRANSFER OF PROPERTY ACT, s. 10.
[I. L. R., 7 All., 516

1. ——————— *Hindu Law.—Mahomedan Law.—Convert.—"Justice, equity, and good conscience."*—To entitle a person to have the Hindu or Mahomedan law applied to him under the first paragraph of section 24 of Act VI of 1871, he must be an orthodox believer in the Hindu or Mahomedan religion. The mere circumstance that he calls himself, or is called by others, a Hindu or Mahomedan, as the case may be, is not enough. His only claim to have a special kind of law applied to him is that he follows and observes a particular religion that of itself creates his law for him. If he fails to establish his religion, his privilege to the application of its law fails also, and he must be relegated to that class of persons whose cases have to be dealt with under the latter paragraph of section 24 of Act VI of 1871 according to justice, equity, and good conscience. *B.*, alleging that his family was a joint undivided Hindu family, sued *R.*, his father, for a declaration that certain property was joint ancestral property, and for partition of his share according to the Hindu law of inheritance of such property, *viz.*, one moiety. *R.* set up as a defence to the suit that the members of the family were Mahomedans, and were therefore not governed by the Hindu law. The evidence in the suit established that the members of the family were neither orthodox Hindus nor Mahomedans. It also established that the Hindu law of inheritance had always been followed in the family. *Held*, following the principle enunciated above, that the family not being Hindus nor Mahomedans, the rule of decision applicable to the suit was neither Hindu nor Mahomedan law, but justice, equity, and good conscience; that, the Hindu law of inheritance having always been followed in the family, it was justice, equity, and good conscience to apply that law to the suit; and that therefore *B.* was entitled to demand partition of half of the family estate. *Abraham* v. *Abraham, 9 Moore's I. A., 199*, referred to. RAJ BAHADUR *v.* BISHEN DAYAL I. L. R., 4 All., 343

2. ——————— **Mahomedan Law—Pre-emption.**—Under section 24 of Act VI of 1871, Mahomedan law is not strictly applicable in suits for pre-emption between Mahomedans not based on local custom or contract, but it is equitable in such

BENGAL CIVIL COURTS ACT, 1871, s. 24.—Mahomedan law—Pre-emption—*continued.*

suits to apply that law. The application of Mahomedan law in a suit for pre-emption between a Mahomedan claimant of pre-emption and a Mahomedan vendee, on the basis of that law, is not precluded by the circumstance of the vendor not being a Mahomedan. CHUNDO *v.* ALIMOODDEEN
[6 N. W., 28
S. C. Agra., F. B., Ed. 1874, 305

See MOTI CHAND *v.* MAHOMED HOOSSEIN KHAN . . . 7 N. W., 147

——————— **s. 26.**

See SUBORDINATE JUDGE, JURISDICTION OF— . . . 18 W. R., 292

——————— **s. 29.**

See RIGHT OF APPEAL . 16 W. R., 227

BENGAL EMBANKMENT ACT (II of 1882), ss. 6, 76, and 80.

See EMBANKMENTS.
[I. L. R., 11 Calc., 570

BENGAL EXCISE ACT, 1878.

See OPIUM . . 13 C. L. R., 336

See STATUTE, CONSTRUCTION OF—
[I. L. R., 8 Calc., 214

——————— **ss. 9, 58, 74.—Introduction into Calcutta of spirituous liquor manufactured elsewhere.**—*Limits fixed by Collector.—Additional punishment.—Alternative sentence of imprisonment.*—The provisions of section 74 of the Bengal Excise Act as to additional punishment, where there has been a "previous conviction for a like offence," contemplate merely the case of the offender having been already convicted of an offence punishable with a fine of R200 or upwards, and being again convicted of another offence punishable with the same punishment: it is not necessary that he should have been previously convicted of the same offence. The accused were sentenced by the Presidency Magistrate, under sections 58 and 74 of the Bengal Excise Act, to a fine of R200 each, in default to three months' imprisonment, and in addition to six months' imprisonment, which was the maximum term that could be awarded under section 74. *Held*, that the sentence of imprisonment was not in excess of the powers given to the Magistrate by section 12 of the Presidency Magistrates Act, the imposition of the additional sentence of imprisonment not affecting the Magistrate's powers as regarded the original sentence under section 58. No limits with regard to any distilleries in Calcutta having been fixed under section 9 of the Act within which spirituous liquor manufactured otherwise than in that particular distillery shall be introduced or sold without a special pass, and the fixing of such limits being necessary to a conviction of an offence under section 58, the convictions in this case were set aside. RAM CHUNDER SHAW *v.* THE EMPRESS . . I. L. R., 6 Calc., 575
[8 C. L. R., 250

BENGAL EXCISE ACT, 1878—*continued.*

——— **ss. 15, 17, and 61.**—*Specified quantity of spirits.—Maximum amount.*—Where, under section 15, Bengal Act VII of 1878, the Chief Commissioner of Assam, exercising the powers of the Board of Revenue, fixed, by a circular order, the limit at six quart bottles of country spirit as allowable for retail sales, and an accused was charged under section 17 with possessing more than that quantity, but the amount he had was less than the amount stated in section 15,—*Held*, that he was not guilty of any offence under section 61, and that no lesser quantity than that specifically mentioned in section 15 of country spirits which might have been declared to be the maximum quantity by any such order made under the provisions of section 15 could be deemed to be the quantity specified in section 15 within the meaning of section 61. EMPRESS *v.* KOLA LALANG

[I. L. R., 8 Calc., 214
10 C. L. R., 155

——— **ss. 15 and 60.**—*Sale by wholesale.*—A sale of more than twelve quart bottles or two gallons of spirituous or fermented liquors of *the same kind*, made at one transaction, is a sale by wholesale. *Quære*,—Whether a sale of twelve quart bottles of one kind of liquor, and three quart bottles of another kind, at the same time, comes within the prohibition in the explanation clause of section 15. EMPRESS *v.* NUDDIAR CHAND SHAW

[I. L. R., 6 Calc., 832
10 C. L. R., 389

——— **ss. 41, 42, and 59.**—*Sale of liquor by servant.—Breach of condition of license.—License, Production of.*—The conviction of servants of a licensed vendor of spirits for a breach of the license is not necessarily illegal. *In re Ishur Chunder Shaha, 19 W. R., Cr., 34*, followed. *The Empress* v. *Nuddiar Chand Shaw* dissented from. Two servants of a licensed vendor of spirits were charged with having committed two breaches of the conditions of the license, and the maximum fine for each breach was inflicted. *Held*, that the Magistrate was competent to punish each of the servants separately in this manner. The excise officer, to whom a licensed vendor of spirits is bound to produce his license, must be an excise officer of the higher grades, not any police officer who may be exercising the powers of an excise officer. IN THE MATTER OF THE PETITION OF BANEY MADHUB SHAW. THE EMPRESS *v.* BANEY MADHUB SHAW

[I. L. R., 8 Calc., 207: 10 C. L. R., 389

——— **s. 53.**—*Sale by licensed vendor contrary to terms of his license.*—Section 53 of the Bengal Excise Act does not apply to sales by a licensed vendor contrary to the terms of his license. That section provides for a breach of the condition of a license not covered by the second clause of section 59 of the Act. THE EMPRESS *v.* NOBOCOOMAR PAL

[I. L. R., 6 Calc., 621

——— **ss. 53, 60, 61.**—*Sale by servant of licensed vendor.—Cooly employed by servant.*—The servant of a licensed vendor sold eight quart bottles of country spirit, and employed a cooly to carry them as he directed. The servant was convicted under section 60, Bengal Act VII of 1878; and the cooly was convicted under section 61 of the same Act. It was suggested that the servant should have been convicted under section 53, and that the cooly had committed no offence. *Held*, that the conviction of the cooly was illegal, and must be set aside. *Held*, also, that the servant was properly convicted, and whether under section 60 or section 53 was immaterial. *In re Ishur Chunder Shaha, 19 W. R., Cr., 34*; and *Empress* v. *Baney Madhub Shaha, I. L. R., 8 Calc., 207: 10 C. L. R., 389*, followed. EMPRESS *v.* ISHAN CHUNDRA DE

[I. L. R., 9 Calc., 847: 12 C. L. R., 451

——— **s. 59.**—*Liability of servant.*—The licensed vendor, and not his servant, is liable under section 59 of the Excise Act, Bengal Act VII of 1878, for contravention of the Act. IN THE MATTER OF NOMULLU AKOND . **11 C. L. R., 416**

——— **s. 60.**—*Liability of servant.*—The licensed retail vendor himself is the only person liable to conviction under section 60. THE EMPRESS *v.* NUDDIAR CHAND SHAW

[I. L. R., 6 Calc., 832: 8 C. L. R., 152

See contra, EMPRESS *v.* BANEY MADHUB SHAW

[I. L. R., 6 Calc., 207: 10 C. L. R., 389

——— **s. 61.**—*Imported liquor.—Possession.—Pass.—Consignee.—Agent.*—Certain liquors arrived in Calcutta per S.S. *Navarino*, consigned to *M. & Co.* at Agra, who requested *A.* to pay on their behalf the duty and landing charges, and forward the goods to Agra. While on the way from the steamer to the railway station, the goods were seized as being in the possession of *A.* without a pass, within the meaning of section 61 of Bengal Act VII of 1878, and *A.* was convicted and sentenced to a fine under the provisions of that Act. *Held* that the conviction was bad. IN THE MATTER OF THE PETITION OF KYTE. EMPRESS *v.* KYTE

[I. L. R., 9 Calc., 223: 11 C. L. R., 427

BENGAL MUNICIPAL ACT III OF 1864.

——— *Power of Municipal Commissioners to close or divert public highways.*—Bengal Act III of 1864, which vested public highways in Municipal Commissioners for the purposes of the Act, did not by so vesting them give power to the Municipal Commissioners, nor, *a fortiori*, to the Vice-Chairman alone, to stop up or divert such public highways. EMPRESS ON THE PROSECUTION OF JODOONATH GHOSE *v.* BROJONATH DEY

[I. L. R., 2 Calc., 425

——— **ss. 6, 79.**—*Power of Municipal Commissioners to administer oath.—Order to close burning-ground.*—Every Municipal Commissioner being vested by Bengal Act III of 1864, section 6, with the powers of a Magistrate under section 23 of the Criminal Procedure Code, is authorized to administer an oath, if the purposes of the Act require that he should do so. BRINDABUN CHUNDER ROY *v* MUNICIPAL COMMISSIONERS OF SERAMPORE

[19 W. R., 309

BENGAL MUNICIPAL ACT III OF 1864—*continued.*

——— s. 19.—*Refusal to permit excavation of tanks.—Discretion of Municipality.*—By section 19 of the Bye-laws of the Howrah Municipality, framed under section 84, Bengal Act III of 1864, and confirmed by the Lieutenant-Governor, it is within the discretion of the Municipality to refuse permission for the excavation of a tank, and the Courts have no power to interfere with the *bonâ fide* exercise of such discretion. BHYRUB CHUNDER BANNERJEE *v.* CHAIRMAN OF THE HOWRAH MUNICIPALITY [17 W. R., 215

——— s. 27.—*Warrant of arrest.—Criminal Procedure Code, 1861, ch. XV (ss. 257-272).*—A Magistrate or Municipal Commissioner has no power under Act III of 1864, Bengal Council, to issue a warrant for the arrest of a person who may have failed to appear on a summons to answer a charge, under section 27 of that enactment, for using premises as a straw or wood depôt without a license. *Per* LOCH, *J.*—The provisions of Chapter XV of the Code of Criminal Procedure are not applicable to offences under Bengal Act III of 1864. IN THE MATTER OF THE PETITION OF BISSESSUR CHATTERJEE . . . . . 16 W. R., Cr., 1

——— s. 33.

See JURISDICTION OF CIVIL COURT—MUNICIPAL BODIES.

[I. L. R., 1 Calc., 409

1. ——— s. 57.—*Obstruction of drain by tree blown down.*—The obstruction of a drain by a tree blown down by a cyclone is not an obstruction within the meaning of section 57 of Bengal Act III of 1864. ANONYMOUS . . 3 W. R., Cr., 33

2. ——— *Blocking up private drain.*—The municipal authorities have no power under section 57, Bengal Act III of 1864, to impose a fine on a person for blocking up a drain which is not shown to be public property, or along the side of any highway. QUEEN *v.* BANI MADHUB BANERJEE [14 W. R., Cr., 23

1. ——— s. 63.—*Right to pull down ruinous house.—Notice of action.*—By section 63, Bengal, Act III, 1864, Municipal Commissioners, if they deem a house or building to be in a ruinous state, may, after the notice prescribed by that section, cause the same to be taken down. GOPEE KISHEN GOSSAIN *v.* RYLAND . . . . . 9 W. R., 279

2. ——— *Bye-law of Municipality.—Covering buildings with inflammable material.*—A bye-law made by the Howrah Municipality in the exercise of the authority vested in it by Bengal Act III of 1864, section 63, which forbids the erection or renewal of the external roof and walls of buildings with inflammable materials, was construed to forbid the renewal even of a portion of the roof with such material. CHAIRMAN OF THE HOWRAH MUNICIPALITY *v.* MONTANEE BEWAH . . 24 W. R., Cr., 70

BENGAL MUNICIPAL ACT III OF 1864—*continued.*

1. ——— s. 67.—*Fine for suffering premises to be in filthy state.—Owners and occupiers.*—The Municipal Commissioners were empowered under section 67, Bengal Act III of 1864, to fine either the owner or occupier of the land who suffered it to be in a filthy state. Where the land was occupied by tenants, and the owner admittedly lived in another district, and there was nothing to show that he suffered the land to be in a filthy state,—*Held*, that the imposition of a fine on owner was not a proper exercise of the discretion given by section 67 of the Act. QUEEN *v.* DWARKNATH HAZRA . . 8 B. L. R., Ap., 9 [S. C. 16 W. R., Cr., 70

2. ——— *Allowing ground to remain in filthy state.*—The owner of ground is answerable under section 67, Bengal Act III of 1864, whether his ground was made dirty by himself or by somebody else. ANONYMOUS . . 3 W. R., Cr., 33

Unless he has let it, then the occupiers are liable. QUEEN *v.* PARBUTTY CHURN SIRCAR [3 W. R., Cr., 57

QUEEN *v.* BROJO LALL MITTER [8 W. R., Cr., 45

——— ss. 67, 73.—*Omission to clear away jungle.—Power of Magistrate as Municipal Commissioner.*—If upon a notice being served on a party under Bengal Act III of 1864, section 73, he does not choose to clear away the jungle referred to, it is open to the Magistrate, as Commissioner of the Municipality, either to clear the jungle at the expense of the party in possession, or to proceed under section 67 and inflict a fine. IN THE MATTER OF THE PETITION OF GOOPEE KISSEN GOSSAIN . 24 W. R., Cr., 79

——— s. 73.—*Expense of clearing away jungle after notice to defendant.*—The Municipal Commissioners were held entitled, under section 73, Bengal Act III of 1864, to recover from the defendant the expense of clearing away any jungle which they found on his land, upon his failure after notice to clear it himself within the time specified in the notice. BROWNE *v.* WOOMESH CHUNDER ROY [7 W. R., 213

1. ——— s. 77.—*Notice of action.—Suit against Municipal Commissioners.*—A notice of action against Municipal Commissioners is absolutely necessary under section 77, Bengal Act III of 1864. A notice of objecting to, and asking for, a reconsideration of the order complained of is not sufficient. ABHOY NATH BOSE *v.* THE CHAIRMAN AND THE DEPUTY CHAIRMAN OF THE MUNICIPAL COMMITTEE OF KISHNAGUR . . . . 7 W. R., 92

2. ——— *Omission to take out license*—Where the accused was charged with a breach of section 77, Act III of 1864, in not taking out a license for a wood-yard, and he pleaded that the yard had been in existence prior to 1864, it was held that the Magistrate was wrong in refusing to enquire into the allegation as to the existence of the yard prior to 1864. CHAIRMAN OF THE SUBURBAN MUNICIPAL COMMISSIONERS *v.* UMBICA CHURN MOOKERJEE [15 W. R., Cr., 84

BENGAL MUNICIPAL ACT III OF 1884, s. 77—*continued.*

3. ——————— *Using premises for offensive trades.*—The words "uses any premises" in section 77, Bengal Act III of 1864, means using and employing the premises as a place for the carrying on of the offensive trades mentioned in that section. MUNICIPAL COMMISSIONERS FOR THE SUBURBS OF CALCUTTA *v.* ZAMIR SHEIKH . . **16 W. R., Cr., 4**

4. ——————— *Burning bricks for private use.*—Section 77 of Bengal Act III of 1864 refers to the burning of bricks for trading purposes, and not to cases where bricks are made for the particular use of the person burning them; such person need not take out a license for that purpose. IN THE MATTER OF THE PETITION OF SRIRAM CHUNDER HALDAR. SRIRAM CHUNDER HALDAR *v.* CHAIRMAN OF THE HOWRAH MUNICIPALITY **[20 W. R., Cr., 65**

——————— **s. 79.**—*Procedure—Medical report.—Closing burning-ground.*—A proceeding taken under Bengal Act III of 1864, section 79, is not a judicial proceeding, and the evidence referred to therein means evidence without oath. Regular reports signed by medical men would constitute evidence within the meaning of that section. Section 79 does not authorize Municipal Commissioners to close a burning-ground which has been used for very many years merely because they think that the burning of dead bodies is offensive. It allows them to interfere only when it shall appear to them upon the evidence of competent persons that any burning-ghat or burying-ground is in such a state as to be dangerous to the health of persons living in the neighbourhood thereof. BRINDABUN CHUNDER ROY *v.* MUNICIPAL COMMISSIONERS OF SERAMPORE **[19 W. R., 309**

——————— **s. 81.**—*Notice of action.—Mistake in notice.*—A notice under any of the sections of Bengal Act III of 1864 preceding section 81 may, under that section, either be served upon the person addressed, or left with some servant of the family. The mistake of a few rupees in a notice, caused by an error in addition, is not sufficient to impeach or affect the demand where the directions of the Municipal Act have been substantially complied with, section 48 protecting the Commissioners against such mistakes. GOPEE KISHEN GOSSAIN *v.* RYLAND **[9 W. R., 562**

1. ——————— **s. 87.**—*Cause of action.—Suit for possession against Municipality as wrong-doers.*—Plaintiffs, as proprietors, sued the Howrah Municipal Committee to recover possession of land from which they alleged they had been ousted by defendants' stacking stones thereon; and they regarded their cause of action as arising when the Municipal Commissioners refused to remove the stones. Defendants' case was that the land had been in possession of Government till Bengal Act III of 1864 was extended to Howrah, since which time the Commissioners had held the land. *Held*, that the plaintiffs' cause of action could not be considered to have first arisen on the refusal of the Municipality to remove the stones. *Held* (by BAYLEY, J.), that the Municipal Commissioners had acted properly under the law, and were entitled to the application of section 87, Bengal Act III of 1864. *Held* (by PHEAR, *J.*), that section 87 could only protect defendants if sued for damages consequent on a wrong done by them in the reasonable belief that they were exercising their lawful powers; not if they were sued by parties kept out of possession by their continued wrong-doing. POORNO CHUNDER ROY *v.* BALFOUR . . **9 W. R., 535**

2. ——————— *Notice of action.—Municipal Commissioners.*—Municipal Commissioners are entitled to one month's notice of action under section 87, Bengal Act III of 1864, while they have been acting *bonâ fide* in the belief that they were exercising powers given to them by that Act; not if their proceedings were not justified by that Act, and only colourably done under cover thereof. GOPEE KISHEN GOSSAIN *v.* RYLAND . . . **9 W. R., 279**

3. ——————— *Suit against Municipal Commissioners for possession of land.*—Previous to the institution of the present suit, one of the shareholders of a piece of land brought a suit against the Chairman of the Municipality for recovery of possession of his share. The other shareholders were made *pro formâ* defendants in the suit. This suit was dismissed as barred by the law of limitation. After the dismissal of the suit, the plaintiff brought the present suit for recovery of his share of the land, on the allegation that his tenant had relinquished the land within three months in consequence of his having been dispossessed by the Municipal Commissioners. *Held* that section 87, Bengal Act III of 1864, did not apply. *Semble*,—Bengal Act III of 1864, section 87, relates only to actions brought in respect of acts done by the Commissioners under that Act for the purpose of the Act. PRICE *v.* KHILAT CHANDRA GHOSE **[5 B. L. R., Ap., 50: 13 W. R., 461**

4. ——————— *Cause of action, Accrual of.—Damages for detention of omnibus.*—In a suit for the recovery of damages on account of a daily fine imposed by the Municipality of Howrah and the detention of an omnibus, which fine had been set aside by the High Court, and the detention pronounced illegal,—*Held*, that if the plaintiff had any cause of action it accrued upon the seizure of the omnibus, and not upon the order of the High Court which allowed the conviction to stand as to one rupee, and that he could not under the circumstances treat the continued detention of the omnibus as a fresh cause of action from day to day, and his suit not having been brought within three months was barred by section 87, Bengal Act VI of 1864. HUGHES *v.* MUNICIPAL COMMISSIONERS OF HOWRAH **[19 W. R., 339**

5. ——————— *Suit to recover possession of land taken by Municipal Commissioners.*—Section 87 of Bengal Act III of 1864 is applicable only in those cases where the plaintiff claims damages or compensation for some wrongful act committed by

BENGAL MUNICIPAL ACT III OF 1864, s. 87—*continued.*

the Commissioners or their officers, in the exercise, or honestly supposed exercise, of their statutory powers. The notice in the earlier part of the section is meant to give the defendant an opportunity of making some pecuniary amends for the wrong without incurring the cost of litigation. CHUNDER SIKUR BUNDOPADHYA *v.* OBHOY CHURN BAGCHI [I. L. R., 6 Calc., 8

BENGAL MUNICIPAL ACT, 1876.

——— **s. 32.**—*Bengal Act V of 1876.—Municipal Corporations.—Commissioners.—Right of way.—Compensation.—Land Acquisition Act, X of 1870.*—Section 32 of Act V of 1876, the Bengal Municipal Act, enacts that "all roads, bridges, embankments, tanks, ghats, wharves, jetties, wells, channels, and drains in any Municipality (not being private property), and not being maintained by Government or at the public expense, now existing or which shall hereafter be made, and the pavements, stones and other materials thereof, and all erections, materials, implements and other things provided therefor, shall vest in, and belong to, the Commissioners." *Held*, that the word "roads" in this section does not include the soil beneath the roads. CHAIRMAN OF THE NAIHATI MUNICIPALITY *v.* KISHORI LAL GOSWAMI [I. L. R., 13 Calc., 171

——— **s. 216 and ss. 215 and 180.**—*Bench of Magistrates, Power of.—Omission to remove obstruction.*—A notice was issued under section 215, Bengal Act V of 1876, requiring *A.* to remove an alleged obstruction. The requisition was not complied with, and *A.* was prosecuted for non-compliance therewith, under section 216, before a Bench of Honorary Magistrates. *Held*, that the Court had power to enquire whether the alleged obstruction was, in point of fact, an obstruction or not. IN THE MATTER OF THE MUNICIPAL COMMITTEE OF DACCA. MUNICIPAL COMMITTEE OF DACCA *v.* SOMEER [I. L. R., 9 Calc., 38

BENGAL REGULATION—1793—I, s. 9.

See JURISDICTION OF CIVIL COURT—REGISTRATION OF TENURES. [13 W. R., 397

See RIGHT OF SUIT—REGISTRATION OF NAME . . . 13 W. R., 397

——— **III.**

See CASES UNDER LIMITATION, REGULATION III OF 1793.

——— **s. 8.**

See JURISDICTION OF CIVIL COURT—SOCIETIES . . 3 B. L. R., A. C., 91

——— **IV.**

——— *Rules for decision in suits regarding Succession, Inheritance, Marriage, Caste, &c.—Law applying to one sect.*—According to the true construction of the rules for decision in suits regarding

BENGAL REGULATION—1793—IV—*continued.*

succession, inheritance, marriage, and caste, and all religious usages and institutions provided in Bengal Regulation IV of 1793,—*viz.*, that Mahomedan law with respect to Mahomedans, and Hindu law with regard to Hindus, are to govern such decisions, the Mahomedan law of each sect ought to prevail as to the litigants of that sect, and not the general or Suni Mahomedan law. DEEDAR HOSSEIN *v.* ZUHOOROONNISSA [2 Moore's I. A., 441

——— **s. 9.**

See BENGAL REGULATION XLVIII OF 1793, s. 24 . 4 B. L. R., Ap., 44

——— **s. 15.**

See RESTITUTION OF CONJUGAL RIGHTS. [8 W. R., P. C., 3
11 Moore's I. A., 551

——— **s. 25.**—*Landed proprietors.*—Section 25 of Regulation IV of 1793 was applicable to landed proprietors. ROGHOOBUR DUTT *v.* THE GOVERNMENT . . . 6 W. R., Mis., 50

——— **VIII.**

See CASES UNDER ENHANCEMENT OF RENT—LIABILITY TO ENHANCEMENT—DEPENDENT TALOOKDARS.

See GHATWALI TENURE. [I. L. R., 3 Calc., 251

See ONUS PROBANDI—ENHANCEMENT OF RENT . . 4. B. L. R., P. C., 8

See RESUMPTION—RIGHT TO RESUME. [5 Moore's I. A., 467

See SALE FOR ARREARS OF REVENUE—PURCHASERS, RIGHTS AND LIABILITIES OF— . . 2 B. L. R., P. C., 23

——— **s. 41.**

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, N.-W. P. [I. L. R., 8 All., 552

——— **s. 46.**—*Suit for recovery of malikana.*—A suit for recovery of malikana was barred by limitation if the malikana has not been received for a period of twelve years. *Quære*,—Whether, under Regulation VIII of 1793, section 46, a suit for recovery of malikana will lie at all. BHULI SING *v.* NEMMU BEHU [4 B. L. R., A. C., 29: 12 W. R., 498

——— **X.**

See ACT XL OF 1858, s. 3. [16 W. R., 231

——— **s. 33.**

See COURT OF WARDS. [I. L. R., 1 Calc., 289
I. L. R., 8 Calc., 620

BENGAL REGULATION—1793—XI.

See HINDU LAW—CUSTOM—INHERITANCE OR SUCCESSION.

[I. L. R., 1 Calc., 186
19 W. R., 8

See HINDU LAW—INHERITANCE—IMPARTIBLE PROPERTY.

[9 W. R., P. C., 15
12 Moore's I. A., 1

See MAHOMEDAN LAW—CUSTOM.

[2 Moore's I. A., 441

——————XV.

See MESNE PROFITS, RIGHT TO AND LIABILITY FOR—

[B. L. R., Sup. Vol., 613

See CASES UNDER MORTGAGE—ACCOUNTS.

1. ———— s. 6.—*Reg. XVII of 1806, s. 3.—Interest, Rate of.*—Under section 6, Regulation XV of 1793, interest claimable under a bond must not exceed the amount of the principal. Section 3, Regulation XVII of 1806, is not inconsistent with the application of Regulation XV of 1793, inasmuch as the Regulation of 1806 refers to *rates* of interest and the Regulation of 1793 to accumulations of interest irrespective of rate. BARDAKANT RAI *v.* BHAGWAN DAS . I. L. R., 1 All., 344

2. ———— *Interest in excess of principal.—Act XXVIII of 1855.*—Section 6, Regulation XV of 1793 (prohibiting the Courts from awarding as interest a sum larger than the principal) is not applicable to a suit instituted after the passing of Act XXVIII of 1855. Even under Regulation XV of 1793 it was the practice of the Court to allow interest in excess of principal where the interest had accumulated owing to reasons not ascribable in any degree to procrastination on the part of the creditor. HUROMONEE GOOPTIA *v.* GOBIND COOMAR CHOWDHRY . . . . . 5 W. R., 51

3. ———— *Interest in excess of principal.*—Regulation XV of 1793 (prohibiting award of interest in excess of principal) applies to sums decreed only, and not to interest which has accumulated through the neglect of the judgment-debtor to pay. SHIB CHUNDER GOOPTO *v.* ALLAD MONEE DOSSIA

[5 W. R., Mis., 22

4. ———— *Interest in excess of principal.*—Where, under section 6, Regulation XV of 1793, interest upon the principal prior to the institution of the suit was adjudged to the plaintiff, limited to a sum equal to the principal, although that Regulation was repealed when the suit was brought, yet looking to the time when his contract was made, the plaintiff was held not entitled to any further interest before suit, but interest upon the principal was allowed to him from the date of suit to the date of decree. JEEBNATH SINGH *v.* KUREEMUN BIBEE

[7 W. R., 172

5. ———— *Usurious transaction.*—To an action for recovery of arrears of rent due to the plaintiff under a sub-lease of a pergunna, the defendant pleaded that the sub-lease was part of a loan transaction, for the purpose of securing to the plaintiff an illegal interest upon the loan, and was void under Bengal Regulation XV of 1793. *Held* by the Privy Council (confirming the decision of the Courts below), that it was an usurious transaction and that the suit should be dismissed. WISE *v.* KISHEN KOOMAR BOSE . . 4 Moore's I. A., 201

BENGAL REGULATION—1793—XV, s. 6
—continued.

———— ss. 8 and 9.—*Maintenance of suit.—Usury.*—Regulation XV of 1793, sections 8 and 9, forbids the maintenance of any suit arising out of an usurious transaction. WISE *v.* JAGABANDHU BOSE

[2 B. L. R., P. C., 69 : 12 Moore's I. A., 477

1. ———— ss. 9 and 10.—*Rate of interest.—Usufructuary mortgages.*—In a suit on a bond executed together with an assignment to the plaintiff of the rent of certain mehals farmed out to other parties, the Judge dismissed the suit under section 9, Regulation XV of 1793, holding that a deduction of a certain sum from the jumma of the assignment was a device to obtain more interest than the legal rate. *Held*, that under the decision of the Privy Council in *Anundo Mohun Pal Chowdhry* v. *Kishen Chunder Bannerjee, 8 Moore's I. A., 358*, that section does not apply where the transaction of the bond and the assignment are one and the same, and where the plaintiff has a claim to be treated as a usufructuary mortgagee under section 10 of the same law. RASSMONEE DOSSEE *v.* MONSHAR ALLY . . 1 Hay, 483

2. ———— *Interest.—Usury.*—Interference with the rate of interest in India was a thing of positive law, and cannot be extended beyond the provisions of the Regulation (XV of 1793). Section 9 of the Regulation does not declare that where an attempt has been made to elude the usury laws the contract is itself void, nor does it direct the return of the pledge without redemption. The mortgagee may retain his pledge until he has received out of it his debt with interest at 12 per cent., the maximum allowed by section 10 of the Regulation. SHAH MAKHUNLAL *v.* SEIKRISHNA SINGH

[2 B. L. R., P. C., 44
11 W. R., P. C., 19 : 12 Moore's I. A., 157

TASADUK HOSSAIN *v.* BENI SINGH

[13 C. L. R., 128

——————XIX.

See ONUS PROBANDI—RESUMPTION AND ASSESSMENT . 4 Moore's I. A., 466

———— s. 6.—*Dependent talookdar.—Expiration of settlement, Effect of, on omission to renew lease.*—A lessee whose interest is that which is declared by Regulation XIX of 1793, section 6, is a dependent talookdar, and does not forfeit his lease by simply omitting to renew his temporary settlement on its expiration. JUNMEJOY MULLICK *v.* GUNGA RAM DUTT . 21 W. R., 26

———— s. 10.

See GRANT—POWER TO GRANT.

[B. L. R., Sup. Vol., 75, 774
12 W. R., 251
I. L. R., 2 All., 545, 732

BENGAL REGULATION—1793—XIX, s. 10—*continued.*

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, N.-W. P. [I. L. R., 8 All., 552

See LANDLORD AND TENANT—CONSTITUTION OF RELATION—GENERALLY. [8 B. L. R., Ap., 82, note; 83, note; 85, note; 87, note; 89, note

See RESUMPTION—RIGHT TO RESUME. [15 W. R., 483
B. L. R., Sup. Vol., Ap., 8
B. L. R., Sup. Vol., 109
8 B. L. R., 566

——— **XXVI, s. 2.**

See COURT OF WARDS. [I. L. R., 1 Calc., 289: L. R., 3 I. A., 72: 25 W R., 235
I. L. R., 8 Calc., 620

See MAJORITY, AGE OF— [15 B. L. R., 67: 23 W. R., 208
L. R., 2 I. A., 87
W. R., 1864, 83
5 W. R., 2, 5
7 W. R., 181, 502

——— **XXVII.**

See RESUMPTION—RIGHT TO RESUME. [5 Moore's I. A., 467

1. ——— **s. 5.**—*Bazars made since 1793.*—Section 5, Regulation XXVII of 1793, had no application to bazars which did not exist in 1793. AFTABOODEN AHMED *v.* MOHINEE MOHUN DASS [15 W. R., 48

CHUNDER NATH ROY *v.* ZEMADAR [16 W. R., 268

RAM MANICK ROY *v.* ASGUR . 11 W. R., 112

2. ——— *Contract to collect duties.*—There is nothing illegal in a contract under a farming lease from the owner of a *hât* to collect a portion of the proceeds of sale from persons exposing their goods for sale in the *hât* under temporary sheds or in open places, and such collections are not in the nature of internal duties, but of rent for the use of land. The provisions of Regulation XXVII of 1793 applied only to *hâts* and bazars existing at the time. BUNGSHO DHUR BISWAS *v.* MUDHOO MOHULDAR [21 W. R., 383

——— **XXXVI, s. 17.**

See REGISTRATION—BENGAL REGULATION XXXVI OF 1793. [8 W. R., 438

——— **XXXVII, s. 15.**

See GRANT—CONSTRUCTION OF GRANT. [2 Agra, 284

——— **XLIV.**

See GHATWALI TENURE [13 B. L. R., 124

BENGAL REGULATION—1793—XLIV, s. 5.

See ENHANCEMENT OF RENT—RIGHT TO ENHANCE . I. L. R., 4 Calc., 612

See SALE FOR ARREARS OF REVENUE—PURCHASERS, RIGHTS AND LIABILITIES OF . . 2 B. L. R., P. C., 23

——— **XLV.**

See LIMITATION ACT, 1877, ART. 12 (1859, s. 1, CL. 3) . 11 W. R., 261

——— **s. 12.**

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY. [8 Moore's I. A., 427

——— **XLVIII, s. 14.**

——— *Quinquennial registers.—Attestation of Zillah Judge.*—According to Regulation XLVIII of 1793, section 14, no counterpart quinquennial registers in the native language are considered authentic unless attested by the Zillah Judge. GOBIND CHUNDER SHARA *v.* PUDDO MONEE DASSEE [17 W. R., 400

——— **s. 24.**—*Reg. IV of 1793, s. 9.—Jurisdiction of Collector.*—Section 24, Regulation XLVIII of 1793, and section 9, Regulation IV of 1793, directed the Zillah and City Courts to transmit their decrees to the Collector, but did not authorize those Courts to make any orders on the Collector as to how he shall enter the result of such decrees in his books. NIMDHARI SING *v.* KACHUN SING [4 B. L. R., Ap., 44: 13 W. R., 162

——— **1795—XIII, s. 15.**

See GRANT—CONSTRUCTION OF GRANT. [2 Agra, 284

——— **XLI, s. 10.**

See ONUS PROBANDI—RESUMPTION AND ASSESSMENT . . 1 Agra, 167

——— **1796—XI.**

See FORFEITURE OF PROPERTY. 7 W. R., P. C., 18, 47

——— **1797—IV.**

See OFFENCE COMMITTED BEFORE PENAL CODE . . I. L. R., 1 All., 599
[I. L. R., 2 Calc., 225

——— **s. 24, cl. 2.**

See LIMITATION ACT, 1877, ART. 179 (1859, s. 20)—STEP IN AID OF EXECUTION—MISCELLANEOUS ACTS BY DECREE-HOLDER . . 4 B. L. R., A. C., 158

——— **XVI, s. 4.**

See CASES UNDER APPEAL TO PRIVY COUNCIL—STAY OF EXECUTION PENDING APPEAL.

BENGAL REGULATION—1798—I.

See APPEAL—REGULATIONS.
[19 W. R., 122

See MESNE PROFITS, RIGHT TO AND LIABILITY FOR—
[B. L. R., Sup. Vol., 613

See MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION.
[B. L. R., Sup. Vol., 598
20 W. R., 387

——— 1799—V, s. 5.

See LANDLORD AND TENANT—CONSTITUTION OF RELATION—GENERALLY.
[4 B. L. R., Ap., 80

1. ——— s. 7.—*Moveable property.*—Section 7 of Regulation V of 1799 only applied to moveable property. SHIB RAM LALL *v.* RAJ COOMAR MITTER . . . . . 6 W. R., 48

2. ——— ——— *Property of intestate without heirs.—Widow with certificate.—A.* died leaving a widow and two daughters and property in cash and Government securities. None of his heirs being present at the time, the Magistrate took possession of the property. *Held,* that it should have been made over to the Civil Court under section 7, Regulation V of 1799, and that Court should treat such property as in its temporary care. *Held,* also, that the widow having obtained a certificate under Act XXVII of 1860, though opposed by one *H.*, who alleged himself to be a cousin of the deceased, and who had appealed from the decision granting the certificate, the property might be delivered to the widow, who held the certificate, on her furnishing proper security for the purpose of indemnifying the appellant, *H.* ABID HOSSEIN *v.* REAZUN . . . . . 15 W. R., 302

——— VII.

See LIMITATION—BENG. REG. VII OF 1799.
[B. L. R., Sup. Vol., Ap., 10 : 5 W. R., 100

1. ——— *Decree.—Act VIII of 1859, s. 206.*—Section 206, Act VIII of 1859, did not apply to decrees under Regulation VII of 1799. GOPAL CHANDRA DEY *v.* PEMU BIBI.
[1 B. L. R., A. C., 76 : 10 W. R., 104

2. ——— *Beng. Reg. VIII of 1831.—Repeal, Effect of.*—A summary suit for rent under section 15, Regulation VII of 1799, was pending when Act X of 1859 came into force, and was, therefore, governed by Regulation VIII of 1831, section 4 of which declared that the decision in the summary suit should be final, subject to a regular suit. By section 1, Act X of 1859, Regulation VII of 1799, sections 1 to 20 and Regulation VIII of 1831 were repealed, except as to proceedings commenced before the date of the Act coming into force. *Held,* that the repealing section did not take away the right to bring a regular suit. GOBIND CHUNDER MOOKERJEE *v.* KALLA GAJEE
[B. L. R., Sup. Vol., 626 : 2 Ind. Jur., N. S., 119

S. C. GOBIND CHUNDER MOOKERJEE *v.* KALA GAZI . . . . . 7 W. R., 185

BENGAL REGULATION—1799—VII—*continued.*

——— s. 25.—"*Under-renter.*"—*Sale on default in payment of rent.*—A ryot holding a jote, for which he pays a particular rent to a Collector, who holds the land under khas management, was an "under-renter" within the meaning of section 25, Regulation VII of 1799, and if he made default in the payment of rent, the proper procedure for the Collector was to sell his land at the end of the year. RUNGO KOPOHOOA *v.* DEHASSUR MUSSULMAN.
[13 W. R., 302

——— 1800—X.

See HINDU LAW—CUSTOM—INHERITANCE AND SUCCESSION . I. L. R., 1 Calc., 186

See MAHOMEDAN LAW—CUSTOM.
[2 Moore's I. A., 441

——— 1803—II, s. 18, cl. 3.

——— *Good and sufficient cause.—Limitation.*—The words "other good and sufficient cause" in clause 3, section 18, Regulation II, 1803, of the Bengal Code, include insanity, whether there has been or is a commission of lunacy or the like or not; and the word "precluded" in the same clause does not mean precluded during the whole term of twelve years or merely at its commencement, but means in effect precluded during any part of it. In computing the twelve years' period of limitation, there should not be reckoned any time elapsing while the person for the time being entitled to seek redress was not free from disability. TROUP *v.* THE E. I. COMPANY; DYCE SOMBRE *v.* THE E. I. COMPANY
[4 W. R., P. C., 111 : 7 Moore's I. A., 104

——— XXXIV.

See MORTGAGE—ACCOUNTS.
[I. L. R., 2 All., 593

See MORTGAGE—REDEMPTION—MODE OF REDEMPTION AND LIABILITY TO FORECLOSURE . . I. L. R., 8 All., 402

——— LII.

See COURT OF WARDS.
[I. L. R., 5 All., 142
9 W. R., P. C., 9

——— 1805—II.

See LIMITATION—BENG. REG. II OF 1805.

——— XII, s. 34.

See JAGHIR . . W. R., F. R., 85

——— 1806—XVII.

See MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION.
[7 B. L. R., 136 : 13 Moore's I. A., 560

See MORTGAGE—FORECLOSURE—RIGHT OF FORECLOSURE. . 11 B. L. R., 301

See ONUS PROBANDI—MORTGAGE.
[B. L. R., Sup. Vol., 415

BENGAL REGULATION—1806—XVII— *continued.*

——— **Operation of, in Chupra.**—Regulation XVII of 1806 came into operation in the district of Chupra on September 11th, 1806. BUKSHUSH HOSSEIN *v.* FUZEELONISSA . **W. R., 1864, 189**

——— **s. 3.**

See BENG. REG. XV OF 1793.
[I. L. R., 1 All., 344

——— **s. 7.**

See MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION.
[B. L. R., Sup. Vol., 598

See MORTGAGE—REDEMPTION—MODE OF REDEMPTION AND LIABILITY TO FORECLOSURE . **3 B. L. R., A. C., 141**
[I. L. R., 3 All., 653

See MORTGAGE—FORECLOSURE—RIGHT OF FORECLOSURE . . **5 B. L. R., 389**

See MORTGAGE—FORECLOSURE—DEMAND AND NOTICE OF FORECLOSURE
I. L. R., 4 All., 276

See TRANSFER OF PROPERTY ACT, ss. 2, 67, 86 . . . **I. L. R., 6 All., 262**
[I. L. R., 11 Calc., 582
I. L. R., 12 Calc., 583

——— **1806—XVII, s. 8.**

See CASES UNDER MORTGAGE—FORECLOSURE—DEMAND AND NOTICE OF FORECLOSURE.

——— **s. 8.**

See TRANSFER OF PROPERTY ACT, ss. 2, 67, 86 . . . **I. L. R., 6 All., 262**
[I. L. R., 11 Calc., 582
I. L. R., 12 Calc., 583

——— *Notice of foreclosure.—Year of grace.*—The year mentioned in section 8 of Regulation XVII of 1806 is to be reckoned from the date of the service of the notice of foreclosure under that section. MAHESH CHANDRA SEN *v.* TARINI
[1 B. L. R., F. B., 15
S. C. MOHESH CHUNDER SEN *v.* TARINEE
[10 W. R., F. B., 27

——— **XIX.**

——— **Petition under—**

See RES JUDICATA—PARTIES—INTERVENORS.
[I. L. R., 3 Calc., 705

——— **1810—XIX.**

See ACT XX OF 1863, s. 18.
[15 B. L. R., 167

——— **1812—V.**

——— *Notice of suit for arrears of rent.—Decree in former suit.*—A suit for arrears of rent at a certain rate decreed in a former suit may be maintained without notice under Regulation V of 1812; the decree itself being held to be sufficient notice. RAMJEEBUN BOSE *v.* TRIPOORA DOSSEE
[W. R., F. B., 93: Marsh., 396: 2 Hay, 449

BENGAL REGULATION—1812—V, s. 10.

See ENHANCEMENT OF RENT—NOTICE OF ENHANCEMENT—SERVICE OF NOTICE
[I. L. R., 11 Calc., 608

——— **s. 26.**

See APPEAL—REGULATIONS.
[12 B. L. R., 366

1. ——— *Beng. Reg. V of 1827.—Dispute as to right to collect rents of undivided estate.*—A dispute as to the right to collect the rents of a joint undivided estate in a certain proportion must be dealt with under Circular Order No. 10 of 18th April 1863, and section 26, Regulation V of 1812, as amended by Regulation V of 1827. Section 318 of the Code of Criminal Procedure, 1861, did not apply. RAMBUNGINEE DOSSEE *v.* GOOROODOSS ROY
[18 W. R., Cr., 36

In S. C. a review was applied for and rejected, and it was held that a consideration of the rights of private individuals, and not only the interests of the public with reference to the Government revenue or otherwise, was sufficient to bring a case under Regulation V of 1812. GOOROODOSS ROY *v.* RAMBUNGINEE DOSSEE . . . . . **20 W. R., 54**

2. ——— *Beng. Reg. V. of 1827.—Manager of joint undivided estate.—Power of Judge.*—A Judge had power to order the person appointed under Regulation V of 1812, section 26, and Regulation V of 1827, to manage an estate, to make over the surplus, after payment of revenue and other outgoings, to the person or persons entitled to receive the same. IN THE MATTER OF THE PETITION OF THE COLLECTOR OF RUNGPORE
[B. L. R., Sup. Vol., 655
2 Ind. Jur., N. S., 178: 7 W. R., 273

3. ——— *Collector, Position of.—Beng. Reg. V of 1827.—Possession by Collector.*—A Collector in taking charge of property which came under attachment by an order of the Civil Court under section 6, Regulation V of 1812, as modified by section 3, Regulation V of 1827, was held to have taken and retained charge on behalf of the parties entitled, and, unless and until anything could be shown to have changed the state of things during such attachment, the parties in possession at the time when it commenced must be held to have continued in possession throughout the attachment. Purchasers subsequently put into possession by the Civil Court, who took from the Collectorate rents relating to an antecedent period, did not thereby exercise rights of ownership for such period. SOOLOCHUNA DAYEE *v.* DURP NARAIN BOSE . . . **12 W. R., 95**

4. ——— *Beng. Reg. V of 1827, s. 3.—Attachment.—Jurisdiction of Collector.*—On an application under Act VIII of 1859, section 200, the Judge ordered the attachment of certain properties, and thereafter sent a precept to the Collector under Regulation V of 1827, and ordered him to hold the properties in question and two others in attachment, and to appoint a person for the due care and management of the same,—*Held*, that Regulation V of 1827 was not intended to apply to any other cases of attach-

BENGAL REGULATION—1812—V, s. 26
—continued.

ment of landed property than those provided for in the Regulation mentioned therein, and the order was therefore made without jurisdiction. COLLECTOR OF NOAKALLY *v.* PAXWELL . . 20 W. R., 78

5. ——— *Beng. Reg. V of 1827.—Power of Collector after order made by Judge.*—When a Judge has made an order in the terms of Regulation V of 1812, section 26, as modified by Regulation V of 1827, he is *functus officio*, and it then lies upon the Collector, as manager and holder, to take at his own proper risk and upon his own responsibility everything that he finds to be part of the joint estate. RAM RUNGINEE DOSSEE *v.* GOOROO DOSS ROY [22 W. R., 212

——— **XX, s. 5.**

See LIMITATION ACT, 1877, ART. 84 (1859, s. 1, CL. 9) . . . 9 W. R., 113

——— *Hundis.*—Section 5, Regulation XX of 1812 (concerning the registration of "bonds, promissory notes, and generally of obligations for the payment of money") was not applicable to hundis or other similar negotiable mercantile securities. BOISTUB CHURN DOSS *v.* PREM CHUND MITTER [4 W. R., 98

——— **1814—I.**

See EVIDENCE—CIVIL CASES—REPORTS OF AMEEN AND OTHER OFFICERS. [9 W. R., 86

——— **XXVII.**

See PLEADER—REMUNERATION. [1 Ind. Jur., N. S., 334 : 6 W. R., 108

——— **XIX.**

See JURISDICTION OF CIVIL COURT—REVENUE COURTS—PARTITION. [I. L. R., 4 Calc., 510
2 W. R., Mis., 51
20 W. R., 182
I. L. R., 8 Calc., 126

See CASES UNDER PARTITION.

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—IRREGULARITY. [8 B. L. R., 230

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—OTHER GROUNDS. [5 B. L. R., 135 : 17 W. R., 21

——— **s. 9.**

See ENHANCEMENT OF RENT—LIABILITY TO ENHANCEMENT—LANDS OCCUPIED BY BUILDINGS AND GARDENS. [3 B. L. R., A. C., 65

——— **XXIX.**

See GHATWALI TENURE. [I. L. R., 9 Calc., 187
14 W. R., 203

See LAND ACQUISITION ACT, 1870 s. 39. [18 W. R., 91

BENGAL REGULATION—1816—XI.

See HINDU LAW—INHERITANCE—IMPARTIBLE PROPERTY . . 3 W. R., 116

——— **XIV.**

See PRISONS ACT, XXVI OF 1870 4 N. W., 4

——— **1817—V.**

See TREASURE TROVE . 4 W. R., Mis., 8
7 Mad., 150
7 B. L. R., Ap., 3
15 W. R., 525

——— **XX, s. 21.**

See PENAL CODE, s. 188 . 7 C. L. R., 575

——— *Village chowkidar, Liability to pay wages of.—Land-owner.*—A liability on the part of a land-holder to pay the wages of a village chowkidar appointed under section 21, Regulation XX of 1817, cannot be inferred from the fact that the chowkidar's salary was fixed by the heads of the village, and apportioned among the several house-holders without objection made by any of them, but must be proved in order to sustain a suit brought by the chowkidar against the land-holder. GOLAMEE *v.* PASLAN. [18 W. R., 298

——— **1818—III.**

See ACT OF STATE . . 6 B. L. R., 392
See HABEAS CORPUS 6 B. L. R., 392, 459

1. ——— **Validity of.**—*Act XXXIV of 1850 and Act III of 1858.—Arrest of native subject.—Power of Indian Legislature.—13 Geo. III, c. 63, s. 36.—37 Geo. III, c. 142, s. 8.—21 Geo. III, c. 70-3, and 4 Will. IV, c. 85, s. 43.*—Regulation III of 1818 was applicable only to natives and those subject to the jurisdiction of the provincial Courts. It was passed under 37 George III, Cap. 142, section 28, not 13 George III, Cap. 63, section 36. It was passed by a legislative authority having full power in that behalf. Considering the circumstances under which it was enacted, Act III of 1858, which extended the effect of that Regulation to Calcutta, was not *ultra vires.* IN THE MATTER OF AMEER KHAN [6 B. L. R., 392

2. ——— *Act XXXIV of 1850.—Act III of 1858.*—Assuming the power of a Judge of the High Court to issue a writ of *habeas corpus*, and assuming the right of appeal against an order refusing such writ,—*Held* that, it appearing that the prisoner was in custody under a warrant in the form prescribed by Regulation III of 1818, the detention was legal. The detention to be legal need only be covered by an actually existing warrant of the Governor General in Council in the form prescribed, without regard to the lawfulness of the arrest. The Regulation is not confined to prisoners of war or foreigners held in confinement for political reasons. The substance of Regulation III of 1818 was expressly re-enacted by Act XXXIV of 1850 and Act III of 1858, and therefore, as the result of these later Acts alone, the detention would be legal. Those Acts are not contrary to the power conferred on the Indian Legislature by 3 and 4 Will. IV, Cap. 85, section 43. IN THE MATTER OF AMEER KHAN [6 B. L. R., 459 : 17 W. R., Cr., 1

BENGAL REGULATION—1818—III—*continued.*

3. ——— Warrant of arrest and commitment under.—*Effect of.*—The Governor General, in issuing a warrant of commitment under Regulation III of 1818, does not in any way act judicially or as a Court of Justice, nor is he to be considered as having adjudicated that the person placed under personal restraint had been guilty of some specific offence. The proceeding is not in the nature of a conviction of the person placed under restraint; therefore the person so placed under restraint cannot, in any future proceeding taken against him, plead that he has been already tried, convicted, and punished. QUEEN *v.* AMEER KHAN [9 B. L. R., 36

——— 1819—II.

See SETTLEMENT—RIGHT TO SETTLEMENT. [5 B. L. R., 528, note; 529, note 8 B. L. R., 524

——— s. 28.

See SANAD . . . 12 B. L. R., 120

——— s. 30.

See LANDLORD AND TENANT—CONSTITUTION OF RELATION—GENERALLY. [8 B. L. R., Ap., 82, note; 83, note; 85, note; 87, note; 89, note

See CASES UNDER RESUMPTION—PROCEDURE.

See PARTIES—PARTIES TO SUITS—GOVERNMENT . . . 8 B. L. R., 524

——— VI, ss. 3 & 6.

See FERRY . . . 4 N. W., 146

——— s. 13, cl. 2.

See FERRY . . . 7 W. R., Cr., 32

See JURISDICTION OF CIVIL COURT—FERRIES. [4 N. W., 146 B. L. R., Sup. Vol., 630

——— VIII.

See CASES UNDER SALE FOR ARREARS OF RENT.

1. ——— *Transfer of tenure.*—A transfer of his tenure by a putnidar is not binding on the zemindar, unless made strictly in accordance with the provisions of Regulation VIII of 1819. WATSON *v.* COLLECTOR OF RAJSHAHYE [3 B. L. R., P. C., 48: 13 Moore's I. A., 160

2. ——— *Application of Beng. Reg. XLIV of 1793.*—Regulation VIII of 1819 was intended to apply to leases which might have been avoided by the grantor or his heirs during the time that Regulation XLIV of 1793 was in force; but which, so far from having been avoided, had been acted upon by the parties after the expiration of ten years, and were treated and considered as in existence at the time when Regulation VIII of 1819 was passed. SHEO PERSHAD SINGH *v.* KALLY DASS SINGH [I. L. R., 5 Calc., 543

BENGAL REGULATION—1819—VIII, s. 6.

See APPEAL—REGULATIONS. [I. L. R., 1 Calc., 383 5 C. L. R., 138

——— s. 8.

See CASES UNDER SALE FOR ARREARS OF RENT—SETTING ASIDE SALE—IRREGULARITY.

——— s. 13.—*"Profits."—Adjustment of accounts between defaulting tenure-holder and person who has held possession as mortgagee under Reg. VIII of 1819, s. 13.*—The word "profits" in the 4th clause of section 13 of Regulation VIII of 1819 means that which is left to the tenure-holder after payment of the rent of the tenure. A person who enters into possession of a tenure as mortgagee under the provisions of that section is bound in the first place to pay the rent due to the landlord out of the collections before applying the same to the liquidation of his own debt, and the defaulter is not to be liable for the rent of the tenure during the period of the possession by the person so holding it as mortgagee. LALA BHARUB CHANDRA KARPUR *v.* LALIT MOHUN SINGH . . . I. L. R., 12 Calc., 185

See SET-OFF—SET-OFF NOT ALLOWED. [2 C. L. R., 414

——— s. 14.

See SALE FOR ARREARS OF RENT—SETTING ASIDE SALE—OTHER GROUNDS. [I. L. R., 12 Calc., 622

——— s. 15, cl. 1.

See REGISTRATION ACT, 1877, s. 17. [I. L. R., 5 Calc., 226

——— s. 17, cl. 3.—*Arrears of rent of a putni.*—By clause 3, section 17 of Regulation VIII of 1819 arrears of rent for a putni being considered personal debts, a person who was no party to an original decree for arrears of rent on account of a putni cannot be held liable for them. INDER CHUNDER BANERJI *v.* ESHAN CHUNDER ROY . 1 Hay, 474

——— s. 17, cl. 5.

See SALE FOR ARREARS OF RENT—SURPLUS PROCEEDS OF SALE. [I. L. R., 7 Calc., 173

——— s. 18, cl. 4.

See LIMITATION—BENG. REG. VII OF 1799 . B. L. R., Sup. Vol., Ap., 10

——— s. 18.—*Attachment.—Attachment for arrears of rent.—Wrongful attachment.—Liability to account for receipts and disbursements under.*—Under Regulation VIII of 1819, a sezawal cannot be deputed and lands attached under its provisions, unless the arrears of rent claimed shall have been actually due for an entire month before the date of attachment. Whenever a person is proved to have exercised the power of attachment alluded to above illegally, he is bound to give a true and full account of all receipts (unauthorized cesses not excepted) and disbursements made by his agents, during his attachment, and only such disbursements as are shown to be necessary and *bonâ fide* can be allowed. GOBIND CHUNDER BURMONO *v.* ALLABUX . 2 Hay, 347

BENGAL REGULATION—1821—I.

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—OTHER GROUNDS. [3 Moore's I. A., 100

——— **1822—VII.**

See CASES UNDER ACT XIII OF 1848.

See CONTRACT ACT, s. 23—ILLEGAL CONTRACTS—ILLEGAL CESSES. [1 Agra, 207; 2 Agra, 336

See EVIDENCE ACT, s. 74. [I. L. R., 4 Calc., 79

See GOVERNMENT OFFICERS, ACTS OF— [4 B. L. R., P. C., 36

See JURISDICTION OF CIVIL COURT—REVENUE COURTS—PARTITION. [4 N. W., 129; 15 W. R., 537; 6 C. L. R., 365

See CASES UNDER LIMITATION ACT, 1877, ART. 45.

See SALE FOR ARREARS OF REVENUE—INCUMBRANCES—ACT XI OF 1859. [14 W. R., 1; 15 W. R., 141

See SETTLEMENT—MODE OF SETTLEMENT. [2 Agra, 258; 6 C. L. R., 365

See SETTLEMENT—MISCELLANEOUS CASES. 23 W. R., 436

——— **s. 33.**

See SURVEY AWARD . 1 Agra, 267; [11 W. R., 389

——— **X—**

See BOUNDARY . 8 W. R., 343; [9 W. R., 426

——— **XI, s. 9.**

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, N.-W. P. [I. L. R., 1 All., 373

——— **ss. 30, 33.**

See CASES UNDER SALE FOR ARREARS OF REVENUE—INCUMBRANCES—BENG. REG. XI OF 1822.

——— **1823—VI, s. 5, cl. 2.**

See DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES—BREACH OF CONTRACT . . . 3 Agra, 77

——— **s. 5, cl. 4.**—*Contract to sow indigo.—Default in sowing.—Held* that, in a contract to sow indigo, not sowing would be *primâ facie* evidence of dishonesty; and that, in order to claim the benefit of clause 4 of section 5 of Regulation VI of 1823, it was necessary to show that the negligence to sow had been accidental. LAL MOHAMED BISWAS *v.* WATSON . 1 Ind. Jur., N. S., 3: 4 W. R., 62

BENGAL REGULATION—1823—VI, s. 5, cl. 4—*continued.*

——— **s. 8.**—*Joint liability in contract.—Specification of liability.*—In a suit to recover the value of the produce of land from defendants, who had agreed to cultivate it, but had failed to do so, it was held that, as defendants were jointly liable, a specification of liability was not required, as the case did not come within section 8 of Regulation VI of 1823. MUNRAJ MUHTON *v.* HUDSON [12 W. R., 309

——— **1824—I.**

See RAILWAY COMPANY [10 B. L. R., 241

——— **Assessment of land formerly occupied for Government salt-works.**—Upon the relinquishment by the Government of lands, within the ambit of a permanently-settled zemindari, continuously used before and since the perpetual settlement of salt-works from the commencement of salt-making by the Government, until after the passing of Regulation I of 1824, the provisions of that Regulation are applicable to the mutual rights of the zemindar and of the Government. Such lands were held by the officers of the Salt Department, in terms of clause 11 of that Regulation, "free of rent" and "under a perpetual title of occupancy," whether belonging to a permanently-settled estate or not. The force of the Regulation and the right of the Government to assess such lands are not affected by 'khalari' payments having been made, among other compensations, by the Government to the zemindar; and clause 11 appears to contemplate some such payment. On a settlement of the relinquished lands, 'khalari' payments, being "sums remitted to the zemindars and to be allowed in perpetuity" within the meaning of the 4th clause of section 9 of Regulation I of 1824, must be continued to the zemindar; or, if a settlement should be made with others, he should be assessed only for the land retained by him. THE SECRETARY OF STATE FOR INDIA IN COUNCIL *v.* ANANDOMOYI DEBI [I. L. R., 8 Calc., 95

Reversing the judgment of the High Court in a decision unreported given after remand in GUJANDRO NARAIN ROY *v.* COLLECTOR OF MIDNAPORE [23 W. R., 197

——— **1825—VII, s. 7.**

See ATTACHMENT—MODE OF ATTACHMENT AND IRREGULARITIES IN ATTACHMENT. [20 W. R., 433

——— **IX.**

See ACT XIII OF 1848. [10 Moore's I. A., 511; 2 B. L. R., P. C., 111

See COLLECTOR, JURISDICTION OF— [7 N. W., 302

——— **XI.**

See CASES UNDER ACCRETION.

See ACT IX OF 1847 . 6 B. L. R., 25

BENGAL REGULATION—1825—XI—*continued.*

See BOUNDARY . . 9 W. R., 426

See LAND ACQUISITION ACT, 1870, s. 39. [I. L. R., 11 Calc., 696

See CASES UNDER LANDLORD AND TENANT—ACCRETION TO TENURE.

——— XIV.

See ONUS PROBANDI—RESUMPTION AND ASSESSMENT . 4 Moore's I. A., 466

——— s. 3.

See SANAD . . 12 B. L. R., 120

——— XX.

See JURISDICTION OF CRIMINAL COURTS—EUROPEAN BRITISH SUBJECTS. [13 B. L. R., 474

——— 1826—XII.

See STAMP—BENGAL REGULATION XII OF 1826 . . . W. R., 1864, 289

——— 1827—V.

See CASES UNDER BENGAL REGULATION V OF 1812.

——— 1828—III.

See SPECIAL COMMISSIONERS. [1 W. R., P. C., 20

See SUNDERBUNS BOUNDARY. [2 B. L. R., P. C., 33

——— XXVIII, s. 11.

——— *Succession to mokurrari tenures.*—Section 11, Regulation XXVIII of 1828, requiring successions to mokurrari tenures to be reported to the Collector within six months, referred only to the security of the revenue, and not to private interests. UMBITH NATH CHOWDHRY *v.* KOONJ BEHARY SINGH . . . . . W. R., F. B., 34

——— 1829—XIV.

See SECURITY FOR COSTS—APPEALS. [7 Moore's I. A., 431

——— 1831—VIII.

See BENGAL REGULATION VII OF 1799. [B. L. R., Sup. Vol., 626

See SALE FOR ARREARS OF RENT—INCUMBRANCES. [10 B. L. R., 139, 150, note

——— 1832—VII.

See MAHOMEDAN LAW—DOWER. [6 B. L. R., 54

——— 1833—IX.

See ACT XIII OF 1848 [10 Moore's I. A., 511

BENGAL REGULATION—1833—IX—*continued.*

See MORTGAGE—ACCOUNTS. [3 Agra, 314

See JURISDICTION OF CIVIL COURT—SURVEY AWARDS . 3 N. W., 132 [2 Agra, 340 4 W. R., 79

See RIGHT OF SUIT—AWARDS, SUITS CONCERNING— . . 2 Agra, 340 [7 N. W., 169

——— XIII.

See JURISDICTION OF CIVIL COURT—REGISTRATION OF TENURES. [13 W. R., 397

See JURISDICTION OF CRIMINAL COURT—EUROPEAN BRITISH SUBJECTS. [13 B. L. R., 474

See RIGHT OF SUIT—REGISTRATION OF NAME . . . 13 W. R., 397

BENGAL RENT ACT, VIII OF 1869 (Act X of 1859).

See CASES UNDER RENT, SUIT FOR—

1. ——— Act X of 1859.—*Assam Rent Law.*—The Rent Law, Act X of 1859, was held to be in force in Assam. HOOTABOO RAOOT *v.* LOOM RAOOT [I. L. R., 7 Calc., 440, note

JULLOW SURMA PATWAREE *v.* MADHUB RAM ATOI BURHA BHUKUT . 16 W. R., 202

2. ——— *Dehra Dhoon, District of.*—The Rent Law, Act X of 1859, was held not to be in force in the Dehra Dhoon district. The Dhoon forms part of "the territories not subject to the General Regulations." DICK *v.* HESELTINE 1 N. W., 196: Ed. 1873, 280

——— s. 2 (Act X of 1859, s. 2).

See KABULIAT, SUIT FOR—FORM OF KABULIAT . . 6 B. L. R., 356

——— Suit for delivery of pottahs.—The Rent Act contemplates suits for delivery of pottahs by ryots in possession only. BHARUT CHUNDER SEIN *v.* OSEEMOODDEEN . 6 W. R., Act X, 56

——— ss. 3 and 4 (Act X of 1859, ss. 3 and 4).

See CASES UNDER ENHANCEMENT OF RENT—EXEMPTION FROM ENHANCEMENT BY UNIFORM PAYMENT OF RENT, &c.

——— s. 6 (Act X of 1859, s. 6).

See CASES UNDER RIGHT OF OCCUPANCY.

——— s. 7 (Act X of 1859, s. 7).

See RIGHT OF OCCUPANCY—MODE OF ACQUISITION . . 17 W. R., 552 [25 W. R., 114 [8 B. L. R., 165, 166, note

BENGAL RENT ACT, VIII OF 1869— *continued.*

1. ——— s. 8 (Act X of 1859, s. 8).—*Tenant without right of occupancy.*—If a ryot has a right of occupancy, and insists on that right, he impliedly undertakes to give a kabuliat at fair and equitable rates if his landlord requires him to do so. But if the right of occupancy is absent, the ryot can only remain on the land by the permission of the landlord,—*viz.*, on such terms as may be agreed upon between the landlord and himself. SUTTO CHURN GHOSAUL *v.* GOUREE PERSHAD ROY . 13 W. R., 117

2. ——— *Right to pottah.—Agreement fixing rent.*—A tenant not having a right of occupancy is not entitled to a pottah under section 8, Act X of 1859, unless there is an agreement with his landlord fixing the rate of rent. NUBUDEEP CHUNDER SIRCAR *v.* LALLA SHEEB LALL . Marsh., 325

——— s. 10 (Act X of 1859, s. 9).

See KABULIAT, SUIT FOR—REQUISITE PRELIMINARIES TO SUIT.
[B. L. R., Sup. Vol., 25, 202
W. R., Act X, 2, 37, 60
5 W. R., Act X, 88

See KABULIAT, SUIT FOR—TENDER OF POTTAH . . . Marsh., 400

——— s. 11 (Act X of 1859, s. 10).

See BENGAL RENT ACT, 1869, s. 27.
[Marsh., 420: 2 Hay, 519

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—CONTRACT.
[1 B. L. R., S. N., 13

1. ——— *Damages for withholding receipts for rent.*—The damages mentioned in section 10 of Act X of 1859 are not penalties invariably to be decreed against persons withholding receipts for rent, but they are to be ascertained by an actual enquiry into the circumstances of each particular case, and never to exceed double the amount for which receipts have been withheld. RASHMONEE DEBEA *v.* RAMJOY SHAHA . . 2 Hay, 516

2. ——— *Power to award damages.*—Under section 10, Act X of 1859, the power of a Judge to award damages for receipts withheld is discretionary only as to the amount to be awarded. The tenant, being entitled by law to double the amount paid as rent, the Judge cannot refuse him costs on the ground that he had demanded double what was due to him. ZOOMEEROODUNNISSA KHANUM *v.* PHILLIPE. SADUT ALI KHAN *v.* PHILLIPE . . . . . 1 W. R., 290

3. ——— *Money paid as rent.*—Damages under section 10, Act X of 1859, are recoverable only in respect of money actually paid as rent. SUMEENA BEBEE *v.* KOYLASH CHUNDER ROY . . . 6 W. R., Act X, 79

4. ——— *Receipt.*—A challan bearing a *mublukbundi* or total in figures, and some mark, not a signature, of the tehsildar, is not a "receipt" within the meaning of section 10, Act X of 1859. JOHEEROODDEEN MAHOMED *v.* DABEE PERSHAD SINGH . . . . 13 W. R., 22

BENGAL RENT ACT, VIII OF 1869, s. 13 (Act X of 1859, s. 12).

See PARTIES—PARTIES TO SUITS—AGENTS.
[16 W. R., 254

——— s. 14 (Act X of 1859, s. 13).

See ENHANCEMENT OF RENT—NOTICE OF ENHANCEMENT.

——— s. 15 (Act X of 1859, s. 14).

See ENHANCEMENT OF RENT—RESISTANCE TO ENHANCEMENT.

——— s. 16 (Act X of 1859, s. 15).

See ENHANCEMENT OF RENT—LIABILITY TO ENHANCEMENT—DEPENDENT TALOOKDARS . . . 15 B. L. R., 120

See ENHANCEMENT OF RENT—EXEMPTION FROM ENHANCEMENT BY UNIFORM PAYMENT OF RENT, &c.—GENERALLY.
[3 B. L. R., Ap., 40

——— ss. 16 and 17 (Act X of 1859, ss. 15 and 16).—*Districts to which permanent settlement has not been extended.—Surborakari tenures in Cuttack.—Transferable tenures.*—The provisions of sections 15 and 16 of Act X of 1859 apply to the whole of the Provinces of Bengal, Behar, Orissa and Benares, and not only to such of the districts in those provinces to which the Permanent Settlement has been extended. Surborakari tenures in Cuttack are permanent, hereditary, and transferable. SADDANUNDO MAITI *v.* NOWRATTAM MAITI
[8 B. L. R., 280: 16 W. R., 289

——— s. 17 (Act X of 1859, s. 16).

See ENHANCEMENT OF RENT—EXEMPTION FROM ENHANCEMENT BY UNIFORM PAYMENT OF RENT, &c.—GENERALLY.
[I. L. R., 4 Calc., 793

See ENHANCEMENT OF RENT—EXEMPTION FROM ENHANCEMENT BY UNIFOM PAYMENT OF RENT—PROOF OF UNIFORM PAYMENT . . . 8 W. R., 284
[22 W. R., 487

——— s. 18 (Act X of 1859, s. 17).

See CASES UNDER ENHANCEMENT OF RENT—GROUNDS OF ENHANCEMENT.

——— s. 19 (Act X of 1859, s. 18).

See ABATEMENT OF RENT.
[17 W. R., 449
1 Ind. Jur., O. S., 7
I. L. R., 11 Calc., 284

See LIMITATION ACT, 1877, ART. 120.
[I. L. R., 11 Calc., 284

——— s. 20 (Act X of 1859, s. 19).

See CASES UNDER RELINQUISHMENT OF TENURE.

BENGAL RENT ACT, VIII OF 1869, s. 21 (Act X of 1859, s. 20).

See RIGHT OF SUIT—SURVIVAL OF RIGHT. [10 W. R., 59

See CASES UNDER INTEREST—ARREARS OF RENT.

——— **"Established usage," Meaning of.**—Section 20, Act X of 1859, referred to the established usage in the pergunnah, and not to the established usage between the parties. CHYTUNNO CHUNDER ROY *v.* KEDARNATH ROY . 14 W. R., 99

——— **s. 22 (Act X of 1859, s. 21).**

See BENGAL RENT ACT, 1869, s. 27. [I. L. R., 4 Calc., 527

See BENGAL RENT ACT, 1869, s. 52. [B. L. R., Sup. Vol., 972 12 B. L. R., 439

See RIGHT OF OCCUPANCY—LOSS OR FORFEITURE OF RIGHT. [I. L. R., 8 Calc., 612

——— **s. 23 (Act X of 1859, s. 22.)**

See BENGAL RENT ACT, 1869, s. 52. [7 W. R., 20 13 W. R., 441

See RECEIVER . I. L. R., 11 Calc., 496

——— **s. 26 (Act X of 1859, s. 27).**

See CO-SHARERS—GENERAL RIGHTS IN JOINT PROPERTY . 9 W. R., 606

See JURISDICTION OF CIVIL COURT—REGISTRATION OF TENURES. [1 B. L. R., A. C., 175

See LANDLORD AND TENANT—ALTERATION OF CONDITIONS OF TENANCY—DIVISION OF TENURE, *&c.* [3 B. L. R., A. C., 349 15 W. R., 320

See RES JUDICATA—COMPETENT COURT—REVENUE COURTS. [4 B. L. R., F. B., 43

1. ——— *Registration of tenure.*—A putnidar is not bound to split up a tenure and to record separately the jumma payable by the holder of a share. Instead, also, of the latter bringing a suit in the first instance to compel the putnidar to register his share, he should have made an application for registration to the putnidar under section 27, Act X of 1859. BHOOPUTTEE ROY *v.* UMBICA CHURN BANERJEE . . . . . 17 W. R., 196

2. ——— *Registration of transfer.*—The purchaser of the rights and interests of a cultivator is not bound under section 27 to notify his purchase to the zemindar. SUTTEESCHUNDER ROY *v.* MUDDOOSOODUN PAUL CHOWDHRY [W. R., 1864, Act X, 91

3. ——— *Non-registration of transfer.—Knowledge by zemindar.*—Mere cognizance

BENGAL RENT ACT, VIII OF 1869, s. 26 (Act X of 1859, s. 27)—*continued.*

or supposed cognizance by the zemindar of the fact of a party having purchased a tenure is not sufficient to cure the defect of non-registration of such tenure in the zemindar's sherista. SARKIES *v.* KALI COOMAR ROY . . W. R., 1864, Act X, 98

4. ——— *Transfer of tenure.—Registration of tenure.*—The transferee of a tenure not in possession, instead of depositing the rents in Court under this section, should take steps, under section 27, Act X of 1859, to register his transfer in the sherista of the zemindar, and to apply to the Collector in case of the refusal of the zemindar to do so. DULLI CHAND *v.* MEHER CHAND SAHOO . 8 W. R., 138

5. ——— *Tenure not intermediate.*—Where the tenure is not one "intermediate between the zemindar and the cultivator," section 27, Act X of 1859, does not apply. UMA CHARAN SETT *v.* HARI PROSAD MISRY . 1 B. L. R., S. N., 7

S. C. WOOMA CHURN SETT *v.* HUREE PERSHAD MISRER . . . . 10 W. R., 101

6. ——— *Registration of transfer of tenure.—Intermediate tenures.*—In determining whether a tenure is a permanent transferable interest within the meaning of section 26, Bengal Act VIII of 1869, the issues should be so framed as to raise distinctly the question whether the tenure was an intermediate one between the landlord and the ryot. SHIBCHURUN SEN *v* JONARDHON DEY . 1 C. L. R., 397

7. ——— *Mortgagee who has obtained foreclosure.*—When the mortgagee of a jote obtains a foreclosure decree, it is his duty, under section 26, Bengal Act VIII of 1869, to have his name registered in the lessor's sherista. WATSON *v.* GONESH CHUNDER SAHOO . 3 C. L. R., 240

1. ——— **s. 27 (Act X of 1859, s. 30).**—*Act I of 1868.*—In a suit under Bengal Act VIII of 1869 to recover possession of land, on the allegation that the plaintiffs had acquired a right of occupancy, and had been dispossessed, the Court, following the interpretation of 'year' given in Act I of 1868,—*Held*, that the computation of the limitation must be according to the English calendar. KHASRO MANDAR *v.* PREMLAL . 9 B. L. R., Ap. 41: 18 W. R., 403

2. ——— *Suit for illegal exaction of rent.*—The fact that incidentally the genuineness of a kabuliat has to be determined, does not make a suit for illegal exaction of rent one not determinable under the Rent Act. KASHEE RAM *v.* GUNGA PERSHAD . . . . . 2 N. W., 304

3. ——— *Suit for excess rent collected under lease.*—A suit for excess rents collected under a lease under which the lessee was, in consideration of a certain sum of money, to pay the Government revenue, and reimburse himself from the remainder of the assets, and which provided for an annual measurement and assessment, was held not cognizable under the Rent Act as a suit for illegal excess of rent. SHORAFUT ALI *v.* RAMZAN [W. R., 1864, Act X, 53

BENGAL RENT ACT, VIII OF 1869 s. 27 (Act X of 1859, s. 30)—*continued.*

PROSUNOMOYEE DOSSEE *v.* SOONDER COOMAREE DEBIA . . . **2 W. R., Act X, 30**

MADHUB CHUNDER BIDYARUTTON *v.* TARA SOONDEREE GOOPTANEE **[2 W. R., Act X, 92**

NILMONEY SINGH DEO *v.* SHARODA PERSHAD MOOKERJEE . . . **16 W. R., 173**

4. ——————— *Suit to recover excess of rent.—Act X of 1859, ss. 10 and 23, cl. 2.—Exaction of sum in excess of rent.*—Contemporaneously with the execution of a pottah it was verbally agreed that the tenant should supply the zemindar with a certain quantity of rice, and that a deduction should be made from the rent reserved in respect thereof. The zemindar took proceedings against the tenant, under Regulation VIII of 1819, for the recovery of the entire amount of rent, notwithstanding the tenant had supplied the rice and was entitled to the reduction. The tenant, without contesting his liability, or demanding an investigation as to the amount due, paid the entire amount. *Held*, that this was not "an exaction from the ryot of a sum in excess of the rent specified in the pottah" within the meaning of section 10, Act X of 1859 (Bengal Act VIII of 1869, section 11), and that a suit was not maintainable in respect of it under the Rent Act. CHUNDERMONEE CHOWDRAIN *v.* DEBENDERNAUTH ROY CHOWDRY **[Marsh., 420: 2 Hay, 519**

5. ——————— *Suit against zemindar for excess rents collected under zur-i-peshgi lease.*—A zemindar after he had granted a zur-i-peshgi lease collected the rent from the ryots. *Held*, that the lessee was entitled to recover from the zemindar the amount of rents so received in excess of the rent due under the lease, and that a suit to recover such excess was properly instituted under the Rent Act. RAMPERSHAD VOGUT *v.* RAMTOHUL SINGH **[Marsh., 655**

6. ——————— *Suit to contest notice of enhancement.*—A suit under section 14, Act X of 1859 (section 15, Bengal Act VIII of 1869), to contest a notice of enhancement is properly instituted under the Rent Act, though, *quære*, whether it is a suit for illegal exaction of rent. SOROOP CHUNDER PAUL *v.* DURUP DE DOMBAL . . . . **1 W. R., 72**

7. ——————— *Suit by sub-lessee to recover from lessor malikana which he was compelled to pay.*—A suit brought by a sub-lessee to recover from his lessor the amount of malikana which he was compelled to pay, and which was properly payable by his lessor, is not one for illegal exaction of rent, and should not be brought under the Rent Act. TARSANAH *v.* KADHAREY LAL **[5 N. W., 1**

8. ——————— *Suit for rent illegally exacted.*—Plaintiff took from defendant a lease of a certain quantity of land at a stipulated rate. Finding, however, that the land fell short of the quantity specified in the lease, and that defendant notwithstanding realized the full rent from him, he obtained a decree for abatement under Act X of 1859. The present suit was brought for the excess rent levied from plaintiff between the date of taking possession and of the Act X decree. *Held* that, if the suit did lie at all, it would be a suit for an illegal exaction of rent, and should be brought under the Rent Act. SURBO CHUNDER DOSS *v.* WOOMANUND ROY **[11 W. R., 412**

9. ——————— *Suit to recover money deposited to pay rents.*—A suit to recover money deposited with the defendants to be applied in payment of rents (the deposit having been unsuccessfully pleaded in a suit for rent) should not be brought under the Rent Act. DABEE GOLAM SINGH *v.* CHUNDER KANT MOOKERJEE . . . **3 W. R., 109**

10. ——————— *Suit for money paid in excess of road cess.—Limitation Act (XV of 1877), sch. II, art. 96.*—In a suit to recover money alleged to have been paid by the plaintiffs to the defendants in excess of the sum demandable by the latter from the former on account of road cess,—*Held* (reversing the decisions of the Courts below), that the suit was governed, not by the special law of limitation contained in section 27, Bengal Act VIII of 1869, but by article 96, schedule II of the Limitation Act, XV of 1877. MATHURA NATH KUNDU *v.* STEEL **[I. L. R., 12 Calc., 533**

11. ——————— *Suit for abatement of rent.—Land, Diluviation of.*—A suit for abatement of jumma and refund of excess rents paid on account of diluviated lands is cognizable under the Rent Act. BARRY *v.* ABDOOL ALI **[W. R., 1864, Act X, 64**

12. ——————— *Suit for abatement of rent.*—So is a suit for abatement of rent by a putnidar. MAN GUROBINEE DOSSEE *v.* KHETTUR CHUNDER GHOSE . . . **2 W. R., Act X, 47**

PROSUNOMOYEE DOSSEE *v.* SOONDUR COOMAREE DEBIA . . **2 W. R., Act X, 30**

13. ——————— *Suit for abatement of rent.—Land sold with erroneous description.*—Where *A.* conveys to *B.* an interest in land under a description as to title which turns out to be erroneous, a suit by *B.* against *A.* for diminution of rent on the ground of the erroneous description ought to be brought under the Rent Act. NEELMONEY SINGH DEO *v.* GORDON STUART & Co. . **1 Ind. Jur., N. S., 356 [6 W. R., 152**

14. ——————— *Suit for abatement of rent.—Eviction from part of tenure.*—In a suit by tenants for abatement of rent in consequence of having been dispossessed of two mouzahs which were included in their lease, and for which separate rents were fixed, the landlord pleaded limitation. *Held*, that Bengal Act VIII of 1869, section 27, did not apply to a case of this description. In such a case the eviction might either give the tenant a cause of action for damages or suspend the rent during the time it lasts. In the latter case the cause of action would not arise

BENGAL RENT ACT, VIII OF 1869, s. 27 (Act X of 1859, s. 30)—*continued.*

until the landlord sought or threatened to recover rent. AITCHISON *v.* NILMONEE SINGH DEO [20 W. R., 347

15. ——— *Suit for abatement of rent.—Suit for declaration of liability to pay less rent.*—A suit by a tenant against his original lessors for a declaration that he is not liable to pay them the whole rent payable under his pottah in consequence of a third person having, subsequently to the grant of such pottah, by suit established a right to a share of the rent, is not a suit for abatement under Bengal Act VIII of 1869, and therefore not subject to the rule of limitation prescribed by section 27 of that Act. CHAND MONI DASI *v.* LOKENATH CHATTERJI [6 C. L. R., 494

16. ——— *Ejectment, Suit for.*—A suit by a putnidar to recover khas possession of land against a tenant who has sold his rights and interests to a third party may be brought under the Rent Act. KEDAR MONEE DOSSEE *v.* CHUNDER KOOMAR ROY [2 W. R., Act X, 75

17. ——— *Suit for land with hut on it.*—If the land is the substantial thing let out, the mere fact of there being a hut on it will not prevent the suit to recover possession from the tenant being brought under the Rent Act. MATUNGINEE DOSSEE *v.* HARADHUN DOSS . . 5 W. R., Act X, 60

18. ——— *Suit for ejectment.*—Suit for ejectment cannot be brought under the Rent Act in the following cases:—

Suit for dispossession between ryots. RADHANATH MOZOOMDAR *v.* PURIKHIT BODRIK [W. R., 1864, Act X, 60

KALLY DOSS BANERJEE *v.* BONOMALEE DOSS [W. R., 1864, Act X, 61

OBHOY CHURN NEWGEE *v.* SRISTIDHUR BAGDEE [1 W. R., 101

MODHOO SOODUN CHUCKERBUTTY *v.* NUFUR BAWUL . . . . . 1 W. R., 196

BHUGGOBUTTY CHURN MOOKERJEE *v.* HUROMOHUN MOOKERJEE . 2 W. R., Act X, 55

TEELUCK CHUNDER OSWAL *v.* GOUROCHUNDER SHAHA . . . 2 W. R., Act X, 100

19. ——— Suit for ejectment of a ryot who, the plaintiff alleges, possesses no right of occupancy. BUDREE DOSS *v.* HUNWANT SINGH [4 N. W., 69

20. ——— Suit where the tenant is a mere tenant-at-will. GOOR BUKSH *v.* CHOONNOO LALL . . . . . 1 Agra, Rev., 70

21. ——— *Suit for possession of land.*—A suit to recover possession of lands which the plaintiff alleged he had leased to the defendant as manager of an indigo factory, and also of other lands over which he had given a zur-i-peshgi lease, should not be brought under the Rent Act. MACDONALD *v.* RAJARAM ROY [3 B. L. R., Ap., 28: 11 W. R., 371

BENGAL RENT ACT, VIII OF 1869, s. 27 (Act X of 1859, s. 30)—*continued.*

22. ——— *Suit for possession of land.*—Nor should a suit by a landlord to recover possession of land from a ryot who had ceased to pay rents, but whom the landlord had omitted to sue when he first ceased payment, and set up an adverse title. SHIB PERSHAD CHUCKERBUTTY *v.* MUDDUN MOHUN CHUCKERBUTTY [W. R., 1864, Act X, 80

See contra, UMA KISHOREE DASSI *v.* HURO GOBIND SHAHA . 5 W. R., Act X, 95

23. ——— *Suit for possession after establishing title.*—A suit against a ryot who sets up title as tenant to a hostile zemindar, against both of whom (as defendants) the plaintiff established his title to the land of which he sues to recover possession, is not a case that falls within the Act. FAKEER ROHOMAN *v.* BHABOSOONDERY DABEA [1 W. R., 232

24. ——— *Suit for possession against alleged trespasser who sets up a permanent ryoti tenure.*—Nor is a suit which is brought to recover possession of lands with mesne profits from one who is alleged to be in possession as a trespasser, notwithstanding the defence set up is that in respect of part of the land the defendant has a permanent ryoti tenure. HARI NATH DAS *v.* ASMUT ALI [6 B. L. R., Ap., 118: 15 W. R., 171

25. ——— *Suit for possession against trespasser.*—Where plaintiff alleged that defendant was a trespasser, and on the ground of that trespass sued for possession, the suit should not be brought under the Rent Act. NOBIN CHUNDER ROY CHOWDHRY *v.* BHOWANEE PERSHAD DOSS [W. R., 1864, Act X, 52

GOBIND CHUNDER MOZOOMDAR *v.* BISSUMBHUREE DOSSEE . . . . . 2 W. R., 5

BANEE MADHUB BANERJEE *v.* JOY KISHEN MOOKERJEE . . . 4 W. R., Act X, 16

26. ——— *Suit to eject ryot.*—A suit by a zemindar to eject a ryot who holds on after the period of his lease, is not cognizable under the Rent Act. SADAT ALI *v.* SADATTUNISSA [3 B. L. R., Ap., 101: 12 W. R., 37

27. ——— *Suit against transferee of tenure.*—Nor is a suit for possession against an occupant by transfer, whom the landlord does not recognise as his tenant. TARAMONEE DOSSEE *v.* BIRESSUR MOZOOMDAR . . . . . 1 W. R., 86

28. ——— *Suit for ejectment and possession for forfeiture of lease.*—Nor a suit by a proprietor for possession and ejectment of the lessee, on the allegation that, by cancelment of his lease, the lessee, after having resigned his lease, has forcibly taken possession of the demised property KAJARTOOLLAH KHAN *v.* FUTTEH ALI [1 Agra, Rev., 28

29. ——— *Suit for ejectment for forfeiture by transfer of tenure.*—Unless it be proved that by express contract or local custom an aliena-

BENGAL RENT ACT, VIII OF 1869, s. 27 (Act X of 1859, s. 30)—*continued.*

tion by the tenant by way of sale or mortgage renders the holding liable to be forfeited, a suit for ejectment on such ground should not be brought under the Rent Act, but the remedy of the zemindar is by suit to have the transaction set aside. RAMDYAL *v.* JANKEY DOBEY . . . . . **3 Agra, 274**

NUTHOO *v.* DAN SUHAI . . **2 Agra, 279**

IMAM BUKSH *v.* HOOB ALI . **3 Agra, Rev., 8**

30. ——————— *Suit for ejectment for forfeiture by transfer of tenure.*—A suit for ejectment against tenants who are alleged to have illegally alienated their tenant rights, cannot be brought under the Rent Act against the vendor because he is alleged to be out of possession, nor against the vendee because he is not the plaintiff's tenant. CHUMMAN SHAH *v.* ISHREE PERSHAD NARAIN SINGH . **4 N. W., 175**

31. ——————— *Suit for ejectment for non-payment of arrears of rent.*—Where a lessor sued to eject the lessees for non-payment of arrears of rent, and to the amount claimed joined a claim for arrears due at the commencement of the leases, the latter claim being based on a stipulation contained in the leases that the lessees would pay such arrears, or on failure would pay the expenses of the servants of the lessors who might be sent to realize such arrears,—*Held*, that the claim was not one cognizable under the Rent Act. GULABI SINGH *v.* RAI NORMAL CHUND . . . . . **6 N. W., 342**

32. ——————— *Suit for ejectment.—Act X of 1859, s. 30.*—In 1857 the plaintiff gave a lease of a garden to defendant, who agreed to plant, within five years from the date thereof, 2,000 betel-nut trees. The defendant failed to do so. In 1867 the plaintiff brought the present suit for ejectment, on account of the breach of the contract entered into by the defendant. *Held* that, by section 30, Act X of 1859, the suit was barred by limitation. KALI KAMAL MAZUMDAR *v.* SHIB SUHAI SUKUL **[3 B. L. R., Ap., 47: 11 W. R., 452**

33. ——————— *Suit to eject for breach of contract.—Act X of 1859, s. 30.—Held*, that a suit to eject a cultivator for a breach of contract by planting a bagh must be brought within one year, under section 30 of Act X of 1859, from the date of the first accruing of the cause of action. RUHMUT-OOLLAH *v.* TUFFUZZOOL HOSSEIN . **1 Agra, Rev., 67**

34. ——————— *Breach of contract in planting trees on land let for agricultural purposes.*—Section 27 of Bengal Act VIII of 1869 only relates to such suits as could be brought either by the landlord or tenant under Act X of 1859, and will not apply to an alternative claim, put forward in a suit for ejectment, to compel the defendant to remove trees from certain lands leased to him for agricultural purposes. Article 120 of schedule II of Act XV of 1877 is applicable to such claims. GUNESH DOSS *v.* GONDOUR KOORMI **[I. L. R., 9 Calc., 147: 12 C. L. R., 418**

35. ——————— *Suit to eject ryot for making a well.—Act X of 1859, s. 30.—Held*, that the limitation of one year under section 30, Act X of 1859, in a suit by a landlord to eject a cultivator for sinking a well, should be computed from the date when the building of the well has assumed such a form that there can be no doubt of the purpose for which it was intended. HEERA KOOREE *v.* NOOR ALI . . . . . **3 Agra, Rev., 1**

36. ——————— *Suit for possession after refusal to give possession under award in arbitration.*—Where the parties agree to refer the question of title to arbitration, and the award being adverse to the defendant he refuses to give up possession, a new cause of action arises, and one of a different character from any mentioned in Bengal Act VIII of 1859, section 27. RAJ NARAIN ROY *v.* MODHOO SOODUN MOOKERJEE . . . **20 W. R., 19**

37. ——————— *Suit to cancel lease and for arrears of rent.*—A suit to cancel a lease for breach of the conditions and for arrears of rent should be brought under the Rent Act. BEHAREE COOMAREE *v.* SOOBRUN SINGH . **2 W. R., Act X, 12**

RAMCHUNDER DUTT *v.* DIN DAYAL PORAMANICK . . . **2 W. R., Act X, 16**

38. ——————— *Suit to set aside lease.—Act X of 1859, s. 23, cl. 5.*—A suit to set aside a lease as null and void is not cognizable under the Rent Act, even though plaintiff mentions that a balance of rent is due by defendant. TAJEH MAHOMED PURDHAN *v.* JOGENDRO DEB ROYKUT **[8 W. R., 368**

39. ——————— *Suit to cancel zur-i-peshgi lease.*—A suit to cancel a zur-i-peshgi, by which the lessee was to receive the usufruct as interest for his advance, and to repay the principal by the rent reserved, is of the nature of an usufructuary mortgage, and as such cannot be brought under the Rent Act. RUTTON SINGH *v.* GREEDHAREE LALL **[8 W. R., 310**

MAHOMED ALI *v.* BATOSH DAO NARAIN SINGH **[1 W. R., 52**

40. ——————— *Suit to get release from tenancy on ground of fraud.*—Where the tenant seeks to have himself released from a contract of tenancy on the ground of fraud, the suit is not one to be brought under the Rent Act. BHOLANATH KHAN *v.* RAM CHUNDER SIRCAR . **7 W. R., 62**

41. ——————— *Suit where lease is alleged to be forged.*—Nor where the lease is said to be a forgery. MAHMOOD LUSHKUR *v.* PAKAR KHAN **[Marsh., 496**

42. ——————— *Suit for possession after ejectment.—Suit for possession on declaration of title.*—The words "suits to recover the occupancy or possession of any land" in clause 6 of section 23, Act X of 1859 (section 27, Bengal Act VIII of 1869), refer only to possessory actions against the person entitled to receive the rent, and not to suits in which the plaintiff sets out his title and seeks to have his right declared and possession given him in

BENGAL RENT ACT, VIII OF 1869, s. 27 (Act X of 1859, s. 30)—*continued.*

pursuance of that title. GOOROODOSS ROY *v.* RAMNARAIN MITTER. GOOROODOSS ROY *v.* BISHTOO CHURN BHUTTACHARJEE
[B. L. R., Sup. Vol., 628
2 Ind. Jur., N. S., 112: 7 W. R., 186

SERAJ MUNDUL *v.* BISTOO CHUNDER ROY
[7 W. R., 459

GUNGA GOBIND ROY *v.* KALA CHAND SURMA GANGOOLY . . . 20 W. R., 455

LALLJEE SAHOO *v.* BHUGWAN DOSS
[8 W. R., 337

Contra, GOOROO CHURN COOMAR *v.* KHETTER MOHUN ROY . W. R., 1864, Act X, 79

and in PUDDOLABH DEO *v.* OBHOYRAM SINGH
[W. R., 1864, Act X, 30

it was held that a suit to try whether the tenant had been rightly evicted was properly tried under the Rent Act.

43. ——————— *Act X of 1859, s. 23.—Possessory suits.—Limitation.*—Following a Full Bench decision—*Gooroo Doss Roy* v. *Ramnarain Mitter, B. L. R., Sup. Vol., 628 : 7 W. R., 186*—as to the proper interpretation of Act X of 1859, section 23, it was held that the same words in Bengal Act VIII of 1869, section 27, described only possessory actions against persons entitled to receive rent, and not suits setting out title, and seeking to have right declared and possession given in pursuance thereof; and that consequently the limitation prescribed by section 27 applied only to simple cases of possessory action. NISTARINEE *v.* KALEE PERSHAD DOSS CHOWDHRY . . . . 21 W. R., 53

SURJOO PERSHAD *v.* KASHEE RAWUT
[21 W. R., 121

BROJO KISHORE RAKHIT *v.* BASHI MUNDUL
[21 W. R., 251

ASMAN SINGH *v.* ABEEDODDEEN
[23 W. R., 460

RAMJOY MUNDUL *v.* RAM SUNDER MUNDUL
[2 C. L. R., 4

44. ——————— *Suit for possession.—Landlord and tenant.—Limitation.*—In a suit for possession of land, it appeared that the defendants had obtained a durputni lease of the land in question in 1271 (1865), and that they had immediately dispossessed the plaintiff, and had never acknowledged him to be theirt enant. The plaintiff instituted his suit within twelve years from the date of dispossession. *Held,* that the suit was not barred by limitation under section 27 of Bengal Act VIII of 1869. That section only applies to cases where the relation of landlord and tenant exists, and cannot be pleaded in bar by a defendant who does not admit that such relation has existed. NILMADHUB SHAHA *v.* SRINIBASH KURMOKAR
[I. L. R., 7 Calc., 442: 9 C. L. R., 137

45. ——————— *Suit for possession after ejectment.*—When the dispute between the parties was whether the plaintiffs, who, by themselves and their ancestors, had long held the land in dispute, could be lawfully dispossessed by the defendant, who claimed it under a pottah recently granted by the zemindar,—*Held,* that the matter was not one for adjudication under the Rent Act, not being a question between landlord and tenant. AFA KHAN *v.* KISHEN MOONJOREE DOSSEE
[W. R., 1864, Act X, 17

MOFUZZEL HOSSEIN *v.* TUSSOODUK ALI KHAN
[W. R., 1864, Act X, 89

UFSUROODEEN *v.* AKBUR ALI
[2 W. R., Act X, 77

46. ——————— *Suit by purchaser against ryots and zemindar.*—A suit by the purchaser of a mokurrari tenure against the ryots and the zemindar for illegal dispossession and for establishing permanent title to the property should not be brought under the Rent Act. NOBBO DOORGA DEBEE *v.* KISTAREENEE DOSSEE . . . . 1 W. R., 48

KANAYE MOLLAH *v.* DEBNATH ROY
[3 W. R., Act X, 161

OOMADHUR BHUT *v.* MAHOMED LUTEEF
[1 W. R., 229

GOKOOL PERSHAD *v.* RAJENDUR KISHORE SINGH . . W. R., 1864, Act X, 4

47. ——————— *Suit for confirmation of title and possession.*—A suit for confirmation of the plaintiff's title and possession as shikmi talookdar under the defendant is not cognizable under the Rent Act. BROJO SOONDUR MITTER *v.* RAM CHUNDER ROY . . . . 2 W. R., Act X, 40

48. ——————— *Suit for confirmation of possession by ryot.*—Suits by ryots for confirmation of possession in a tenure which is threatened are not cognizable under the Rent Act. RITTOO RAJ RAE *v.* JUGGESHUR RAE
[1 N. W., Part 2, p. 40: Ed. 1873, 98

49. ——————— *Suit by transferee for declaration of title as tenant.*—A suit by the purchaser of a permanent transferable tenure for a declaration of his title as tenant to possession is not cognizable under the Act. NOBEEN KISHEN MOOKERJEE *v.* SHIB PERSHAD PATTUCK . 8 W. R., 96

50. ——————— *Suit where purchaser is opposed.—Suit against zemindar by purchaser of transferable tenure.*—A case where the zemindar opposes the entry of the purchaser of a transferable ryot's tenure would come under the Rent Act. DEGUMBUREE DABEA *v.* SHAMASOONDUREE DEBEA
[W. R., 1864, Act X, 81

51. ——————— *Suit for land.—Suit for declaration of right to share in produce of trees.—Act X of 1859, s. 23, cl. 6.*—A suit for the declaration of the right of the plaintiff to a share in the produce of certain trees, on the allegation that those trees were planted by a person whose rights had passed to the plaintiff by a bill of sale, is not cognizable under the Rent Act. RAMZAN ALI *v.* ANWAR ALI
[2 B. L. R., Ap., 19: 11 W. R., 52

BENGAL RENT ACT, VIII OF 1869, s. 27 (Act X of 1859, s. 30)—*continued.*

52. ——— *Suit to establish right to use and cut trees.*—*Held*, that a suit by a cultivator to establish his right to cut and make use of the trees situate on the borders of his holding was not a suit of the nature triable under the Rent Act. PUCHOOA *v.* MAHOMED TALA ASSUD-OOLLAH . 2 Agra, 217

53. ——— *Suit for maintaining possession.*—There must have been ejection, therefore a suit for maintenance of possession in the holding from which the plaintiff was not actually ejected does not come within the Act. DOWLAT RAI *v.* GYA MISSER . . . . . 2 Agra, 95

54. ——— *Suit by holder of lease who has never been in possession.*—Nor does a case where a plaintiff sued to recover possession of land of which he had never been in possession, but which he claimed under a pottah alleged to be valid, on the allegation that he had been illegally ejected. JODOO NATH GHOSE *v.* SOOKHMOYE DOSSEE [1 W. R., 201

55. ——— *Suit by purchaser who has never obtained possession.*—So with a purchaser of an under-tenure who has never obtained any real substantive possession. ANUND NATH ROY *v.* JUNMEJOY BISWAS . . . . 8 W. R., 240

56. ——— *Ejectment of cultivators. Dispossession of farmer.*—The disturbing or dispossessing the cultivators is tantamount to ejecting and disturbing in the receipt of rent the farmer to whom they pay rent, for which a suit will lie under the Rent Act. LUNGUT MAHTOON *v.* RAMESHUR ROY [W. R., 1864, Act X, 54

57. ——— *Mode of dispossession.*—It matters not how the ejectment is brought about, whether under colour of award of a Criminal Court or otherwise; so long as it is between landlord and tenant the suit to recover possession can be brought under the Rent Act. MUTHOORANATH KOOND *v.* SAMEERUDDEE MOLLAH . . . . 1 W. R., 42

UMBIT LALL BANERJEE *v.* BHOOBUN MOHINEE DOSSEE . . . . 7 W. R., 24

58. ——— *Dispossession irregularly made.*—*Act X of 1859, s. 23, cl. 6.*—Where a zemindar pursues his right to eject in a manner which is not legal, possession will be restored, although if the zemindar had proceeded legally he could have ejected his ryot; such cases are contemplated by section 23, clause 6 of Act X of 1859, and Bengal Act VIII of 1859, section 27. GUNGA GOBIND ROY *v.* KALA CHAND SURMA GANGOOLY . 20 W. R., 455

59. ——— *Suit to set aside illegal ejectment.*—*Cause of action.*—Where a tenant was restored to his holding by a decree to set aside the auction sale of his right,—*Held*, that the cause of action for the tenant to sue under clause 6, section 23, Act X of 1859, arose on the zemindar's refusal to admit him into possession of his holding; and a suit brought within one year from the date of such refusal, which was practically an illegal ejectment by the zemindar, would not be barred under section 30 of that enactment. LUCHMUN SINGH *v.* MAHOMED HOSSEIN . . . . 1 Agra, Rev., 42

60. ——— *Suit by tenant.*—*Suit by shikmi talookdar for possession.*—A shikmi talookdar may sue under the Rent Act to recover possession. RAJ CHUNDER SURMA GOSSAIN *v.* ALI NEWAZ KHAN . W. R., 1864, Act X, 133

Provided he sue the zemindar, and not only in respect to a portion of his tenure. HUR PERSHAD *v.* MATA BUKSH . . . . 3 Agra, 225

61. ——— *Suit by lakhirajdar.*—A suit by a lakhirajdar does not come within the Act. GOOROO PERSHAD ROY *v.* NIMAYE CHAND PULSHANI . . . . 3 W. R., Act X, 5

62. ——— *Suit by putnidar.*—But a suit by a putnidar against the zemindar may be brought under it. THAKOOR DOSS MOZOOMDAR *v.* RADHA SOONDERY DOSSEE . 2 W. R., Act X, 3

63. ——— *Suit by dur-maurasidar.*—Where a zemindar sold a maurasi tenure for arrears of rent, and purchased it himself, and then evicted the dur-maurasidar, and made a fresh settlement for the tenure with a third party,—*Held*, that a suit for ejectment by the dur-maurasidar against the zemindar was cognizable under the Rent Act. WOOMA SUNKORY *v.* ALLY ASHRUFF [W. R., 1864, Act X, 96

64. ——— *Suit by tenant with right of occupancy.*—So is a suit to recover possession by a tenant with a right of occupancy, illegally ejected by the zemindar, with or without the assistance of the Collector. RAM BHUJUN BHUKUT *v.* KETAYE RAM CHOWDHRY . . 6 W. R., Act X, 21

TARANATH BHUTTACHARJEE *v.* OBHOY CHURN HALDAR . . . 7 W. R., 471

65. ——— *Suit by tenant with right of occupancy.*—Where plaintiffs alleged themselves to be tenants with rights of occupancy, and as such not liable to ejectment by defendant, the owner of the land, under a religious grant as alleged by them (plaintiffs),—*Held*, that the suit was exclusively cognizable by the Revenue Court, under clause 6, section 23, Act X of 1859. SEWAK RAM *v.* RAM BHAWAN OJHA . . . . 1 Agra, 212

66. ——— *Suit to recover possession as heir of occupancy ryot.*—Where the plaintiff sues on the ground that having been in possession of, and cultivated, land of an occupancy ryot during her lifetime he is entitled to succeed to possession at her death, he might sue under the Rent Act; but when never having been in possession he claims as heir by Hindu law to succeed to the occupancy right, he should not. PEM KOOER *v.* UPPER BALEE SINGH [2 N. W., 86

67. ——— *Suit by zemindar to establish his right against maafeedar and for possession.*—*Act X of 1859, s. 23, cl. 6.*—*Held*, that the Rent

BENGAL RENT ACT, VIII OF 1869, s. 27 (Act X of 1859, s. 30)—*continued.*

Act, which refers to suits to recover occupancy in any land, farm or tenure, from which a ryot, farmer, or tenant has been illegally ejected by a person entitled to receive the rent, does not apply to a suit brought by a zemindar against a maafeedar to establish his right as such, and to recover possession and malikana allowance secured to him at the time of settlement. RADHA MOONEE *v.* KISHNA'. **2 Agra, Pt. II, 188**

68. ——————— *Ejectment.—Limitation.—Suit for possession on declaration of title.*—The only remedy for a party in the position of an occupancy ryot, who alleges he has been ejected in contravention of the proviso to section 22 of Bengal Act VIII of 1869, is a suit on the ground of the illegal ejectment, and such a suit must, under section 27, Bengal Act VIII of 1869, be brought within one year from the ejectment. GOLABOLEE *v.* KOOTOSBOOLLAH SIRCAR **[I. L. R., 4 Calc., 527**

69. ——————— *Suit to recover possession after ejectment.*—Where a ryot, having a mere right of occupancy in certain land, has been wrongfully dispossessed by the zemindar, his suit to recover possession must be brought, under section 27 of Bengal Act VIII of 1869, within one year from the date of dispossession. BRINDABUN CHUNDER SIRKAR *v.* DHUNUNJOY NUSHKUR **[I. L. R., 5 Calc., 246: 4 C. L. R., 443**

70. ——————— *Possession under zur-i-peshgi mortgage.—Landlord and tenant.—Limitation.*—Where the plaintiff claimed a right to enjoy possession of certain land for a term of years on the footing of a mortgage transaction (zur-i-peshgi), it having been a part of his contract with the mortgagor-defendants that he should repay himself the money advanced by taking the rent reserved on the zur-i-peshgi lease during its pendency,—*Held*, that the relation between the parties was different from that of landlord and tenant contemplated in Bengal Act VIII of 1869, section 27, and that the suit could not be governed by the limitation prescribed in that law. PARIAG DUTT ROY *v.* FEKOO ROY **[19 W. R., 160**

71. ——————— *Ejectment by a suit against person entitled to rent.*—The only suits for recovery of possession that are cognizable under the Rent Act are suits by a tenant who has been illegally ejected by the person entitled to receive the rent of the land or tenure. RAJ COOMAR SINGH *v.* RAJBUNSEE KOOER . **W. R., 1864, Act X, 108**

LUCKHEE PREA DABEA *v.* JUGGODUMBA DABEA **[3 W. R., Act X, 8**

HOSSEINEE KHANUM *v.* RUBIA KHANUM **[5 W. R., Act X, 14**

DEBRANEE DOSSEE *v.* SHITAL KAREEGUR. NILUMBER SEN *v.* HARANUND SOOREE **[W. R., 1864, Act X, 10**

GOBIND MONEE *v.* RAJENDRO KISHORE CHOWDHRY . . . . . **15 W. R., 18**

72. ——————— *Suit against ijaradar.—Act X of 1859, s. 30.*—A suit on the ground of illegal ejectment can be brought where the defendant is the ijaradar entitled to the rents. GOBIND MONEE *v.* RAJENDRO KISHORE CHOWDHRY **[15 W. R., 18**

See BROJO MOHUN DE SIRCAR *v.* DENGU. **[7 C. L. R., 141**

—a case under section 27, Bengal Act VIII of 1869, where it was held that "person entitled to receive the rent" means "all the persons" if there are more than one; and when the suit was brought against one ijaradar only out of several, it was held that the section would not apply.

73. ——————— *Ejectment not directly by landlord.*—To bring a case of ejectment within the Rent Act there must have been some direct act on the part of the person entitled to receive the rent towards ejecting the tenants, either personally or by his servants, or by joining with those who actually ejected them. JOYKISSEN MOOKERJEE *v.* MUDOOSOODUN KULLIAH . . **W. R., 1864, Act X, 90**

WISE *v.* HUREO CHUNDER SHAHA **[6 W. R., Act X, 90**

AMJAD ALI KHAN *v.* GHOLAM HYDER KHAN **[1 W. R., 313**

MODHOOSOODUN CHUCKERBUTTY *v.* NUFUR BAWAL . . . . . **1 W. R., 196**

74. ——————— *Landlord and tenant.—Limitation.*—Where a landlord does not himself directly take steps to interfere with the rights of cultivation of his tenants, but does so through other persons, whose acts he may, if it so pleases him, afterwards ignore, he is not in a position to set up a special plea of limitation under the Rent Law (Bengal Act VIII of 1869, section 27). KALLIDA PERSHAD DUTT *v.* RAM HARI CHUCKERBUTTY **[I. L. R., 5 Calc., 317**

75. ——————— *Ejectment not by zemindar.*—A suit by plaintiff complaining of having been ejected by the defendants, who were not the zemindars of the land in dispute, or the persons entitled to collect rent from the plaintiff, cannot be entertained under the Rent Act. The mere allegation of the defendants that they were the zemindars, unless admitted to be true by the plaintiff, will not give jurisdiction under that Act. KISHUN MOHUN SINGH *v.* TOOLSEE SINGH . . . **2 N. W., 102**

RAM DEHUL PANDEY *v.* KASHEE RAWUT **[14 W. R., 232**

HURISH CHUNDER ROY *v.* SHONASHEE DALAL **[14 W. R., 466**

76. ——————— *Suit by ryot for possession against transferees of zemindari.*—The ownership of a zemindari having changed hands under a decree, a ryot with a right of occupancy brought a suit on the ground of illegal dispossession by the new zemindars. *Held*, that the suit was maintainable under the Rent Act. SHEO PROKASH MISSER *v.* FUKEER ROY **[13 W. R., 20**

BENGAL RENT ACT, VIII OF 1869, s. 27 (Act X of 1859, s. 30)—*continued.*

77. ——————— *Suit after ejectment by purchaser from Government.*—The Government purchased the zemindari rights in a pergunnah, under Regulation XXI of 1822, at a sale for arrears of Government revenue, and re-settled one of the talooks in the pergunnah, which talook had been created subsequently to the Decennial Settlement, with the plaintiffs as talookdars. Subsequently, and after the expiration of the terms for which they had re-settled with the plaintiffs, the Government sold their zemindari rights to the defendant, who ejected the plaintiffs. In a suit by the plaintiffs for possession,—*Held*, that it was properly brought under the Rent Act. ASSANOOLLAH *v.* OBHOY CHURN ROY
[13 W. R., P. C., 24: 13 Moore's I. A., 317

78. ——————— *Suit against other than person entitled to rent.*—If a tenant in a suit to recover possession of land from which he has been ejected finds it necessary to implead a person other than the person entitled to receive the rent of the land, he should not bring his suit under the Rent Act. RITTOO RAJ RAE *v.* JUGGESHUR RAE
[1 N. W., Pt. II, p. 40: Ed. 1873, 98

NUFFER MYTEE *v.* MONOHUR SIRDAR
[13 W. R., 334

AMIRTA *v.* NUND KISHORE . **2 Agra, 333**

BUSHEEROODDEEN *v.* DAL CHUND
[3 Agra, 236

As for instance a person alleged to be in collusion with the zemindar to eject. SOWANTEE *v.* SEWA RAM . . . . . **2 N. W., 35**

MUGNEE ROY *v.* LALL KHOONEE LAL
[6 W. R., Act X, 19

MADHUB CHUNDER DEY *v.* RAM DYAL GUHO
[8 W. R., 303

MAHOMED JAKEE *v.* GOPEE ROY
[10 W. R., 5

SEEKANT ROY CHOWDHRY *v.* KITABOODDEEN SIRDAR . . . . . **10 W. R., 49**

79. ——————— *Suit by shikmi ryot against tenants.*—A suit by a shikmi cultivator, or under-tenant, to recover possession of land from which he has been illegally ejected by the defendants, themselves only tenants, and not zemindars, is cognizable under the Act. JEY SINGH *v.* MOORLEE
[2 N. W., 98: S. C., Agra, F. B., Ed. 1874, 194

80. ——————— *Suit for possession of land assigned as security for a loan.—Act X of 1859, s. 23, cl. 6, and s. 25.*—Neither clause 6, section 23, nor section 25 of the Rent Act, applies to a suit for recovery of possession on expiry of assignment of land assigned over for a term of years as security for a loan and as the means for its repayment. KHETTUR MOHUN PAUL *v.* RAM COOMAR PAUL
[5 W. R., Act X, 2

81. ——————— *Suit against person entitled to rent for wrongful ejectment.—Act X of 1859, s. 23, cl. 6.*—*A.*, after the grant of a putni talook to *B.*, fraudulently granted a pottah of the same land to his own daughter, and by means thereof she intervened in a suit by *B.* against a ryot for rent, and prevented *B.* from recovering in the suit. *Held*, that this was evidence to support a suit by *B.* against *A.* under Act X of 1859, section 23, clause 6, for illegally ejecting him from the tenure, and the pottah being a mere device. Notwithstanding the daughter was joined as a defendant in the suit, the suit could be entertained under the Rent Act. HUREEE DYAL CHUKEE *v.* BIRJESSUREEE DOSSEE . . **Marsh., 604**

82. ——————— *Question of title.—Ejectment. — Limitation.* — Section 27 of Bengal Act VIII of 1869 applies only to such suits for possession as the Court is asked to decide irrespectively of any title, but simply on the ground that the plaintiffs have been ousted otherwise than by legal means. FORBES *v.* SREE LAL JHA
[I. L. R., 8 Calc., 365

83. ——————— *Suit for possession.—Title.—Limitation.*—The limitation provisions of section 27, Bengal Act VIII of 1869, have no application to a case in which the plaintiff relies upon his title, and seeks to recover possession upon the strength of that title, and in which the defendant denies that title. *Gooroo Doss Roy* v. *Ramnarain Mitter, B. L. R., Sup. Vol., 628: 7 W. R., 186; Nistarinee* v. *Kali Pershad Dass Chowdhry, 21 W. R., 53; and Nilmadhub Shaha* v. *Srinibash Kurmokar, I. L. R., 7 Calc., 442,* referred to. JOYUNTI DASI *v* MAHOMED ALLY KHAN . **I. L. R., 9 Calc., 423**

84. ——————— *Landlord and tenant.—Possession, Suit for, on dispossession by landlord.—Title, Claim for declaration of.*—Where a suit by a tenant against his landlord is both in form and substance one to recover possession on the ground of illegal dispossession by the landlord, and no question of the plaintiff's title is raised, the insertion in the plaint of a claim for declaration of the plaintiff's title is not sufficient to prevent the application of the limitation prescribed by section 27 of Bengal Act VIII of 1869. *Dhurjobutty Chowdrain* v. *Chumroo Mundul, 25 W. R., 217,* distinguished. IMAM BUKSH MUNDUL *v.* MOMIN MUNDUL
[I. L. R., 9 Calc., 280

85. ——————— *Suit for possession on declaration of title.—Limitation.*—Where a suit was brought to recover possession of land of which plaintiff alleged that he was dispossessed by the zemindar in Jeyt 1281, and the zemindar rejoined that plaintiff had relinquished the greater portion of the land in suit in Bysack 1280, and was now barred by limitation,—*Held* that, as this was a suit to recover possession by establishment of title, plaintiff was at liberty to bring it within twelve years, and was not barred by the lapse of one year. An objection of limitation is not most suitably sustained by evidence of a relinquishment from a period the lapse of time from which exceeds the period of limitation. DHURJOBUTTY CHOWDRAIN *v.* CHAMROO MUNDUL
[25 W. R., 217

BENGAL RENT ACT, VIII OF 1869, s. 27 (Act X of 1859, s. 30)—*continued.*

86. ——————— *Suit for possession with mesne profits.—Defendants.—Title.—Limitation.*—A suit for possession of certain lands "by establishing the plaintiff's howla right," and for mesne profits, brought against a shareholder of the talook in which the lands are situated, a former talookdar, and certain royts who paid rent to the first defendant, is not a suit to recover the occupancy of the land from which the plaintiff has been illegally ejected by the person entitled to receive the rent, within the meaning of section 27 of Bengal Act VIII of 1869, and is not governed by the limitation provided by that section. ASHANOOLLAH *v.* RAMDHONE BHUTTACHARJEE . . . I. L. R., 1 Calc., 325

87. ——————— *Question of title.—Limitation.*—In a suit to recover possession of certain land as the ancestral maurasi mokurrari jote of the plaintiffs, from which they had been dispossessed by the defendant, the latter denied the dispossession and alleged that the plaintiffs had themselves relinquished the land in question. It was found, although the alleged title was not proved, that the plaintiffs had established an occupancy right, but had been dispossessed by the defendant. On appeal it was contended that the suit was barred under section 27 of Bengal Act VIII of 1869, as not having been brought within one year from the date of the dispossession. *Held*, that the suit involved a question of title, and that the limitation of a year prescribed by section 27 of the Rent Act, therefore, did not apply. TAMIZUDDIN MUNSHI *v.* HURO NATH PAL [9 C. L. R., 253

88. ——————— *Suit for possession.—Question of title.—Limitation.*—Where the plaintiff alleged that he was the holder of a jote under the defendant by whom he had been forcibly dispossessed, and sued for declaration of his title and for restoration to possession; and the defendant did not question the plaintiff's tenure, nor his original title, but denied the forcible dispossession, and alleged that the plaintiff had relinquished the land;—*Held*, that the suit was not one to try a question of title, but was governed by the one year's period of limitation prescribed by section 27, Bengal Act VIII of 1869. *Jonardun Acharjee* v. *Haradun Acharjee, B. L. R., Sup. Vol., 1020: 9 W. R., 513; and Imam Buksh Mondul* v. *Momin Mondul, I. L. R., 9 Calc., 280*, approved. SRINATH BHATTACHARJI *v.* RAM RATAN DE [I. L. R., 12 Calc., 606

89. ——————— *Wrongful distraint.—Suit for damages.—Act X of 1859, s. 143.*—A suit for recovery of damages, by reason of wrongful distraint, is cognizable under section 143 of the Rent Act, X of 1859, section 99 (Bengal Act VIII of 1869.) RAM CHANDRA CHOWDRY *v.* SUBAL PATRO [3 B. L. R., Ap., 74: 11 W. R., 539

SHUMBHOONATH BANERJEE *v.* TARINEE CHURN BOSE . . . 6 W. R., Act X, 33

90. ——————— *Wrongful distraint.—Act X of 1859, ss. 139, 143, and 323.*—*A.* distrained the paddy of *B.*, alleging that it belonged to *C.*, who was *A.*'s ryot. It was found that there was no relation of landlord and tenant between *A.* and *B.*, and that *C.* was acting in collusion with *A.* *B.* attempted, under section 139, Act X of 1859, to get possession of the distrained paddy from *D.* and *E.*, to whose custody it had been made over under section 118 of Act X of 1859, but was unsuccessful. In a suit by *B.* against *A.*, *C.*, *D.*, and *E.* for damages, *Held*, that the suit was one falling either under section 139 or section 143 of Act X of 1859, and came under section 23 of that Act, and was cognizable under the Rent Act. All suits which are specially provided for by Act X of 1859, and which arise out of the exercise of the power of distraint, or out of any acts done under colour of the exercise of the said power, are within the provisions of section 23 of that Act. JOY LALL SHEIKH *v.* BROJONATH PAUL CHOWDHRY . . . . . 9 W. R., 162

91. ——————— *Wrongful distraint—Suit for damages by under-tenant.*—A suit for damages for an illegal distraint upon an under-tenant who has paid his rent, for rent due from his lessor to the superior landlord, lies under the Rent Act. GHOLAM ALLY *v.* NUNDAYA [Marsh., 264: 2 Hay, 108

92. ——————— *Wrongful distraint.—Suit to set aside collusive decree for rent.—Question of title.*—A suit by *A.* to set aside an alleged collusive decree for rent obtained by *B.* against *C.*, under which decree *A.* was ejected from his lands and his crops seized, is distinguishable from a case of illegal distraint by a landlord. Such a suit raises a question of title, and should not be brought under the Rent Act. GOOPENATH DUTT *v.* PRONATH SIRCAR [6 W. R., Act X, 7

93. ——————— *Wrongful distraint.—Suit for property illegally distrained.*—A suit by a ryot for the recovery of the value of his property illegally distrained as the property of another ryot, is one which should be brought under the Rent Act. RAM BHISTO ACHARJEE *v.* CHEYT LALL TEWARY [15 W. R., 451

94. ——————— *Wrongful distraint.—Illegal distraint of crops.—Suit for damages.*—Certain sub-lesseses sued the zemindar and others employed by him for the value of crops seized and carried away under a certificate, as was alleged by the defendants, granted to them by the Collector, but which they failed to produce. *Held*, the suit was properly brought under the Rent Act. RADHA MOHAN NASKAR *v.* JADU NATH DAS [3 B. L. R., A. C., 261: 12 W. R., 68

95. ——————— *Wrongful distraint.—Misappropriation of distrained crops.*—The Rent Act makes no provision for a case where, before the sale of the distrained property, because the defaulter paid the debt demanded by the landlord, the crops distrained and alleged by the plaintiff to be his were made over to the ryot, who, the plaintiff stated, had misappropriated them. In such a case a suit for damages cannot be brought under that Act. GUREEBOOLLAH *v.* SYEFOOLLAH . . 7 W. R., 41

BENGAL RENT ACT, VIII OF 1869—*continued.*

1. ——— s. 28 (Act X of 1859, s. 31). —*Suit to determine rate of rent.—Offer to give pottah.—Conditional offer.*—A suit under section 28, Bengal Act VIII of 1869, asking the Court to determine the rate of rent which plaintiff is entitled to receive, and offering to execute a pottah at that rate, must be accompanied by an unconditional offer by the plaintiff to execute a pottah at the rate directed by the Court. The omission of such an offer is fatal to the claim, and plaintiff has no right to make it a condition to the execution of such a pottah that all previous arrears should be paid at the rates to be so fixed. REILY (LAND MORTGAGE BANK OF INDIA) *v.* JUDOO NATH GHUTTUCK . . . . . 25 W. R., 175

2. ——— *Suit by co-parcener to assess sir land.—Act X of 1859, s. 23, cl. 1.—Held,* that a suit by plaintiff, a co-parcener in the land in question, against another co-parcener holding as his *sir* land, to assess the same, was not one cognizable under the Rent Act. JODHA SINGH *v.* OMAID SINGH [2 Agra, Rev., 5

3. ——— *Resumption, Effect of.—Creation of tenancy.*—In a suit in a Civil Court a decree was obtained in 1863, declaring the land of the defendant "to be resumed and subject to assessment of revenue, the amount to be fixed by the Collector,"—*Held,* that the decree was conclusive; that the lands were not considered mal at the time of the settlement in 1790; and, further, that their resumption in 1863 did not create a tenancy, and that therefore section 28 of Act VIII of 1869 did not apply. FORBES *v.* BHUJLOO ROY . . . . 6 C. L. R., 301

——— s. 29 (Act X of 1859, s. 32).

See CASES UNDER LIMITATION ACT, 1877, ART. 110 (1859, s. 1, CL. 8).

1. ——— *Suit for rent.*—The limitation in a suit for arrears of rent brought under the Rent Act, X of 1859, was that provided by section 32 of that Act, and not that provided by Act XIV of 1859. UNNODA PERSAUD MOOKERJEE *v.* KRISTO COOMAR MOITRO . . 15 B. L. R., P. C., 60, note [S. C. 19 W. R., 5

POULSON *v.* MODHUSUDAN PAL CHOWDHRY [B. L. R., Sup. Vol., 101: 2 W. R., Act X, 21

2. ——— *Special period of limitation.*—The period of limitation specified in Act X of 1859 has reference exclusively to suits brought under that Act. PROSONNO COOMAR PAL CHOWDHRY *v.* MUDDUN MOHUN PAL CHOWDHRY [11 B. L. R., Ap., 31, note: 13 W. R., 390

SURBESSUR DEY *v.* MAHOMED SIRCAR [7 W. R., 243

3. ——— *Computation of time according to English calendar.—Held,* in accordance with former decisions of the High Court, that, for the purpose of computing the period of limitation prescribed by section 29 of Bengal Act VIII of 1869, the calculation is to be made according to the English calendar. MAHOMED ELAHEE BUKSH *v.* BROJOKISHORE SEN . . I. L. R., 4 Calc., 497 [3 C. L. R., 398

And "month" means a calendar month. LUCHMEEPUT SINGH BAHADOOR *v.* RAJCOOMAREE DABEA [23 W. R., 275

KASHEE PERSHAD SEN NEOGEE *v.* JAMIR PAIKAR . . . . . 2 C. L. R., 265

SARODA PERSHAD GANGULI *v.* PATIALI MAHANTI [I. L. R., 10 Calc., 913

4. ——— *Act X of 1859, s. 32.—Construction of "after passing of the Act."*—The words in Act X of 1859, section 32, limiting suits for arrears of rent due at the passing of the Act to a period of "three years after the passing of the Act" refer to the date when the Act passed, and not to the subsequent date fixed for its coming into operation. PEARY MOHUN DOSS *v.* MCARTHUR . . Marsh., 637

MORAN *v.* BINDUBASINEE DEBIA [W. R., 1864, Act X, 5

WATSON *v.* RUTNOKANT ROY [W. R., 1864, Act X, 19

5. ——— *Act X of 1859, s. 32.—Suit brought for period preceding Act.*—When a suit was brought within three years from the passing of Act X of 1859, for arrears of rent of 1266 to 1269, and three months of 1269,—*Held,* that the suit was not barred by limitation under section 32, and that the claim for the arrears of 1266 which were not due till 1267 was in time, though that was a period preceding the passing of the Act. MASHISHUREE DOSSEE *v.* RAM SAGUR SINGH [W. R., 1864, Act X, 69

6. ——— *Act X of 1859, s. 32 and s. 30.—Suit for arrears of rent after enhancement.*—A landlord having obtained a decree for enhancement against his tenant, sued him for arrears of rent. *Held* (with reference to sections 30 and 32 of Act X of 1859), that the suit might be brought within one year from the date of the final decree fixing the rent in the suit for enhancement, or within three years from the end of the month of Jeyt of the Fusli or Willayutti year for which such rent was claimed. JOYMONEE DASSEE *v.* HURRONATH ROY [2 W. R., Act X, 51

See HURRONATH ROY *v.* GOOROO DOSS BISWAS . . 3 W. R., Act X, 19

7. ——— *Act X of 1859, s. 32.—Suit for arrears of rent.—Cause of action.*—An arrear of rent is not due within the meaning of section 32, Act X of 1859, until the rent itself has been determined. COMUL LOCHUN ROY *v.* MORAN [2 W. R., Act X, 82

8. ——— *Act X of 1859, s. 32.—Suit for arrears of rent.*—Act X of 1859 does not authorize the recovery of only three years' rent. Thus, where a suit was commenced within three years from the end of the Bengal year 1268, the plaintiff

BENGAL RENT ACT, VIII OF 1869, s. 29 (Act X of 1859, s. 32)—*continued.*

was held entitled to recover the whole of that year's rent. DOORGA DOSS CHATTERJEE *v.* NOBIN MOHUN GHOSAL . . . **6 W. R., Act X, 63**

9. ——— *Act X of 1859, s. 32.*—*Suit for arrears of rent.*—Section 32, Act X of 1859, does not authorize the recovery of only three years' rent, but requires suits for the recovery of rents to be instituted within three years from the end of the Bengali or Fusli year, as the case may be. GOSSAIN UMUR NARAIN POOREE *v.* ARURUT LALL *alias* BABOO JAN . . . **7 W. R., 301**

10. ——— *Act X of 1859, s. 32.*—*Suit for arrears of rent.*—Under section 32, Act X of 1859, the rent of any portion of one year (1273) is recoverable at any time up to the last day of the third year (1276) after its close. BYKUNT RAM ROY *v.* SHURFOONISSA BEGUM . . **15 W. R., 523**

11. ——— *Award of damages in former suit.—Cause of action.*—Where rents are not sued for within three years from the end of the year for which they are alleged to be due, the fact that damages were awarded against the plaintiff in a former suit for not giving receipts for that year will not create a cause of action. HURO PERSHAD ROY CHOWDRY *v.* WOOMA TARA DEBEE **[15 W. R., 194**

12. ——— *Suit to contest enhancement of rent.*—Where a ryot's suit contesting a notice of enhancement was dismissed, and the dismissal confirmed in special appeal in the month of May, the landlord's suit brought in December of the same year, for rent at an enhanced rate, according to notice, was held to be barred by section 32, Act X of 1859. HURRE KISHORE GHOSE *v.* KOMODINEE KANT BANERJEE . . . . . **10 W. R., 41**

13. ——— *Suit for arrears of rent.*—The words of section 29, Bengal Act VIII of 1859, are intended to apply specially, and exclusively of Act XIV of 1859, to the same class of cases as those to which section 32, Act X of 1859, applied, though that class cannot now be defined, as it formerly could, by reference to the jurisdiction of the Court in which the cases fall to be entertained. The class is limited to suits for arrears of rent simply, as "arrears of rent" are defined in section 21, Bengal Act VIII of 1869. GOBIND COOMAR CHOWDHRY *v.* MANSON **[15 B. L. R., 56: 23 W. R., 152**

14. ——— *Suit for arrears at enhanced rates.—Limitation.*—The intention of section 29 of Bengal Act VIII of 1869, is that a suit for arrears at enhanced rates should not be deferred beyond the third month after the year for which enhancement is claimed. GLASSCOTT *v.* RAJCHUNDER MOOCHY MUNDUL . . . **25 W. R., 381**

15. ——— *Suit for compensation for land.*—A suit to make the defendant liable for compensation in the shape of rent for the land which he held in the name of his servant is not a suit for rent to which section 29 of Bengal Act VIII of 1869 applies. KISHENBUTTY MISRAIN *v.* ROBERTS **[16 W. R., 287**

BENGAL RENT ACT, VIII OF 1869, s. 29 (Act X of 1859, s. 32)—*continued.*

16. ——— *Suit for arrears of rent.*—*Act XIV of 1859, s. 1. cl. 16.—Pro formâ defendants.—Limitation.*—The plaintiffs sued the defendant who were ijaradars of the property in which they were co-sharers, for arrears of rent extending over a period of six years. The suit was first brought in the Revenue Court, and as their co-sharers had not joined in the suit, the plaintiffs made them defendants, and their being defendants preventing the plaintiffs from continuing the suit in the Revenue Court, they instituted it afresh in the Civil Court after Bengal Act VIII of 1869 came into operation. The defendants objected that, under the limitation provided by section 29 of that Act, no more than three years' rent could be recovered; but the Judge held, affirming the decision of the Munsif, that the case was governed by clause 16, section 1, Act VIII of 1859, and that six years' rent could be decreed. *Held*, on special appeal to the High Court, that the fact of the co-sharers being made *pro formâ* defendants did not alter the real character of the suit, which was to recover arrears of rent, and that, therefore, the provisions of section 29, Act VIII of 1869, were applicable, and a decree for three years' rent only was given. GUNGA GOBIND SEN *v.* GOBIND CHUNDER DASS **[11 B. L. R., Ap., 31: 19 W. R., 347**

17. ——— *Suit for arrears of rent.*—*Limitation.*—The period of limitation within which a suit for arrears of rent may, under Bengal Act VIII of 1869, section 29, be instituted, must, in the absence of any special agreement, be calculated from the last day of the year following the expiration of the year for which such rent is claimed. WOOMESH CHUNDER BOSE *v.* SOORJEE KANTO ROY CHOWDHRY **[I. L. R., 5 Calc., 713: 6 C. L. R., 49**

18. ——— *Suit for arrears of rent—Limitation.*—The last day on which a suit for the recovery of arrears of rent can be instituted under section 29, Bengal Act VIII of 1869, is the last day of the third year from the close of the year in which the rent became payable. The word "arrear" in that section means "rent in arrear." *Woomesh Chunder Bose* v. *Surjee Kanto Roy Chowdhry* overruled KASIKANT BHUTTACHARJI *v.* ROHINIKANT BHUTTACHARJI . **I. L. R., 6 Calc., 325: 7 C. L. R., 342**

19. ——— *Suit for arrears of rent.*—*Suit against registered tenant.*—A suit having been brought in 1284 for arrears of rent of a dur-putni for the years 1281-83, and part of 1284, against *A.* as the widow and heiress of the former dur-putnidar who died in 1256, *A.* pleaded that she was not the representative of her husband, as in 1276 she had adopted a son. Whereupon, in 1285, more than three years from the time the rent of 1281 became due, the son was made a defendant. It appeared that from the time of her husband's death *A.* had allowed her own name to remain on the sherista of the plaintiffs, and that the plaintiffs had no notice of the adoption. *Held*, reversing the decision of the lower Appellate Court, that the claim for the rent for the year 1281 was not barred as against *A.* and the tenure, but that no decree could be made against the son in respect of

BENGAL RENT ACT, VIII OF 1869, s. 29 (Act X of 1859, s. 32)—*continued.*

it. DWARKANATH MITTER *v.* NOBONGO MONJORI DASSI . . . . . **7 C. L. R., 233**

20. ——————— *Suit for arrears of rent.—Limitation.*—It having been decided in a former case that the zemindar's claim against defendants for the rent of 1271, being a suit for arrears of rent recoverable upon a liability arising out of matters not within the cognizance of a Revenue Court, was not governed by the special limitation prescribed by section 32, Act X of 1859, but by the ordinary law of limitation, Act XIV of 1859,—*Held*, that the zemindar's present claim of a precisely similar nature against the same parties in respect of the year 1272 was not barred by the special limitation prescribed by section 29, Bengal Act VIII of 1869, corresponding to section 32, Act X of 1859. PROSUNNO COOMAR PAL CHOWDHRY *v.* RAMDHUN CHATTERJEE . . . . . **18 W. R., 8**

21. ——————— *Suit for arrears of rent.—Limitation.*—Certain suits brought in the Collector's Court for rent of 1270 and subsequent years having been dismissed in consequence of the defendant's plea that the whole of the estate had been resumed, and that there was no distinct land for which plaintiff was entitled to any separate rent, plaintiff was obliged to bring a civil suit to establish his right to recover those rents. Having obtained a decree, he brought a suit for arrears of rent from 1271 to 1279, but obtained a decree for the rents of three years only, the cause of action for the years previous to 1277 having been considered to be barred. *Held*, that this decision was right, as there was nothing to prevent the plaintiff from including in the civil suit which he brought, or any previous suit, a claim for rent as well as for declaration of right. BURODA KANT ROY *v.* CHUNDER COOMAR ROY . . **23 W. R., 281**

22. ——————— *Act X of 1859, s. 32.—Suit to recover rent in cash and kind with declaration of plaintiff's right.*—A suit to recover rent in cash and kind which comprehended a claim to have a particular share of the rent declared as the property of the plaintiff, was held to be one which a Collector, acting under Act X of 1859, would have refused to entertain, and therefore to be governed not by the limitation prescribed by Bengal Act VIII of 1869, section 29, but by the ordinary law of limitation. HEERA SINGH *v.* MEER AKBUR ALI **[24 W. R., 382**

23. ——————— *Act X of 1859, s. 32.—Pendency of suit for enhancement.—Limitation.*—The three years' limitation provided by section 32, Act X of 1859, is in general terms, and does not admit of any exceptions,—*e.g.*, the pendency of a suit for enhancement for 1265 will not save limitation in respect to the rent for 1266. NOBOKANTH DEY *v.* BORODAKANTH ROY . . . . **1 W. R., 100**

DAKHINA DABEA *v.* ROMESH CHUNDER DUTT **[1 W. R., 142**

24. ——————— *Grant of perwannah.—Contingency.*—When a person lets land under a kabuliat, and subsequently grants a perwannah, undertaking not to ask for rent till a certain contingency occurs, the perwannah will not alter the original agreement so far as to prevent limitation applying to a suit for rent. BEBEE *v.* MAHOMED GHONSI . . . **1 Ind. Jur., N. S., 31**

BENGAL RENT ACT, VIII OF 1869, s. 29 (Act X of 1859, s. 32)—*continued.*

25. ——————— *Act X of 1859, s. 32.—Cause of action.—Suit for enhancement of arrears of rent.*—A suit for arrears of rent at an enhanced rate, brought more than three years after the rent had accrued due, was held to be barred by lapse of time under section 32 of Act X of 1859, notwithstanding that it was commenced within one year from the date of a decree made in a suit brought in the Civil Court declaring that the plaintiff was entitled to enhance. The cause of action was the non-payment of the rent at the enhanced rate, and not the declaration of the Civil Court that the plaintiff had a right to enhance. DOYAMOYEE CHOWDRAINEE *v.* BHOLANATH GHOSE **[B. L. R., Sup. Vol., 592 : 6 W. R., Act X, 77**

26. ——————— *Act X of 1859, s. 32.—Suit for arrears of rent.*—The plaintiff had sued the defendant at the end of the year 1272 to recover arrears of rent for 1271, and to eject him for non-payment. The litigation lasted till 1276, when the plaintiff obtained a decree, which, however, was not executed, as the defendant paid the amount and costs within fifteen days. In 1276 the plaintiff brought this suit to recover the rents of 1272 and of subsequent years. *Held*, that the plaintiff's claim for the rents of 1272 was not barred by the lapse of three years, under section 32, Act X of 1859. DINDAYAL PARAMANIK *v.* RADHA KISHORI DEBI **[8 B. L. R., 536 : 17 W. R., 415**

ISHAN CHANDRA ROY *v.* KHAJA ASHANULLA **[8 B. L. R., 537, note : 16 W. R., 79**

Contra, MADHUB CHUNDER GHOSE *v.* RADHIKA CHOWDHRAIN . . . **7 W. R., 405**

Rejecting review of same case in **[6 W. R., Act X., 42**

HURONATH ROY CHOWDHRY *v.* GOLUCKNATH CHOWDHRY . . . **19 W. R., 18**

27. ——————— *Act X of 1859, s. 32.—Sale for arrears of rent.—Sale afterwards set aside.—Subsequent suit for arrears of rent.*—*A.*, a zemindar, sold the rights of *B.*, his putnidar, for arrears of rent under Regulation VIII of 1819. This sale was subsequently set aside at the suit of *B.* for irregularity. *A.* then sued *B.* for the arrears under Act X of 1859, and *B.* raised the defence that the suit was barred, more than three years having elapsed from the close of the year in which the arrears became due. *Held* (reversing the decision of the High Court) that, upon the setting aside of the putni sale, the putnidar took back the estate subject to the obligation to pay the rent, and that the particular arrears of rent claimed must be taken to have become due in the year in which that restoration to possession took place, and plaintiff could sue within three years from the close of that year. SWARNAMAYI *v.* SHASHI MUKHI BARMANI **[2 B. L. R., P. C., 10 : 11 W. R., P. C., 5 : 12 Moore's I. A., 244**

BENGAL RENT ACT, VIII OF 1869, s. 29 (Act X of 1859, s. 32)—*continued.*

28. ——————— *Suit for arrears of rent.—Allowance of time occupied by suit for ejectment.*—Where limitation is pleaded in a suit for arrears of rent, deduction must be allowed to the landlord for the time he was suing to eject defendants as trespassers. ESHAN CHUNDER ROY *v.* KHAJAH ASSANOOLLAH . . . . . **16 W. R., 79**

29. ——————— *Act X of 1859, s. 32.—Suit for arrears of rent.—Assignment of rent in payment of bond.*—Plaintiff, a zemindar, being indebted on a bond, gave the bond-holder an assignment on the putnidars for the greater portion of the putni rent to be paid to the bond-holder until the debt was liquidated. The bond-holder, not receiving his money, sued the zemindar in the Small Cause Court, whereupon the zemindar brought this suit against the putnidars for the rent due. The lower Appellate Court, reversing the decision of the first Court, held that the claim for the rent of 1273 was not barred by limitation, because brought within three years from the time that plaintiff knew of the non-payment of the rent by defendants. *Held*, upon the principle of the decision of the Privy Council in *Swarnamayi* v. *Shashi Mukhi Barman, 2 B. L. R., P. C., 10 : 11 W. R., P. C., 5*, that plaintiff was entitled to recover the rent of 1273. MOHESH CHUNDER CHAKLADAR *v.* GUNGAMONEE DOSSEE **[18 W. R., 59**

30. ——————— *Suit delayed pending final decision as to rent.*—A previous suit was brought in 1859, which was not finally decided in appeal by the High Court until December 1865, the effect of which decision was to take the talook then in dispute out of the class of those protected by section 51, Regulation VIII, 1793, and to make it liable to enhancement. *Held*, that the plaintiff's cause of action for rent did not accrue until ascertainment of the rent by that decision, and that her present suit for about five years' rent from 1st July 1859, having been brought within one year from the date of that decision, could be maintained. MADHUB CHUNDER GHOSE *v.* RADHIKA CHOWDHRAIN **[6 W. R., Act X, 42**

31. ——————— *Act X of 1859, s. 32.—Suit for arrears of rent.—Deduction of time when bonâ fide suing defendant as a trespasser.*—A landlord can be allowed a deduction in respect of limitation for the time he is suing a tenant as a trespasser, only when he is acting under a *bonâ fide* belief that the tenant is a trespasser, and not in suits when from the circumstances of the case he must have known of the defendant's right to hold as a tenant. HURONATH ROY CHOWDHRY *v.* GOLUCKNATH CHOWDHRY **[19 W. R., 18**

32. ——————— *Tenancy in abeyance.—Res judicata.—Limitation.*—*A.*, the zemindar, granted a putni lease of certain talooks to *B.*, who assigned it to *C.* and *D.* On *B.'s* death, *C.* and *D.* applied to the Collector for registration of the putni talook in their names as assignees of *B.* *A.* objected to the registration on the ground that the lease inured only for the life of *B.* *A.'s* objection being overruled, he instituted a regular suit to eject *C.* and *D.*, the present defendants, which was decided against *A.* finally by the Privy Council in 1874. During the pendency of this litigation, the zemindar sued to recover the rent for the year 1868, not upon the basis of the putni lease, but for use and occupation, treating the tenants as mere trespassers. This suit was dismissed on the ground that the plaintiff ought to have sued on the lease. In 1875 the plaintiff brought the present suit for the rent of 1868 on the putni lease. The defendants pleaded *res judicata* and limitation. The plaintiff contended that the suit was within time, on the ground that the right to recover the rent was in suspense during the pendency of the litigation regarding the lease. *Held* that the suit, though not *res judicata*, was barred under section 29 of Bengal Act VIII of 1869. *Swarnamayi* v. *Mukhi Barman, 2 B. L. R., P. C., 10*, distinguished. WATSON & Co. *v.* DHONENDRA CHUNDER MOOKERJEE **[I. L. R., 3 Calc., 6**

33. ——————— *Deduction of time whilst another suit was pending.—Limitation.*—*A.* sued for enhancement of rent of certain lands for a specified year. On the dismissal of this suit, *A.*, more than five years after the rent fell due, sued for arrears of rent for the same year. *Held*, that *A.* was not entitled to deduct the time occupied in the conduct of his enhancement suit from the period which elapsed since the rent first fell due in order to bring his case within the period of limitation prescribed for such last-mentioned suits by section 29 of Bengal Act VIII of 1869. BROJENDRO COOMAR ROY *v.* RAKHAL CHUNDER ROY . . . **I. L. R., 3 Calc., 791**

34. ——————— *Limitation.—Holiday.*—A rent suit under Bengal Act VIII of 1869 must be brought strictly within the term of three years prescribed by section 29 of that Act, which contains the only law of limitation applicable to the case. Where, therefore, the last day of the term so fixed was a close holiday, and the plaint in such a suit was filed on the following day,—*Held* that, inasmuch as section 29 contains no provision for relaxing the term fixed by it, such as is contained in the general law of limitation, the suit was barred. PURRAN CHUNDER GHOSE *v.* MUTTY LALL GHOSE JAHIRA **[I. L. R., 4 Calc., 50 : 2 C. L. R., 543**

35. ——————— *Limitation.—Suit for arrears of rent.*—After the expiration of the period prescribed by section 29 of the Bengal Act VIII of 1869, a plaintiff suing for arrears of rent cannot insist on the pendency of another suit, brought by him for possession of the land, as preventing limitation from running, where there has been no time during which such rent could not have been recovered if he had acted on his right of suing for it. In *Ram Surnomoyee* v. *Shoshee Mookhee Burmonia, 12 Moore's I. A., 244 : S. C. 2 I. L. R., P. C., 10*, the claimant of rent was, until the setting aside of the sale that had taken place, in the position of a person, whose claim had been satisfied. The right to sue in that case had been suspended; and it was

BENGAL RENT ACT, VIII OF 1869, s. 29 (Act X of 1859, s. 32)—*continued.*

therefore, distinguishable from the present. The plaintiff's ancestor purchased a talook from the Government, subject to an ijara therein held by the defendants, which expired in 1866. A suit brought by the plaintiff in 1874 for possession was dismissed finally in 1876, the defendant's claim to remain in possession under another tenure being allowed. The plaintiff in 1876 sued the defendants for arrears of rent for the years 1866-1872. *Held*, that the suit was barred under section 29, notwithstanding the proceedings of 1874. HURO PERSHAD ROY *v.* GOPAL DAS DUTT

[I. L. R., 9 Calc., 255: 12 C. L. R., 129: L. R., 9 I. A., 82

Affirming the decision of the High Court in HURRO PROSAD ROY *v.* GOPAL DOSS DUTT

[I. L. R., 3 Calc., 817: 2 C. L. R., 450

36. ——— *Limitation.* — *Suit for arrears of rent.*—The defendant held a putni in respect of a share in a zemindari, which share was held and the putni granted by a Hindu widow who died in Pous 1281. The plaintiffs were the heirs who succeeded to the zemindari on the death of the widow. In Pous 1284 they brought a suit against the defendant for the purpose of setting aside the putni, and on the 16th Pous 1285, obtained a decree declaring the putni invalid, and giving them khas possession with mesne profits. This decree was, however, reversed on appeal on the 6th Srabun 1288, and their suit was dismissed. In a suit for arrears of rent from 1282 to 1288,—*Held*, that the plaintiff was not protected from the operation of the law of limitation during the pendency of his suit to set aside the putni, and that his suit was barred except as to the arrears accruing within three years preceding the suit. *Hurro Pershad Roy* v. *Gopal Doss Dutt, I. L. R., 9 Calc., 255,* followed; *Rani Surnomoyee* v. *Shoshi Mookhi Burmonia, 2 B. L. R., P. C., 10,* distinguished. SHERIFF *v.* DINA NATH MOOKERJEE

[I. L. R., 12 Calc., 258

——— s. 30 (Act X of 1859, ss. 24 and 33).

See JURISDICTION OF REVENUE COURT.

[13 W. R., 433

A suit under the Rent Act, X of 1859, section 24, was not maintainable, unless the defendant was an agent or servant employed in the management of lands or collection of rents. The Bengal Rent Act, 1869, however, does not define who are agents.

1. ——— *Agent, Suit against.*—*Suit for papers in possession of sudder amlahs.*—It was held that a suit for papers in the possession of sudder amlahs employed in keeping the books of the office, and in performing the other duties incidental to the office of sudder amlahs and not mofussil amlahs, was not one cognizable under the former Act. MOHENDRONARAIN SINGH *v.* LALLA RUTTUN

[Marsh., 289: 2 Hay, 278

ODDOY NARAIN SIRCAR *v.* KRISTO CHUNDER ROY CHOWDHRY . . **13 W. R., 433**

BENGAL RENT ACT, VIII OF 1869, s. 30 (Act X of 1859, ss. 24 and 33)—*continued.*

2. ——— *Agent, Suit against.*—*Tehsildar.*—A suit to recover from defendant rent collected by him for the plaintiffs as their tehsildar, for the due performance of which office he had bound himself by agreement under security, was held to be maintainable under the Rent Act, 1859. GRANT *v.* RAM TONOO BHOOMICK . . **10 W. R., 83**

SHRISTEEDHUR BOSE *v.* SHAMA CHURN GHOSE

[14 W. R., 53

3. ——— *Agent, Suit against.*—*Tehsildar.*—A claim for moneys collected by the defendant as plaintiff's tehsildar was held to be one cognizable under the Rent Act, and the fact that the matter was referred to arbitration and an award made was held to make no difference. SHOSHEE MOHUN SHAHA *v.* SHEER SIRCAR . . **5 W. R., Act X, 13**

4. ——— *Agent, Suit against.*—*Naib or gomashta.*—The suit of a zemindar against a naib or a gomashta for papers, accounts, and moneys collected, is cognizable under the Rent Act. KALEE NATH GHOSAL *v.* CHUNDEE CHURN SIRCAR

[10 W. R., 51

See, however, KADUMBINEE DOSSEE *v.* BHUGOBUTTY CHURN GHOSE . **10 W. R., 7**

5. ——— *Agent, Suit against.*—*General manager.*—Where an agent was employed as the manager of a trading business and as a general manager, and in that capacity received rents collected by sub-agents employed by the zemindar,—*Held*, that a suit for rendition of accounts against such agent was not cognizable under the Rent Act. BUTAS KOONWAR *v.* JANKEE PERSHAD . **3 Agra, 292**

6. ——— *Agent, Suit against.*—*Agent and sureties.*—A suit by a zemindar against an agent and his sureties for money received by the agent in collection of the rents of the zemindari, should be brought under the Rent Act. WOOZEER ALI *v.* DOORGA CHURN ROY . **5 W. R., Act X, 79**

7. ——— *Agent, Suit against.*—*Suit for accounts from heir of agent.*—*Semble,*—A suit for the delivery of accounts under the Rent Act, X of 1859, lay against the heir of an agent, the Act being intended to facilitate the recovery of accounts by zemindars, and to make the heir of an agent equally responsible with the agent. GOWHAR HOSSEIN *v.* RAM COOMAR CHOWDHRY . . **8 W. R., 481**

8. ——— *Agent, Suit against.*—*Suit against agent for rent received and misappropriated.*—An agent may be sued under the Rent Act for rents received by him, whether or not he has committed, with respect to such rents, an offence under the Penal Code. SKINNER *v.* RUJUB ALI KHAN

[2 W. R., Act X, 105

9. ——— *Act X of 1859, s. 33.*—*Agent, Suit against.*—*Accounts.*—Section 33, Act X of 1859, gives the benefit of the extended period of limitation to a man who shows reasonable diligence, but not to one who, having the means of knowledge,

BENGAL RENT ACT, VIII OF 1869 s. 30 (Act X of 1859, ss. 24 and 33)— *continued.*

carelessly neglects to investigate the accounts. DHANPUT SINGH DOGAR *v.* RAHMAN MANDAL **[2 B. L. R., A. C., 269: 11 W. R., 163**

S. C. before remand **[2 B. L. R., A. C., 270, note**

10. ——————— *Act X of 1859, s. 33.—Suit on account stated.—Agent.*—By section 33 of Act X of 1859, "suits for the recovery of money in the hands of an agent, or for the delivery of accounts or papers by an agent, may be brought at any time during the agency, or within one year after the determination of the agency of such agent." *Held,* where an agent was dismissed, and after such dismissal rendered an account showing a balance due to the landholder, that a suit for such money might be maintained notwithstanding the lapse of more than a year from the dismissal of the agent before the suit was commenced, because a cause of action arose out of the admitted balance of account. *Semble,*—That a suit may be maintained upon such account stated, in which the period of limitation would be regulated, not by Act X of 1859, but by Act XIV of 1859. *Semble,*—If the account so rendered were fraudulent, then the latter clause of the 33rd section of Act X of 1859, that "if any fraudulent account shall have been rendered by the agent, the suit may be brought within one year from the time when the fraud shall have been first known to such person," would apply to extend the time. CHOWDHRY CHATTERPAUL SINGH *v.* FOUJDAR ROY **[Marsh., 405: 2 Hay, 509**

See PEAREE MOHUN GHOSE *v.* JARDINE, SKINNER & CO. . **22 W. R., 338**

11. ——————— *Act X of 1859, s. 33.—Suspension of agent.—Determination of agency.*—If a principal suspends an agent, the agency must be held to have been determined within the meaning of section 33, Act X of 1859. MUDDUN MOHUN ROY *v.* GOPEE MOHUN ROY . **W. R., 1864, Act X, 8**

MAHATAB CHAND *v.* JUDOO MOHUN MITTER **[5 W. R., Act X, 91**

12. ——————— *Act X of 1859, s. 33.—Suit against agent and surety of agent.*—A suit by a zemindar against his agent and the agent's surety for money improperly and fraudulently charged by the agent in his accounts, is barred if not brought within one year from the rendering of the accounts, which is the time of the accruing of the plaintiff's cause of action, he then having the means of knowing of the fraud. MACKINTOSH *v.* WOOMESH CHUNDER BOSE . . . . **3 W. R., Act X, 121**

HURO CHURN NARAIN SINGH *v.* ROOCHER DOBEY . . . **6 W. R., Act X, 30**

13. ——————— *Act X of 1859, s. 33.—Suit against surety of agent for losses occasioned by embezzlement.*—A suit under Act X of 1859 against the surety of an agent employed in the collection of rents, for losses occasioned by the embezzlement of his principal, is not governed by the period of limitation prescribed by section 33 of the Act, but by that prescribed by section 30, namely, "one year from the date of the accruing of the cause of action." BEELASMONEE *v.* NUSSEEBOOLAH **[Marsh., 410: 2 Hay, 510**

14. ——————— *Act X of 1859, s. 33.—Admission of amount by agent.—Cause of action.*—The principal acquires no fresh cause of action against the agent from the date on which the agent admitted the amount which was due from him, and executed an agreement to pay it. MAHATAB CHAND *v.* JUDOO MOHUN MITTER **[5 W. R., Act X, 91**

15. ——————— *Act X of 1859, s. 33.—Fraud preventing knowledge of rights.*—In a suit against an agent under section 33, Act X of 1859, where fraud is alleged, before applying the limitation prescribed by that section, the plaintiff should have an opportunity of proving that by the fraud of the defendant he was kept from a knowledge of his rights. RAM KANT CHOWDHRY *v.* BROJO MOHUN MOZOOMDAR . . . **6 W. R., Act X, 20**

16. ——————— *Act X of 1859, s. 33.—Cause of action.—Suspension of agent.*—In a suit for the recovery of money in the hands of an agent, the limitation prescribed by section 33, Act X of 1859, counts from the date of the suspension of the agent. RADHIKA PERSHAD CHATTERJEE *v.* RAMDHUN POOROHEET . . **6 W. R., Act X, 27**

17. ——————— *Act X of 1859, ss. 30 and 33.—Claim against sureties of deceased agent for misappropriation of money.*—Section 30, and not section 33, Act X of 1859, is applicable to the case of sureties of a deceased agent, against whom a claim is made for moneys appropriated by him, and the cause of action accrues from the time when the plaintiff had means of knowing what was the amount due to him from the deceased agent,—*i.e.*, from the date on which his accounts were put in by his sureties, and not from the date of his death. PUREE SOONDERY DEBIA *v.* BHOLANATH ROODRO **[8 W. R., 159**

18. ——————— *Act X of 1859, s. 33.—Fraud.—Cause of action.*—In a suit against an agent for moneys received on plaintiff's account, in which defendant set up a plea of limitation, plaintiff sought to extend the period of limitation on the ground that fraudulent accounts were delivered. *Held,* that the Judge should have found specifically when the fraud was first known to the plaintiff; limitation in such a case running from the date of knowledge of the fraud, not merely from that of suspicion of the fraud, or of delivery of accounts. DHUNPUT SINGH DOOGUR *v.* RUHMAN MUNDUL . . . **9 W. R., 329**

19. ——————— *Act X of 1859, s. 33.—Suit against surety of deceased agent.*—In a suit by the manager of a factory to recover from a surety certain sums collected as rent by a deceased putwari, in which suit the defendant pleaded limitation,—

BENGAL RENT ACT, VIII OF 1869, s. 30 (Act X of 1859, ss. 24 and 33)— *continued.*

Held, that plaintiff was not entitled to reckon the year which the law gave him to bring the suit from the date on which he acquired from the surety information of the state of his accounts. If a person's ignorance of the state of his accounts is owing to his own negligence, he can claim no benefit under section 33, Act X of 1859. BIDDELL *v.* CHUTTERDHAREE LALL . . . . **12 W. R., 116**

20. ——————— *Suit against agent for accounts.*—A suit under section 30, Bengal Act VIII of 1869, against a gomashta to obtain accounts after the agency has determined, must be brought within a year from such determination. The proviso in that section refers to suits for money, and under that proviso, where a fraudulent account has been given in by the agent, concealing the fact of the receipt of certain moneys, the zemindar has one year from the discovery of the fraud to bring his suit for such money. JAN ALI CHOWDHRY *v.* ISHAN CHUNDER SEIN . . . . . **16 W. R., 149**

21. ——————— *Suit to contest an account against gomashta.*—In a suit to contest an account brought against a gomashta under Bengal Act VIII of 1869, the only ground on which the plaintiff can claim an allowance of time beyond the period of limitation provided in section 30, is by showing that there was fraud in the case, and that he came to the knowledge of it within a year before the date of his action. RADHA KISHORE ROY *v.* AMEER CHUNDER MOOKHOTY . . . . . **20 W. R., 386**

22. ——————— *Suit against agent.—Delay after discovery of fraud of agent.*—A suit against an agent for the recovery of money under Bengal Act VIII of 1869, section 30, though brought within three years after the termination of the agency, was held to have been barred as not having been brought within a reasonable time from the date of the discovery of the fraud alleged against the agent. JAN ALI CHOWDHRY *v.* TARINI CHURN RUKHEET **[21 W. R., 107**

23. ——————— *Suit against zemindari agent.*—There is no limitation but that prescribed by section 30, Bengal Act VIII of 1869, to the bringing of a suit against an agent with regard to zemindari matters (*e.g.*, tehsildar and collector of rents) for the recovery of money or the delivery of accounts and papers. RAM BHUROSA CHOWDHRY *v.* HUNOOMAN SINGH . . . . . **21 W. R., 240**

24. ——————— *Suit for account.—Subsequent suit for amount falsely entered.—Res judicata.*—Plaintiff brought a suit for collection papers against the defendant, his agent, and got a decree. Having received and inspected the papers, he brought another suit for moneys which, he alleged, the defendant had falsely entered as expended. *Held*, that the suit was barred. *Quære*,—Whether the Rent Act, section 30, contemplates the bringing of two successive suits,—one for an account, and the other for the amount due on that account. GOLOKE NATH SEN BISWAS *v.* RAM KANT DEY SIRCAR . . **3 C. L. R., 444**

BENGAL RENT ACT, VIII OF 1869, s. 30 (Act X of 1859, ss. 24 and 33)— *continued.*

25. ——————— *Act X of 1859, s. 33.—Suit against agent.—Change of employment.*—A suit against an agent, under Act X of 1859, section 24, was resisted on the ground that the defendant's employment as tehsildar had terminated by the plaintiff having employed him as a moonshee, and the defendant relied for proof on the fact of his subsequent reappointment as tehsildar. The lower Appellate Court construed section 33 as applicable to the case. *Held*, that this was not a correct interpretation of the section, and that so long as the defendant continued to be employed in the plaintiff's service, his agency had not terminated. NILMONI SINGH DEO *v.* RAM GOLAM BUNDOPADHYA . . **21 W. R., 154**

26. ——————— *Suit against agent.*—The fact of an agent furnishing his principal with an account under his signature with a letter upon which a balance appeared due, is a cause of action irrespective of Act X of 1859, section 33, and the principle is applicable to cases decided under the present law. PEAREE MOHUN GHOSE *v.* JARDINE, SKINNER & Co. **[22 W. R., 338**

See CHOWDHRY CHATTERPAUL SINGH *v.* FOUJDAR ROY **[Marsh., 405: 2 Hay, 509**

27. ——————— *Fraud of agent, Evidence of.—Not filing accounts in proper time.*—In a suit by a zemindar against a gomashta, where fraud is not alleged, the Court cannot assume it merely on the ground that the accounts were not filed till the close of the year of the determination of the agency. KOONJO LAL MUNDUL *v.* DABEE PERSHAD TEWAREE **[22 W. R., 398**

28. ——————— *Suit for an account against an agent.—Limitation.*—A suit for an account against an agent employed to collect rents is barred under Bengal Act VIII of 1869, section 30, after the expiration of one year from the time of his resigning or leaving his agency. Notwithstanding the general provisions of section 19 of the Limitation Act of 1877, by which a new period of limitation, according to the nature of the original liability, is allowed, provided that the acknowledgment of liability is made in writing before the expiration of the period prescribed for the suit, a suit cannot be brought upon an acknowledgment or account stated, signed by a person who has been an agent to collect rents, if his signature was not procured till more than a year after the determination of his agency. PARBUTINATH ROY *v.* TEJOMOY BANERJI **[I. L. R., 5 Calc., 303**

GOLAP CHAND NOWLUCKA *v.* KRISHTO CHUNDER DASS BISWAS . **I. L. R., 5 Calc., 314**

29. ——————— *Principal and agent.—Account, Suit for.—Zemindar.—Limitation.*—A suit by a zemindar against his land agent, for payment of sums not accounted for by the latter, must, under section 30 of Bengal Act VIII of 1869, be brought within three years from the termination of the defendant's agency. The zemindar should never bring

BENGAL RENT ACT, VIII OF 1869, s. 30 (Act X of 1859, ss. 24 and 33)—*continued.*

a suit of this kind for an account merely, or for the delivery of accounts or account papers merely; but the suit should be framed for an account and for payment of what, on the taking of the account, may be found due from the defendant to the plaintiff. SHOSHI BHOOSHUN PAL *v.* GURU CHURN MOOKHOPADHYA . **I. L. R., 7 Calc., 89 : 8 C. L. R., 285**

30. ——————— *Suit against tehsildar.—Special agreement.—Limitation.*—The defendant was tehsildar of one of the plaintiff's zemindaris, and after his dismissal on the 24th of August 1876 he submitted an account which was found to be incorrect, and time was given to him to make good certain items on his executing an ikrar promising to pay whatever balance should be found due from him to the plaintiff. In a suit brought on the 28th of October 1878 to recover the balance found on enquiry to be due,—*Held*, that section 30 of Act VIII of 1869 had no application, the special agreement taking the case out of the scope of that section, and therefore the suit was not barred by reason of having been brought more than one year after the defendant's dismissal. BEER CHUNDER MANICKYA *v.* HURRO CHUNDER BURMAN . . **I. L. R., 9 Calc., 211 12 C. L. R., 329**

31. ——————— *Suit against administrator of deceased agent for sums misappropriated.*—In April 1875, *A.* entered into an agreement in writing with *B.*, whereby he agreed to act as the manager of *B.'s* zemindaris and other landed properties for three years, on certain terms therein mentioned. The agreement was duly registered. On the 15th of June 1882, *B.* sued the Administrator General of Bengal, as administrator of *A.'s* estate, to recover certain sums of money, set forth in detail in the plaint as having been received by *A.* and not accounted for, stating that they had been misappropriated by *A.* *Held*, that in respect of such sums as were received by *A.* in virtue of his position as manager under the registered agreement, the limitation of six years applied; but that in respect of the sums received by him in the course of transactions which did not come within the scope of the registered agreement, the limitation of three years applied. *Held*, also, that the suit was not such as is contemplated by Bengal Act VIII of 1868, section 30. HARENDER KISHORE SINGH *v.* THE ADMINISTRATOR GENERAL OF BENGAL **[I. L. R., 12 Calc., 357**

——— **s. 31 (Bengal Act VI of 1862, s. 6).**

See BENGAL RENT ACT 1869, s. 47. **[18 W. R., 126**

See LIMITATION ACT, 1877, s. 5, **[I. L. R., 7 Calc., 690**

See PARTIES—PARTIES TO SUITS—RENT SUITS FOR AND INTERVENORS IN SUCH SUITS . . . **21 W. R., 277**

1. ——————— *Bengal Act VI of 1862, s. 6.—Suit for enhancement of rent.*—The limitation of six months prescribed by section 6, Bengal Act VI of 1862, applies to deposits made after rents have become due, and does not interfere with the limitation for suits for enhanced rent, as prescribed by section 32, Act X of 1859. TARAMONEE KOONWAREE *v.* JEEBUN MUNDAR **[6 W. R., Act X, 98**

2. ——————— *Bengal Act VI of 1862, s. 6.—Applicability of Act.—Deposit of rent.*—Bengal Act VI of 1862 applies to cases where the amount which the ryot thinks due is deposited by him, and the landlord may either accept it or sue for whatever he himself may deem due to him for the same period for which the deposit is made; but not to suits for rent for the year preceding that for which the deposit is made. MAHOMED SHUHUROOLAH CHOWDHRY *v.* ROOMYA BIBEE . **7 W. R., 487**

3. ——————— *Bengal Act VI of 1862, s. 6.—Suits for enhanced rent after notice.*—Bengal Act VI of 1862, section 6, refers to the period within which suits on account of rent which has accrued prior to the date of the deposit under section 5 may be brought, and not to suits for rent at an enhanced rate after notice. AHMED HOSSEIN *v.* KERAMUT **[8 W. R., 353**

4. ——————— *Notice of payment or deposit in Court.—Suit for arrears of rent.—Limitation.*—By a condition in the lease of a talook, additional rent became payable in respect of all lands which, not being in a state of cultivation at the time of the lease, should be subsequently brought into cultivation so soon as the lessee had enjoyed them rent-free for the space of seven years. Rent having become due under this condition on certain lands which had not been in a state of cultivation at the time of the making of the lease, the lessee deposited in Court, as the entire rent payable in respect of the talook, the same amount as he had paid in previous years. In a suit brought a year after the lessor had notice of such deposit, to recover the entire rent payable in respect of the lands newly brought into cultivation,—*Held* that such suit, having been instituted more than six months after service of notice of such deposit on the lessee, was barred under section 31 of Bengal Act VIII of 1869. RAM SUNKER SENAPUTTY *v.* BIR CHUNDER MANIKYA **[I. L. R., 4 Calc., 714**

——— **s. 32 (Act X of 1859, s. 69).**

See PARTIES—PARTIES TO SUITS—AGENTS. **[I. L. R., 9 Calc., 450 11 W. R., 43**

——— **ss. 33 & 34.**

See BENGAL RENT ACT, 1869, s. 102. **[23 W. R., 171 I. L. R., 3 Calc., 151**

——— **s. 34.**

See EXECUTION OF DECREE—DECREES UNDER RENT LAW. **[I. L. R., 7 Calc., 748**

BENGAL RENT ACT, VIII OF 1869, s. 34—*continued.*

——— *Suits for rent.—Act VIII of 1859, s. 119.*—Section 119 of the Civil Procedure Code (Act VIII of 1859) was made applicable to rent suits under Bengal Act VIII of 1869 by the provisions of section 34 of the latter Act. DRABAMAYI GUPTIA *v.* TARACHARAN SEN [7 B. L. R., 207: 16 W. R., 17

——— **s. 37 (Bengal Act VI of 1862, s. 9).**

See APPEAL—MEASUREMENT OF LANDS. [6 B. L. R., 1

See EXECUTION OF DECREE—DECREES UNDER RENT LAW . 7 C. L. R., 345

See CASES UNDER MEASUREMENT OF LANDS.

——— **s. 38 (Bengal Act VI of 1862, s. 10).**

See APPEAL—MEASUREMENT OF LANDS. [24 W. R., 171

See CASES UNDER MEASUREMENT OF LANDS.

See RES JUDICATA—COMPETENT COURT—REVENUE COURTS. [I. L. R., 10 Calc., 507

——— **s. 41 (Bengal Act VI of 1862, s. 11).**

See CASES UNDER MEASUREMENT OF LANDS.

——— **s. 44 (Bengal Act VI of 1862, s. 2).**

See DAMAGES, SUIT FOR—RENT SUITS. [I. L. R., 8 Calc., 290
W. R. 1864, Act X, 22, 68, 73, 84
1 W. R., 100, 290, 343
2 W. R., Act X, 11

1. ——— **s. 46 (Bengal Act VI of 1862, s. 4).**—*Putni talookdars.—"Under-tenants."*—Bengal Act VIII of 1869, section 46, applies to putni talookdars, the term "under-tenant" being wide enough to include them. THAKOOR DOSS GOSSAIN *v.* PEAREE MOHUN MOOKERJEE . 22 W. R., 431

2. ——— *Bengal Act VI of 1862, s. 4.—Deposit of arrears.—Tender.—Registration of transfer.—Act X of 1859, s. 27.*—*O. S.* purchased from the former ryot his jotdari right, and entered into possession of the land. *H. M.*, the talookdar, had notice of this; but while *O. S.* was in possession, he sued the former tenant, and obtained a decree against him for arrears of rent, under which he sold the tenure in execution. *O. S.* had deposited the amount of the arrears, but by mistake as payable to "*D.* (the wife of *H. M.*'s brother) of Lodi Syudpore," instead of to "*H. M.* of Lodi Culpo." *H. M.* was aware the amount had been deposited. *Held*, the deposit was a sufficient tender under section 4, Bengal Act VI of 1862, and that registration of the

BENGAL RENT ACT, VIII OF 1869, s. 46 (Bengal Act VI of 1862, s. 4)—*continued.*

transfer of the ryoti tenure was not necessary, inasmuch as section 27 of Act X of 1859 did not apply, the tenure not being one "intermediate between the zemindar and the cultivator." UMACHARAN SETT *v.* HARIPROSAD MISRY . 1 B. L. R., S. N., 7

S. C. WOOMA CHURN SETT *v.* HUREE PERSHAD MISSER . . . 10 W. R., 101

3. ——— *Bengal Act VI of 1862, s. 4.—Tender of payment of rent.*—A ryot's tender of payment to be valid must be made at the proper place and to a person authorised to receive the same ESHAN CHUNDER ROY *v.* KHAJAH ASSANOOLLAH [16 W. R., 79

4. ——— *Bengal Act VI of 1862, s. 4.—Tender not followed by deposit or payment.—Power to award interest.*—Act VI of 1862 does not forbid the Court to advert or give effect to a tender not followed by a deposit or payment into Court of the money, nor does it alter or affect the discretionary power of the Court to award interest or costs in a decree for arrears. BISSONATH DEY *v.* HURRO PERSHAD CHOWDHRY . 2 W. R., Act X, 88

5. ——— *Bengal Act VI of 1862, s. 4.—Transfere of tenure.—Act X of 1859, s. 27.—Registration of transfer.*—Section 4, Bengal Act VI of 1862, applies only to under-tenants and ryots of whose possession there can be no doubt [DULLI CHAND *v.* MEHER CHAND SAHOO 8 W. R., 138

6. ——— *Bengal Act VI of 1862, s. 4.—Set-off.—Deposit of arrears of rent.*—In a suit for rent, where defendant claimed credit for a sum which he had deposited under the provisions of section 4, Bengal Act VI of 1862, in the Deputy Collectorate of the subdivision within which plaintiff's mal-cutcherry was situated, giving notice to plaintiff under section 5,—*Held*, that defendant was entitled to a set-off. GRISH CHUNDER SEN *v.* EASTERN BENGAL JUTE MANUFACTURING COMPANY [10 W. R., 492

7. ——— *Bengal Act VI of 1862, s. 4.—Deposit of arrears of rent.—Omission to tender.*—A party is not entitled to benefit from a deposit under Act VI (Bengal) of 1862, if it was paid in without a tender to, and refusal by, the opposite party. KRISTO PROTIBAR *v.* ALLADINEE DASSEE [15 W. R., 4

1. ——— **s. 47 (Beng. Act VI of 1862, s. 5) & s. 31.**—*Notice of deposit on account of rent.—Form of notice.*—The omission of the words "you must institute a suit in Court for the establishment of such claim or demand within six calendar months from this date, otherwise your claim will be for ever barred," from the notice referred to in section 47 when a deposit is made under section 31, Act VIII of 1869, was held fatal to the defendant's claim to the benefit of his having paid his rent into the Collectorate. KANCHUN MALLA DOSSIA *v.* RAJENDRO CHUNDER ROY CHOWDHRY . 18 W. R., 126

BENGAL RENT ACT, VIII OF 1869— *continued.*

2. ——— s. 47.—*Bengal Act VI of 1862, s. 5.—Limitation.—Suit for accrued rent.*—Section 5, Bengal Act VI of 1862, refers to deposits by tenants of the rent which they consider to be the full amount of rent due from them, and section 6 refers to the period within which suits on account of rent which has accrued prior to the date of the deposit under section 5 may be brought, not to suits for rent at an enhanced rate after notice. AHMED HOSSEIN *v.* KERAMUT . . . . **8 W. R., 353**

——— s. 52 (Act X of 1859, s. 78).

See RECEIVER . **I. L. R., 11 Calc., 496**

1. ——— *"Reversed," Meaning of.*—The word "reversed" in Bengal Act VIII of 1869, sections 52 and 54, means reversed in respect of that part of the arrears which is contested in the Appellate Court. PATTAREY SIRCAR *v.* SURNO MOYEE **[24 W. R., 185**

2. ——— *Act X of 1859, s. 78.—Suit for cancellation of lease.—Condition for forfeiture.*—Section 78, Act X of 1859, applies to all cases of suits for the ejectment of a ryot or the cancelment of a lease for non-payment of rent, whether such ejectment or cancelment be sought under the provision of sections 21 and 22, respectively, or under an express stipulation in that behalf contained in the engagement between the parties. JAN ALI CHOWDHRY *v.* NITTYANUND BOSE **[B. L. R., Sup. Vol., 972: 10 W. R., F. B., 12**

3. ——— *Act X of 1859, s. 78.—Ejectment for non-payment of rent.*—Section 78 of Act X of 1859 authorises the joinder of a claim for rent in an ejectment for non-payment of rent. *Held*, that the section does not empower a landlord to eject his tenant for non-payment of rent due in the middle of the Bengali year, but that an ejectment for such default is maintainable only for arrears due at the end of the year under section 21. SAVI *v.* CHAND SICKDAR . **Marsh., 348: 2 Hay, 438**

SEIRAM BISWAS *v.* JUGGERNATH DOSS **[1 Ind. Jur., N. S., 187: 5 W. R., Act X, 45**

4. ——— *Act X of 1859, s. 78.—Breach of condition for forfeiture.*—Where in a perpetual lease there was a condition that, on default being made in payment of a certain number of instalments of rent, the lease should be void,—*Held* that, in a suit under clause 5, section 23 of Act X of 1859, for cancellation of the lease on account of a breach of the condition, the lessee was entitled to the benefit of section 78, even though the defence set up was false in fact. DULI CHAND *v.* MEHER CHAND SAHU **[12 B. L. R., P. C., 439**

Affirming decision of High Court in DULLI CHAND *v.* MEHER CHAND SAHOO . . **8 W. R., 138**

See AMEER KOOLEE KHAN *v.* RUSSICK LALL SINGH . . **8 W. R., 495**

5. ——— *Act X of 1859, s. 78.—Suit for ejectment of ryot for non-payment of rent.*—The provisions of the last clause of section 78, Act X of 1859, apply to every suit in which ejectment of a ryot is sought on the ground that he has failed to pay rent. MAHOMED HOSSEIN KHAN *v.* KHUSROO FAKEER **[1 N. W., 44: Ed. 1873, 41**

BENGAL RENT ACT, VIII OF 1869, s. 52 (Act X of 1859, s. 78) *—continued.*

6. ——— *Act X of 1859, s. 78 and s. 22.—Suit for ejectment after realising arrears.*—A landlord cannot sue for cancelment of lease and ejectment under section 22, Act X of 1859, after he has sued for and realised the arrears of rent due. WOOMESH CHUNDER CHATTERJEE *v.* KUMUROODEEN LUSKUR . . . **7 W. R., 20**

7. ——— *Act X of 1859, s. 78.—Receipt of rent after decree for ejectment.*—A landlord cannot execute his decree for ejectment obtained under section 78 Act X of 1859, if he has accepted the rent from the tenant. NUBO KISHEN MOOKERJEE *v.* HURISH CHUNDER BANERJEE **[7 W. R., 142**

8. ——— *Act X of 1859, s. 78.—Cancelment of lease.—Ejectment.*—Section 78, Act X of 1859, applies equally whether the ryot's liability to be ejected arises under section 21 of that Act, or under special stipulation in the contract between him and his landlord. MAHOMED HOSSEIN *v.* BOODHUN SINGH *alias* ROOPNARAIN SINGH **[7 W. R., 374**

9. ——— *Act X of 1859, s. 78.—Forfeiture for default in payment of rent.*—Plaintiff sued defendant under clause 5, section 23, Act X of 1859, for direct or khas possession of a farm (for which the latter had paid a bonus), stating that the contract between them was that, on default in payment of the farming rent as per kistbundi, a suit was to be instituted for the arrears, and in execution of the decree the lease was to be forfeited, and the plaintiff, the lessor, entitled to enter upon khas possession, unless the amount was paid within 15 days. It was further urged that defendants, the lessees, had defaulted; that plaintiff had obtained decrees; and that defendants, having failed to pay within fifteen days, had violated the lease, and were liable to be ejected. *Held*, that the terms of the contract were in strict accordance with the provisions of section 78, Act X of 1859, and the plaintiff ought to have brought his suit under that section, and obtained a decree for ejectment. From the date of such decree, specifying the amount of arrear, the lessors would have fifteen days for payment. RUGHOO MOHINEE DOSSEE *v.* KASHEENATH ROY CHOWDHRY, KASHEENATH ROY CHOWDHRY *v.* SABITREE SOONDEREE DOSSIA . . . **10 W. R., 156**

10. ——— *Act X of 1859, s. 78 and s. 22.—Erroneous decree, Effect of.—Held* by NORMAN, *J.*, that a Deputy Collector's decree for rent cancelling a mokurrari tenure, with reference to section 22, Act X of 1859, as not creating a permanent or transferable interest, though erroneous, cannot be treated as a nullity or as passed without jurisdiction. The tenure, however, is not cancelled as long as the decree is not executed. LALLA SHAM SOONDUR *v.* SOORAJ LALL . **13 W. R., 441**

BENGAL RENT ACT, VIII OF 1869, s. 52 (Act X of 1859, s. 78)—*continued.*

11. ——————— *Act X of 1859, s. 78.*—*Failure to rely on section 78.*—Where a judgment-debtor fails to invoke the protection of section 78, Act X of 1859, against a decree-holder, he cannot afterwards in special appeal claim the fifteen days' time allowed under that section. CHOONEE MUNDUR *v.* CHUNEE LALL DASS . **14 W. R., 178**

12. ——————— *Act X of 1859, s. 78.*—*Decree for ejectment.—Effect of erroneous decree.—Suit to question its validity.*—Where in a suit for arrears of rent of a transferable tenure, to which a person claiming as mortgagee was no party, a decree for ejectment under section 78, Act X of 1859, was made instead of a decree for sale,—*Held*, that the decree for ejectment could not confer upon the decree-holder (the purchaser in execution of a decree against the mortgagor) the right to avoid the mortgage by the ejectment of the mortgagor, and was no bar under section 2, Act VIII of 1859, to a suit by the mortgagee to question the validity of that decree, and to show that the Collector had no power under Act X of 1859 to make a decree for ejectment. TIRBHOBUN SINGH *v.* JHONO LAL . . . **18 W. R., 206**

13. ——————— *Act X of 1859, s. 78.*—*Term of grace.—Condition in lease.*—The fifteen days' grace allowed to a lessee prior to ejectment cannot be negatived by any condition in the lease. MADHUB CHUNDER ADIT CHOWDHRY *v.* RAM KALOO BEPAREE . . . . . **16 W. R., 151**

14. ——————— *Act X of 1859, s. 78.*—*Suit for ejectment of ryot and for arrears of rent.—Person paying rent in position of subordinate proprietor.*—In a suit, under section 78, Act X of 1859, to eject the defendant from certain land, and to recover arrears of rent, the defendant was in the habit of receiving the rents of his tenants, and was bound only to pay a certain sum on account of Government revenue and village expenses. He was also competent to sell or mortgage his rights. *Held*, that he was not a tenant, but a subordinate proprietor, and that, therefore, the suit could not be brought under the above section. BATOOL BEBEE *v.* JAGUT NARAIN **[4 N. W., 172**

15. ——————— *Act X of 1859, s. 78.*—*Execution of decree for arrears of rent against purchaser at an execution sale.*—A zemindar, in execution of a decree, sold the rights and interests of his tenant. He subsequently ejected the purchaser at that sale under a decree (dating prior to the above sale) for arrears of rent and ejectment under section 78, Act X of 1859, which latter decree became complete on the expiry of fifftteen days without deposit of the arrears due. *Held*, that until the purchaser adopted means to have his name registered in the zemindar's sherista, the latter was not bound to give him notice to pay the arrears due on the tenure which he purchased before proceeding to give effect to the decree. BHUBO TARINEE DOSSIA *v.* PROSONOMOYEE DOSSIA **[10 W. R., 304**

Reversed on review in PROSUNNOMYEE DOSSIA *v.* BHUBO TARINEE DOSSIA . . **10 W. R., 494**

BENGAL RENT ACT, VIII OF 1869, s. 52 (Act X of 1859, s. 78)—*continued.*

16. ——————— *Act X of 1859, s. 78.*—*Cancelment of lease for breach of stipulation in payment of rent.*—The property in suit had been sub-let to defendant on the sipulation that if the rent was in arrear for three kists, the lease would be liable to cancelment. Plaintiff sued to eject the lessee, on the allegation that the lease was forfeited. *Held*, that as the only ground given for cancelment was non-payment of arrears of rent, the case fell under section 78, Act X of 1859; and as the amount due had been paid into Court, defendant was entitled to the protection afforded by the latter portion of that section. KUMLA SAHOY *v.* RAMBUTTUN NEOGY **[11 W. R., 201**

17. ——————— *Act X of 1859, s. 78.*—*Ejectment for forfeiture of lease by breach of its conditions.—Suit for cancelment of lease.—M.* granted a lease of certain lands to *R.* for a term of thirteen years on the 25th of November 1870. One of the conditions of the lease was that rent was to be paid harvest by harvest, otherwise the lessee would be liable to ejectment. On the 12th of September 1873, *M.* obtained a decree against *R.* for arrears of rent which became due in May. On the day following, *M.* instituted a suit under clause 5, section 23, Act X of 1859, for the cancelment of the lease and the ejectment of *R.* on account of the non-payment of rent when due, according to the terms of the lease. *R.* paid into Court the amount of the arrear on the 18th of September, *i.e.*, within fifteen days from the date of the decree, and in the course of the suit under section 23, clause 5. In special appeal the suit was dismissed, it being held that the circumstances of the case brought it within the operation of the provisions of sections 21 and 78 of Act X of 1859, which were applicable in deciding it. RAMDYAL *v.* MUSHTAK AHMAD . . . **6 N. W., 326**

18. ——————— *Act X of 1859, s. 78.*—*Modification of decree in review. — Date from which time for payment runs.*—A decree in a suit for ejectment of a ryot for non-payment of rent was modified upon review, by reducing the amount of arrears awarded to the plaintiff. *Held*, that the amended decree was the final decree in the suit, and that the ryot was entitled under section 78, Act X of 1859, to fifteen days from its date for payment of the arrears with costs and interest. RADHAMOHUN MUNDLE *v.* BUCKSHEE BEGUM **[Marsh., 471: 2 Hay, 595**

19. ——————— *Act X of 1859, s. 78.*—*Suit for ejectment.—Stay of execution.*—The latter part of Act X of 1859, section 78, which enacts that "in all cases of suits for the ejectment of a ryot, or cancelment of a lease, the decree shall specify the amount of arrears; and if such amount, together with interest and cost of suit, be paid into Court within fifteen days from the date of the decree, execution shall be stayed," applies not only to suits for ejectment of the ryot, or cancelment of the lease, on account of the non-payment of arrears of rent, but to all suits for ejectment brought by the lessor on

BENGAL RENT ACT, VIII OF 1869, s. 52 (Act X of 1859, s. 78)—*continued.*

account of a breach of the conditions of his lease by the defendant. FITZPATRICK *v.* GOWAN

[1 Ind. Jur., N. S., 420: 6 W. R., Act X, 64

20. ——————— *Act X of 1859, s. 78.*—*Omission to specify previous unsatisfied decree.*—Where in a suit for the rent of the current year and for ejectment under section 78, Act X of 1859, supported by a previous unsatisfied decree, a decree was passed for the rent of the current year without including the amount claimed under the previous unsatisfied decree, and the plaintiff neither applied to the lower Court to amend its decree nor appealed against that part of it,—*Held*, that the defendant, having paid the amount of arrear specified in the decree, had saved himself from ejectment. SAVI *v.* MOHESH CHUNDER BOSE

[W. R., 1864, Act X, 29

21. ——————— *Act X of 1859, s. 78.*—*Computation of time.*—In calculating the fifteen days allowed for payment of arrears of rent by section 78 of Act X of 1859, the day on which the decree was passed should be excluded from the computation. SHEOPALAUL SINGH *v.* NABEE ASHRUF KHAN . . . . . **3 N. W., 342**

22. ——————— *Act X of 1859, s. 78.*—*Stay of execution.*—It is not necessary to declare in a decree given under section 78 of Act X of 1859 that fifteen days' time should be allowed to the tenant. But the decree must specify the amount of the arrear, and payment of this, with costs and interest as decreed, within fifteen days, *ipso facto* stays execution. SEETUL SINGH *v.* THAKOOR TEWARY

[1 N. W., Part 2, p. 31: Ed. 1873, 89

ALI HOSSEIN *v.* NANDAR KHAN . **2 N. W., 62**

23. ——————— *Act X of 1859, s. 78.*—*Interest on deposit.*—When a tenant is sued for arrears of rent, even though he should deposit the rent in Court during the pendency of the suit, he is still liable to have the decree passed against him, as the arrear was admittedly due when the suit was brought. Interest to date of deposit in Court and costs of suit being paid within fifteen days, execution would be avoided. SHEO NATH SINGH *v.* RAM THUL RAE . **1 N. W., Part 2, 39: Ed. 1873, 97**

24. ——————— *Act X of 1859, s. 78.*—*Stay of execution.—Private agreements, Suits to enforce.*—Section 78 of Act X of 1859 contains a positive direction of law by which the Revenue Courts are required, in all suits for ejectment for non-payment of rent, clearly to specify in the decree the amount of rent default in payment of which has conferred a right of re-entry on the landlord, and to stay execution of their decrees if the amount found due, with interest and costs, be paid into Court within the time therein specified. This overrides all private agreements to the contrary, or rather renders their enforcement by suit in the Revenue Court impossible. LULLOO SINGH *v.* THAKOOR PERSHAD

[2 N. W., 249

BENGAL RENT ACT, VIII OF 1869, s. 52 (Act X of 1859, s. 78)—*continued.*

25. ——————— *Act X of 1859, s. 78.*—*Stay of execution of decree.*—The Court has discretion to stay execution on other grounds than those on which it is bound to do so under section 52 of Bengal Act VIII of 1869. RAO BANEERAM *v.* RAMNATH SHAH

[10 B. L. R., Ap., 2: 18 W. R., 412

NUBOKISTO MOOKERJEE *v.* RAMESSUR GOOPTO

[18 W. R., 412, note

26. ——————— *Act X of 1859, s. 78.*—*Stay of execution.—Payment of arrears by purchaser.*—Execution may be stayed on a decree for arrears of rent by payment of the amount, under section 78, Act X of 1859, by a purchaser from the tenant of his interest in the terms. SARODAPERSAD ROY CHOWDHRY *v.* NOBINCHAND DUTT

[Marsh., 417: 2 Hay, 527

27. ——————— *Payment into Court.*—*Liability to ejectment.*—Payment into Court by a judgment-debtor, within fifteen days from the date of decree, of rent, interest, and costs, with a protest as to the sum improperly charged against him as interest, is a sufficient payment, under section 52, Bengal Act VIII of 1869, to save him from liability to be ejected from his tenure. SHREESTEEDHUR DEY *v.* DOORGA NARAIN NAG . . . **17 W. R., 462**

28. ——————— *Act X of 1859, s. 78.*—*Stay of execution as to part of decree.—Extension of time for payment.*—The Court, whose duty it is to execute a decree, is bound to execute it in the shape in which the decree comes before it, and has no authority to permanently stay the execution of any portion thereof,—*e.g.*, where a decree is for money and for ejectment in the event of non-payment within fifteen days, the Court executing is not competent to extend the period for payment in order to save the judgment-debtor from the alternative consequence. SUNKUR SINGH *v.* HUREE MOHUN THAKOOR

[22 W. R., 460

29. ——————— *Act X of 1859, s. 78.*—*Stay of execution.—Payment into Court.—Extension of time when Court is closed.—Decree.—Suit for arrears of rent.*—When a tenant has been sued for arrears of rent and a decree obtained against him under Bengal Act VIII of 1869, section 52, which provides for the stay of execution if the amount of the arrears, together with interest and costs of suit, be paid into Court within fifteen days from the date of the decree, and the Court is closed on or before the last day of the period so limited, the tenant is at liberty to pay into Court the arrears, interest, and costs on the first day that the Court reopens; and if he does so, execution must be stayed. HOSSEIN ALLY *v.* DONZELLE

[I. L. R., 5 Calc., 906: 6 C. L. R., 239

30. ——————— *Act X of 1859, s. 78.*—*Forfeiture.—Stay of execution of decree.*—The provisions of section 52 of Bengal Act VIII of 1869 are exactly similar to those of section 78 of Act X of 1859, and applicable to the case of a mokurrari lease; and therefore, a decree passed in conformity there-

BENGAL RENT ACT, VIII OF 1869, s. 52 (Act X of 1859, s. 78)—*continued.*

with, which allowed fifteen days for the payment of the arrears of rent found due and interest thereon, was a good decree. MAHOMED AMEER *v.* PERYAG SINGH . **I. L. R., 7 Calc., 566 : 9 C. L. R., 185**

31. ——————— *Mokurrari lease.—Covenant to forfeit lease if rent be unpaid.—Payment of rent after suit but before decree.—Relief against forfeiture.*—Section 52 of Bengal Act VIII of 1869 is applicable both to cases where the right to cancel a lease arises under the provisions of the Act, and to cases where the right arises under agreement between the parties. But the object of the section being to prevent a forfeiture, if the rent be paid within the time specified by the section, the Courts will grant relief against a forfeiture where the rent is so paid. DULI CHAND *v.* RAJKISSORE **[I. L. R., 9 Calc., 88 : 11 C. L. R., 326**

32. ——————— *Ejectment.—Right of occupancy.—Forfeiture.—Landlord and tenant.*—The mere omission to pay rent for five years does not of itself amount to forfeiture of a ryot's right of occupancy, and will not be sufficient to sustain an action by the landlord for the recovery of the ryot's holding. A ryot having a right of occupancy cannot be legally ejected, unless under an order regularly obtained under section 52 of the Rent Law,—that is, under a decree for arrears of rent unsatisfied within fifteen days from the passing of the decree. *Duli Chand* v. *Rajkissore* followed. MUSYATULLA *v.* NOORZAHAN **[I. L. R., 9 Calc., 808**

S. C. BROJENDRO KUMAR ROY CHOWDHRY *v.* BUNGO CHUNDER MUNDUL **[12 C. L. R., 389**

33. ——————— *Ejectment. — Proviso in lease for forfeiture.—Release from effect of forfeiture.*—A se-putni was granted to *B.* by *A.*, who held a dur-putni containing the following conditions, *viz.*, "I shall pay rent month by month; should I fail in that, I shall pay interest on instalments overdue at 1 per cent. per month. I shall pay the rent in full by the close of every year; should I neglect to make the payments, you will, of your own authority, take over possession of the said dur-putni talook after the expiration of one month of the next succeeding year, and I shall have no complaint against your doing so." Upon non-payment of rent for the year 1281, a suit for khas possession of the lands was brought against *A.* and *B.* The defendants claimed an equitable right to prevent forfeiture by paying all arrears according to the terms of the dur-putni, together with all costs. *Held* that, whether or not the provisions of the Rent Law actually applied to the case, the Court was bound by the analogy of that law to apply in favour of the defendants an equity similar to the equity there given, and accordingly a decree was passed, that if the defendants should pay the whole of the rent due up to date, with interest according to the conditions of the dur-putni, together with the costs in the High Court and Courts below, they should be released from the effect of the forfeiture. MOTHOOR MOHUN PAL CHOWDHRY *v.* RAM LAL BOSE **[4 C. L. R., 469**

BENGAL RENT ACT, VIII OF 1869, s. 52 (Act X of 1859, s. 78)—*continued.*

34. ——————— *Suit for ejectment from land assigned under a contract for building.*—The only suits for ejectment contemplated by Bengal Act VIII of 1869 are those consequent on the non-payment of arrears of rent, but not a suit for ejectment from land assigned for building purposes brought upon a contract (a kabuliat) by which the defendant had bound himself to give up the land when required by the plaintiff to do so on receipt of a year's rent and the cost of carrying away the building materials. RAMNARAIN MITTER *v.* NOBIN CHUNDER MOORDAFARASH . . . . . **18 W. R., 208**

35. ——————— *Suit for ejectment.—Tenant with right of occupancy.*—Where tenants have obtained a right of occupancy under Bengal Act VIII of 1869, section 6, a suit for ejectment against them can only be brought under that Act. JOWAD HOSSEIN *v.* MOHABEE SAHEE . . **23 W. R., 412**

36. ——————— *Talookdar with power of transfer.—Ejectment.*—Bengal Act VIII of 1869, section 52, does not apply to the case of a talookdar who has power to transfer his land, and is liable, under the terms of his kabuliat to immediate ejectment in the event of default. The question whether a talookdar is liable to ejectment must be determined by the provisions of his lease. MUMTAZ BIBEE *v.* GRISH CHUNDER CHOWDHRY . **22 W. R., 376**

37. ——————— *Suit for arrears of rent and for ejectment.—Payment into Court.—Suit to cancel lease.*—Where a suit is brought both to recover arrears of rent and to eject the ryot, it falls under the purview of Bengal Act VIII of 1869, section 52, and not within section 22; and if decreed, the defendant is entitled to pay into Court, within fifteen days from the date of decree, the arrear with interest and costs. Where the lower Court's decree was altered to this effect by a decision of the High Court, the fifteen days were held to date from the later decision. Bengal Act VIII of 1869, section 52 (as answering to Act X of 1859, section 78), applies to cases in which it is sought to cancel a lease for non-payment of rent, as well as to all suits for ejectment. ABDUR RUHMAN *v.* DIGAMBUREE DOSSEE . **18 W. R., 477**

38. ——————— *Decree for arrears of rent and ejectment.*—A party who is under an obligation by the terms of a decree not only to pay arrears of rent, but also to give up possession, is allowed by Bengal Act VIII of 1869, section 52, relief from the operation of the latter portion of the decree if he pays the money decreed within fifteen days of the date of the decree. GOKHLANUND *v.* LALLJEE SAHOO **[21 W. R., 11**

39. ——————— *Act X of 1859, s. 78.—Execution of decree for ejectment for arrears of rent.* Where a Munsif gave, under Act X of 1859, section 78, a decree for ejectment and for the recovery of a certain amount of rent, and the decree was not modified in review, it was held that the lower Appellate Court was right in holding that inasmuch as the tenant did not deposit the money within fifteen days from the date of the decree, execution should issue to recover

BENGAL RENT ACT, VIII OF 1869, s. 52 (Act X of 1859, s. 78)—*continued.*

possession of the property. PURESH NATH GHOSE MUNDUL *v.* KEISHTO LALL DUTT . **23 W. R., 50**

40. ——————— *Decree for rent, Execution of.—Appellate Court, Decree of, effect of.—Liability to ejectment.*—A decree under section 52, Bengal Act VIII of 1869, provided that unless the amount due was paid within fifteen days from the date thereof, the tenant (judgment-debtor) would be liable to ejectment. That decree was confirmed in appeal, *no step to execute it having been taken in the meantime.* The tenant paid the decretal amount into Court within fifteen days of the appellate decree. *Held,* that inasmuch as the appellate decree must be presumed to incorporate the terms of the original decree, and was the only decree of which execution could be taken, the tenant (judgment-debtor) having paid the decretal amount within fifteen days of that decree was protected from ejectment. NOOR ALI CHOWDHURI *v.* KONI MEAH **[I. L. R., 13 Calc., 13**

41. ——————— *Liability to ejectment.—Payment of amount of decree, but not amount due.*—Where a judgment-debtor complied with the terms of a rent decree, as he found them in the certified copy issued to him, he was held to be protected from ejectment, even though the amount paid (owing to an error in the copy) was less than the amount really due. RUNNOO ROY *v.* KADOO LALL . **25 W. R., 58**

42. ——————— *Suit for ejectment for arrears of rent.—Bhaoli tenure.*—Under the provisions of Bengal Act VIII of 1869, a suit in ejectment will lie for arrears of rent due on a bhaoli tenure. A suit which is in reality a claim for compensation for use and occupation of lands, cannot be described as a suit for arrears of rent under section 52 of Bengal Act VIII of 1869. KISHEN GOPAL MAWAR *v.* BARNES . **I. L. R., 2 Calc., 374**

43. ——————— *Ejectment.—Decree for arrears of rent, ejectment and damages.*—A decree which gave damages in addition to a decree for arrears of rent and ejectment in default of payment upheld, as being a decree which conformed substantially to section 52 of the Rent Act, though it was doubtful whether the Court exercised a wise discretion in adding damages to the decree. In the spirit of the Rent Law a decree for ejectment operates as an award of damages. HEERAMUN ROY *v.* JHUBOO SINGH . . . . **22 W. R., 511**

——————— **s. 53.**

See LANDLORD AND TENANT—EJECTMENT —GENERALLY . **I. L. R., 5 Calc., 135**

——————— **s. 58 (Act X of 1859, s. 92, and Bengal Act VI of 1862, s. 17).**

1. ——————— *Act X of 1859, s. 92. Construction of.—"Issued."—Execution of decree.*—The word "issued" in the sentence, "no process of execution of any description whatever shall be issued," at the commencement of the 92nd section of Act X of 1859, is to be interpreted to mean "sued

BENGAL RENT ACT, VIII OF 1869, s. 58 (Act X of 1859, s. 92, and Bengal Act VI of 1862, s. 17)—*continued.*

out," or "applied for with success;" that is, no application for a process of execution shall be successful unless the application for it is made or it is sued out within the fixed time. (BAYLEY and KEMP, *JJ.*, dissenting.) RHIDOY KRISHNA GHOSE *v.* KAILAS CHANDRA BOSE

[4 B. L. R., F. B., 82: 13 W. R., F. B., 3

HEERALALL SEAL *v.* PORAN MATTEAH **[6 W. R., Act X, 84**

IN THE MATTER OF HOSSEIN ALI **[13 W. R., 295**

2. ——————— *Act X of 1859, s. 92.—Judgment.—Value of stamps.*—In considering whether a "judgment" under this section is under R500 or not, the value of the stamps necessary in taking out execution is to be included in the judgment on the principle of sections 187 and 188 of Act VIII of 1859. CAMPBELL *v.* ABDOOL HUQ **[6 W. R., Act X, 8**

3. ——————— *Calculation of amount of judgment.—Interest.*—In ascertaining the amount of a judgment with a view to the applicability or otherwise of Bengal Act VIII of 1869, section 58, the interest which accrues subsequently to the date of the decree is not to be included. BRINDABUN DUTT *v.* BEHAREE MOHUN SEN . . **24 W. R., 442**

4. ——————— *Division of joint decree to bring case within s. 58.*—A joint decree against two defendants for a sum exceeding R500 cannot be divided so as to fall within the scope of Bengal Act VIII of 1869, section 58. SYEFOOLLAH KHAN *v.* FORBES . . . . . **25 W. R., 55**

5. ——————— *Execution of decree.—Attachment.—Limitation.*—A decree in a suit instituted under Bengal Act VIII of 1869 was passed on the 13th of March 1873. Application for execution was made on the 18th of February 1876, but no process of attachment or sale was issued until the 2nd of April 1876. *Held,* that the attachment was valid, and not void as barred by limitation, under section 58, Bengal Act VIII of 1869. *Heera Lall Seal* v. *Poran Matteah, 6 W. R., Act X, 84; Rhedoy Krishna Ghose* v. *Koylash Chunder Bose, 4 B. L. R., F. B., 82: 13 W. R., F. B., 3; and Lala Ram Sahoy* v. *Dodraj Mahto, 20 W. R., 395,* cited. DEODHARY SINGH *v.* DOWLUT RAM . . . . . **3 C. L. R., 189**

6. ——————— *Delay in executing decree.—Limitation.*—The holder of a rent decree having made application for attachment and sale within three years from the 3rd September 1868, the date of decree, attachment was effected and an order passed fixing 21st November 1871 as the date for sale. On consent of parties and part payment, postponement of sale was allowed for three months. After the lapse of this period the judgment-debtor delayed two months longer and then applied for sale. The application was refused. *Held,* that the judgment of the lower Court was right, proceedings having been barred by Bengal Act VIII of 1869, section 58. *Quære,*—Had

BENGAL RENT ACT, VIII OF 1869, s. 58 (Act X of 1859, s. 92, and Bengal Act VI of 1862, s. 17)—*continued.*

the Court any power, on consent of parties or otherwise, to extend the period of time prescribed by the statute of limitation? LALLA RAM SAHOY *v.* DODRAJ MAHTO . . . . . **20 W. R., 395**

7. ——————— *Release of property from attachment.—Decree in suit to set aside order releasing it.*—Where property has been released from attachment in execution of a decree, and in a subsequent suit brought for the purpose, a decree is obtained declaring it liable to be attached and sold in execution of the former decree, the effect of the decree in the latter suit is to set aside the order which released the property from attachment, thus leaving matters as they were before that order was passed; and therefore, it being unnecessary to issue further process of execution, the execution proceedings are not barred under section 58 of Bengal Act VIII of 1869. WOOMA CHURN CHATTERJEE *v.* KADAMBINI DABEE **[3 C. L. R., 146**

8. ——————— *Failure to carry out order for execution.—Limitation.*—On a decree for rent dated 18th July 1870, execution process was taken out on 21st April 1873. On 24th October following, an order was passed for tulubana to be deposited within seven days, but, before that time expired (*i.e.*, on 27th October), the case was struck off by an order which was not appealed against. The next execution process was taken out on the 6th December 1873. *Held* that as the last process, being for a set-off, was not of the same nature as the first, which was for attachment of property, it could not be considered to be a carrying out of the former; and as the order of 27th October 1873 remained uncancelled, the decree was barred under the Rent Law, section 58. AKRAM SHEKH *v.* LALJEE SINGH . . . **24 W. R., 16**

9. ——————— *Decree payable by instalments.—Limitation.—Per* GARTH, *C. J.*, and MORRIS, *J.* (PRINSEP, *J.*, dissenting).—The words "from the date of such judgment," in section 58 of Bengal Act VIII of 1869, should be read as if they were "from the date when the rent is adjudged to be payable." *Per* PRINSEP, *J.*—The "date of such judgment," in section 58 of Bengal Act VIII of 1869, means the date on which the judgment was delivered. GUREEBULLAH SIRKAR *v.* MOHUN LALL SHAHA **[I. L. R., 7 Calc., 127: 8 C. L. R., 409**

10. ——————— *Landlord and tenant—Rent decree.—Execution of decree.—Limitation.* Where an application for the transfer of a rent decree for execution has been made and granted by the Court which passed the decree within three years from the date of the decree, but no application for execution is made to the Court to which the decree has been transferred within three years from the date of the decree, the execution of the decree will be barred by limitation, under the provisions of Bengal Act VIII of 1869, section 58. BHOLANATH ROY *v.* NURENDRO NATH ROY . **I. L. R., 9 Calc., 380 [12 C. L. R., 58**

BENGAL RENT ACT, VIII OF 1869, s. 58 (Act X of 1859, s. 92, and Bengal Act VI of 1862, s. 17)—*continued.*

11. ——————— *Landlord and tenant.—Execution of decree.—Instalments.—Limitation.*—On the 10th of July 1878, a rent decree was passed in favour of certain parties for the sum of R168, payable in two equal instalments, on the 4th of June 1879, and the 30th of October 1879, respectively. On the 18th July 1881, the decree-holders applied for execution of the decree. *Held*, by the majority of the Full Bench (GARTH, *C. J.*, and MITTER, *J.*, dissenting), that the application was barred by limitation under the provisions of section 58, Bengal Act VIII of 1869. *Gureebullah Sircar* v. *Mohun Lall Shaha, I. L. R., 7 Calc., 127 : S. C. 8 C. L. R., 409*, dissented from. MAMTAZUL HUQ *v.* NIRBHAI SINGH . **I. L. R., 9 Calc., 711: 12 C. L. R., 318**

12. ——————— *Application for execution of decree for arrears of rent.—Proper application.—Civil Procedure Code (Act XIV of 1882), ss. 235, 237, 245.—Limitation.*—Within the period of three years from the date of a decree for arrears of rent under R500, the judgment-debtor applied for execution of his decree without giving a list of the properties which he sought to attach, but stating that a list was filed with a previous application, and praying that that application might be put up with the present one. Subsequently, upon an order made by the Court, a fresh list was filed after the period of a year had elapsed. *Held*, that though the application was not in strict accordance with the provisions of section 237 of the Civil Procedure Code, it was still an application under section 235, and that execution of the decree was not barred, but that it must be limited to the property specified in the previous application. *Mahomed* v. *Abedoollah, 12 C. L. R., 279*, followed. HURRY CHURN BOSE *v.* SUBAYDAR SHEIKH . . . . **I. L. R., 12 Calc., 161**

13. ——————— *Application for execution of decree for arrears of rent.—Circular Order, 10th July 1874.—Limitation.*—The words "no process of execution of any description whatsoever shall be issued on a judgment in any suit ..... after the lapse of three years" in section 58 of Bengal Act VIII of 1869, mean that execution shall not issue unless a proper application for execution is made within three years from the date of the judgment. Therefore, where, on an application made on 5th July 1875 for execution of a decree for arrears of rent obtained on the 31st January 1873, a warrant for the arrest of the judgment-debtors was issued, but not executed, a subsequent application for execution of the same decree made on 17th March 1876 was held not to be barred. The law as laid down in *Rhidoy Krishna Ghose* v. *Kailas Chandra Bose* is not affected by the Circular Order No. 18, dated 10th July 1874. GOLOKEMONEY DABIA *v.* MOHESH CHUNDER MOSA **[I. L. R., 3 Calc., 547: 1 C. L. R., 149**

14. ——————— *Execution of decree.—Delay and laches.—Costs.—Limitation.*—In a suit for arrears of rent under Bengal Act VIII of 1869, a decree was obtained, on the 30th June 1876, for a sum which with costs amounted to less than R500.

BENGAL RENT ACT, VIII OF 1869, s. 58 (Act X of 1859, s. 92, and Bengal Act VI of 1862, s. 17)—*continued.*

Application for execution was made, in December 1877, against property other than that for which the rent was due; but was, in the first Court, opposed successfully by the judgment-debtor, on the ground that the under-tenure should first be proceeded against, though such under-tenure had already been sold away in execution of another decree, and the execution-proceeding was struck off on the 15th March 1878, and the property released from attachment. The judgment-creditor appealed, and was successful both in the lower Appellate Court and the High Court, the latter decision being dated 26th February 1879. The costs awarded him in these proceedings, if added to the amount of the decree, would amount to a sum of more than R500. The next application for execution was made on 19th August 1879. *Held*, that the costs of the appeals in the execution-proceedings should not be added to the decree; and, therefore, the decree being for less than R500, the provisions of section 58, Bengal Act VIII of 1869, applied to it. *Held*, also, that the attachment having been removed in March 1878, the execution of the decree was barred under that section. KADUMBINI DABYA *v.* KOYLASH CHUNDER PAL CHOWDHRY [I. L. R., 6 Calc., 554: 8 C. L. R., 19

——— ss. 59, 60, 66.

See ONUS PROBANDI—SALE FOR ARREARS OF RENT . . I. L. R., 13 Calc., 1

——— ss. 59, 60 (Bengal Act VIII of 1865, ss. 4 and 5).

See SALE FOR ARREARS OF RENT—UNDER-TENURE, SALE OF—

See SALE FOR ARREARS OF RENT—PORTION OF UNDER-TENURE, SALE OF—

See SALE FOR ARREARS OF RENT—INCUMBRANCES.

——— ss. 59-61 (Act X of 1859, s. 105).

See EXECUTION OF DECREE—DECREES UNDER RENT LAW.
[I. L. R., 7 Calc., 748
I. L. R., 8 Calc., 675
I. L. R., 10 Calc., 547

See CASES UNDER SALE FOR ARREARS OF RENT—INCUMBRANCES.

See CASES UNDER SALE FOR ARREARS OF RENT—UNDER-TENURE, SALE OF—

——— s. 62 (Bengal Act VIII of 1865, s. 6).

See SET-OFF—SET-OFF NOT ALLOWED.
[2 C. L. R., 414

——— s. 63 (Act X of 1859, s. 106).

See RIGHT OF SUIT—ORDERS, SUITS TO SET ASIDE— . . 3 C. L. R., 146

1. ——— *Act X of 1859, s. 106.—Sale of under-tenure.—Suit to establish proprietary right.*—Sections 106 and 107, Act X of 1859, apply only to cases in which the existence of the under-tenure and the decree-holder's right as landlord are admitted, not where they are denied and an adverse proprietary title is set up by the claimant as owner of the land. The remedy open to the owner of the land in such a case is under section 77 before the decree is made, but after he allows it to be made he cannot have it set aside in execution. GOLAM CHUNDER DEY *v.* NUDDIAR CHAND ADHEEKAREE . 16 W. R., 1

BENGAL RENT ACT, VIII OF 1869, s. 63 (Act X of 1859, s. 106)—*continued.*

2. ——— *Act X of 1859, s. 106.—Suit by purchaser for possession of under-tenure.*—A suit by an auction-purchaser to obtain khas possession of an under-tenure which had been sold under Bengal Act VIII of 1865 was dismissed on the ground that the suit in which the zemindar had obtained the decree was a fraudulent one and the purchaser knew that it had been against the wrong party. In special appeal, Act X of 1859, section 106, was pleaded in justification of the zemindar. *Held*, that the zemindar could not bring such a suit as he had brought against a person other than the one whom he knew to be the proprietor of the under-tenure, and from whom for a series of years he had been receiving rent. NOBIN CHUNDER SEN CHOWDHRY *v.* NOBIN CHUNDER CHUCKERBUTTY . . 22 W. R., 46

WOOMA CHURN CHATTERJEE *v.* KADOMBINI DABEE . . . . 3 C. L. R., 146

——— s. 64 (Act X of 1859, s. 108).

See SALE FOR ARREARS OF RENT—PORTION OF UNDER-TENURE, SALE OF—
[15 W. R., 6, 524
22 W. R., 67, 414
24 W. R., 313
2 C. L. R., 325
I. L. R., 12 Calc., 464

——— s. 66 (Bengal Act VIII of 1865, s. 16).

See CASES UNDER SALE FOR ARREARS OF RENT—INCUMBRANCES.

——— s. 68 (Act X of 1859, s. 112).

See DISTRESS . . 4 N. W., 76

——— s. 71 (Act X of 1859, s. 115).

See DISTRESS.
[1 N. W., Pt. 3, p. 53: Ed. 1873, 108

——— ss. 72, 74, 76 (Act X of 1859, ss. 116, 118, 120).

See CRIMINAL TRESPASS.
[I. L. R., 7 Calc., 26

——— s. 74 (Act X of 1859, s. 118).

See DISTRESS.
[1 N. W., Pt. 3, p. 53: Ed. 1873, 108

——— s. 80 (Act X of 1859, s. 124).

See DISTRESS . . . 21 W. R., 37

BENGAL RENT ACT, VIII OF 1869.

——— s. 98 (Act X of 1859, s. 142).

See DISTRESS . . 9 W. R., 162
[W. R., 1864, Act X, 77

See WRONGFUL DISTRAINT.
[3 B. L. R., A. C., 261
10 W. R., 70
5 W. R., Act X, 68
8 W. R., 219

——— *Suit for value of crops.—Distraint.—Jurisdiction.—Small Cause Court.*—The plaintiff made a complaint to the Magistrate against the defendant, his landlord, for forcibly carrying away his crops; whereupon the defendant was tried, convicted of theft, and punished. The plaintiff then instituted a suit against the defendant in the Munsif's Court, apparently under section 95 of Bengal Act VIII of 1869, and obtained a decree declaring the distraint to be illegal, and directing the crops to be given up to him. The defendant offered to give up a smaller quantity than was mentioned in the decree. The plaintiff refused to take the same, and brought a suit in the Small Cause Court to recover the value of the quantity he had claimed before the Munsif and something additional. *Held*, that the Small Cause Court had no jurisdiction, and that the suit ought to have been brought under section 98 of Bengal Act VIII of 1869. HYDER ALI *v.* JAFAR ALI
[I. L. R., 1 Calc., 183: 24 W. R., 222

——— s. 99 (Act X of 1859, s. 143).

See WRONGFUL DISTRAINT.
[3 B. L. R., A. C., 261
5 W. R., Act X, 67, 68
15 W. R., 543
9 W. R., 162

——— s. 100 (Act X of 1859, s. 144).—*Cause of action.—Suit for wrongful distraint.—Limitation.*—The time limited by Act X of 1859, section 144, for suing in respect of distraints for rent, "namely, three months from the date of the occurrence of the cause of action," was to be reckoned, in the case of a suit for a wrongful distress afterwards abandoned, from the abandonment of the distress, and not merely from the date of the original seizure. TEUKREE ROY *v.* HEERAMUN SINGH
[Marsh., 470: 2 Hay, 597

TARINEE CHUEN BOSE *v.* SHUMBHOONATH PANDAY . . . 3 W. R., Act X, 139

——— s. 101 (Act X of 1859, s. 145).

See PENAL CODE, s. 206.
[2 B. L. R., S. N., 4: 10 W. R. Cr., 46

See WRONGFUL DISTRAINT.
[20 W. R., 445

——— *Act X of 1859, ss. 145 and 160.—Complaint.—Suit.*—A complaint under section 145 of Act X of 1859 is not a suit, and did not fall within the description of the suits in which, under section 160, an appeal was given to the Zilla Judge. IN THE MATTER OF THE PETITION OF AMANATULLA
[6 B. L. R., 569: 15 W. R., 136

BENGAL RENT ACT, VIII OF 1869—*continued.*

1. **——— s. 102.**—"*Suit.*"—*Appeal in execution proceedings.*—The word "suit" in Bengal Act VIII of 1869, section 102, is intended to cover all proceedings prior to decree and subsequent ones in execution. KRISHTO COOMAR CHUCKERBUTTY *v.* ANUND COOMAR DUTT . . 19 W. R., 307

KEDARNATH BISWAS *v.* HURO PERSHAD ROY CHOWDHRY . . . 23 W. R., 207

2. ——— *Intention of section.—Effect of decree under.*—Section 102 of Bengal Act VIII of 1869 was enacted in order to protect parties in the position of ryot-defendants, and to prevent their being dragged up to the High Court in cases where the decree or demand is under R100. In such cases the decree is intended to have the same effect as that of a Small Cause Court. DOORGA NARAIN SEN *v.* RAM LALL CHHUTAR . I. L. R., 7 Calc., 330

S. C. DURGA NARAIN MISSER *v.* GOBURDHUN GHOSE . . . . 9 C. L. R., 86

3. ——— *Special appeal.—Power of Bengal Legislature.*—Bengal Act VIII of 1869 (sections 33, 34) gives jurisdiction to Civil Courts to try suits brought for any cause of action arising under that Act; but it is a jurisdiction to try them according to the Code of Civil Procedure except where it is otherwise provided by the Act: and section 102 modifies the effect of section 34 and provides that there shall be no special appeal in rent suits for an amount under R100 except in certain circumstances. *Quære*,—Has the Bengal Legislative Council power to give to the High Court any appellate jurisdiction not conferred by the Charter? POORNO CHUNDER ROY *v.* KRISTO CHUNDER SINGH . 23 W. R., 171

4. ——— *Special appeal.—Practice.*—In a suit for arrears of rent and ejectment, the right of appeal is taken away by section 102, Bengal Act VIII of 1869, only when it is shown that the amount sued for and the value of the property claimed is less than R100. Unless that fact appears, either from the finding of the District Judge or elsewhere upon the proceedings, the High Court has no right to draw any inference to that effect. TULSI PANDAY *v.* BUCHU LAL
[I. L. R., 9 Calc., 596: 12 C. L. R., 223

5. ——— *Special appeal.—Sale in execution of decree for rent.*—No appeal lies under section 102, Bengal Act VIII of 1869, from the order of a District Judge on an application connected with the sale of a tenure in execution of a decree for arrears of rent below R100. DEB COOMAREE DASSEE *v.* GUNGADHUR DUTT . . . 17 W. R., 189

6. ——— *Special appeal.*—In suits for recovery of rent below R100, a special appeal lies to the High Court from the decision in appeal by a Subordinate Judge. MAHOMED MUNOOR MEA *v.* JYBUNEE
[10 B. L. R., Ap., 29: 19 W. R., 200

BENGAL RENT ACT, VIII OF 1869, s. 102– *continued.*

7. ——————— *Special appeal.*—In a suit for arrears of rent below R100, an appeal lies to the High Court from a decree passed in appeal by an Additional Judge. NOBOKISTO KOONDOO *v.* MAHOMED SHEIKH

[10 B. L. R., Ap., 30 : 19 W. R., 202

8. ——————— *Special appeal.—Suit for rent under R100.—Civil Procedure Code, 1859, s 372.—Held* by the Court (JACKSON, *J.*, dissenting), that no appeal lies to the High Court from the decision of a District Judge in a suit for rent under R100, when no question of right to enhance or vary the rent of a ryot or tenant, nor any question relating to a title to land or to some interest in land as between parties having conflicting claims thereto, has been determined by the judgment. LUNGESSUR KOOER *v.* SOOKHA OJHA. RADHAY KISHAN *v.* KALI MISSER

[I. L. R., 3 Calc., 151

S. C. LAKHESSUR KOER *v.* SOOKHA OJHA

[1 C. L. R., 39

9. ——————— *Special appeal.—Suit for ejectment and rent under R100.*—An appeal does not lie to the High Court from a decision of a District Judge staying execution in a suit for arrears of rent and for ejectment where the value of the amount decreed is less than R100. Nor can an application, made to eject the tenant on his default to pay into Court the moneys due under the decree within the time fixed by section 52 of Bengal Act VIII of 1869, confer such right of appeal. PARBUTTY CHURN SEN *v.* MONDARI

[I. L. R., 5 Calc., 594 : 5 C. L. R., 513

10. ——————— *Special appeal.—District Judge.—Subordinate Judge.—Act XVI of 1868.—Bengal Civil Courts Act (VI of 1871).*—The words "District Judge" in section 102 of Bengal Act VIII of 1869 do not include a Subordinate Judge, to whom under Act XVI of 1868, or Act VI of 1871, the District Judge may make over appeals filed in his Court. DOYAL CHAND SAHOY *v.* NABIN CHANDRA ADHIKARI . . 8 B. L. R., 180 : 16 W. R., 235

11. ——————— *Special appeal. — Additional Judge.—District Judge.—Bengal Civil Courts Act (VI of 1871).—Appeal.—Held* (JACKSON, *J.* dissenting), that an Additional Judge invested with the powers given to him by Act VI of 1871, is a District Judge within the meaning of section 102 of Bengal Act VIII of 1869, and no appeal lies from his decision in suits of the, nature described in that section. BROJO MISSER *v.* AHLADI MISRAN

[13 B. L. R., F. B., 376 : 21 W. R., 320

ISHAN CHUNDER GHOSE *v.* NOBIN PAL

[13 B. L R., 377, note

12. ——————— *Special appeal.—Right to enhance or vary the rent.*—The question in a suit for arrears of rent as to a right to convert the money rent into a rent payable in kind, is a question which, if determined, renders the suit appealable. ELAHEE BUKSH *v.* JAFFUR ALY

[1 N. W., 109 : Ed. 1873, 157

BENGAL RENT ACT, VIII OF 1869, s. 102 *-continued.*

13. ——————— *Special appeal. -Right to enhance or vary rent.*—A special appeal was held to lie to the High Court under section 102, Bengal Act VIII of 1869 in a suit for rent below R100 in which the question of right to enhance had been determined. WATSON CO. *v.* RAM DHUN GHOSE

[17 W. R., 495

14. ——————— *Special appeal.—Question of title.*—In this case the Judge dismissed plaintiff's suit, on the ground that no notice had been served on defendant, the nature of the suit being not one for enhancement, but to recover rent at rates previously settled, and no notice being therefore required. The value of the suit was under R100, and the High Court held that the Judge had not decided any right to vary or enhance the rent, and therefore they could not interfere, there being no appeal under Bengal Act VIII of 1869, section 102. GOLUCK CHUNDER DUTT *v.* MEAH RAJA MIJEE . . 17 W. R., 119

15. ——————— *Special appeal.—Question between parties having conflicting claims.*—In a suit for rent less than R100, the decision turned upon whether, in a former suit against the plaintiff by a third party, a decree had been recovered for possession of a portion of the land now in dispute. *Held*, that as neither the land nor the rent of such portion was claimed by the defendant, the question as to title was not decided between parties having "conflicting claims" thereto; consequently there was no right of appeal. REEDOYNATH DOORIPA *v.* PUDDO LOCHUN CHUCKERBUTTY . . . 22 W. R., 205

16. ——————— *Special appeal.—Question of title.*—The issue whether or not there has been a binding enhancement of rent, and whether or not the tenant has paid at the enhanced rate, involves no question of title or of right to enhance or vary the rent, and the appeal in such a suit properly lies to the Collector. BAHADUR SINGH *v.* HURA

[3 N. W., 73

AGER SINGH *v.* BOOJHAWUN . 4 N. W., 61

17. ——————— *Special appeal.—Decision as to varying rent.*—In a suit for arrears of rent on the basis of a shironamah, where the ryot denied that he had executed that document, and produced evidence to show that the rates mentioned in it were not correct,—*Held*, that there was no question of right to vary the rent, and that the case therefore did not come under Bengal Act VIII of 1869, section 102. NITRESSUR SINGH *v.* JHOTEE TELY

[23 W. R., 343

18. ——————— *Special appeal.—Decision as to varying rent.*—Where the amount of jumma is not disputed, but there is a question as to whether it is payable by instalments or in a lump sum, the decision cannot be said to involve a question of "right to enhance or vary the rent." PEARI MOHUN MOOKHOPADHYA *v.* MADHUB CHUNDER BABOO

[23 W. R., 385

BENGAL RENT ACT, VIII OF 1869, s. 102—*continued.*

19. ——————— *Special appeal.—Question of fact.—Question of nature of rent.*—In a suit for arrears of rent, where the question was whether the defendants were holding on payment of nugdi rents or as bhouli tenants,—*Held*, that the decision was a finding of fact. *Held*, further, that as the suit was for an amount under R100, and as no question to vary the rate was determined, nor any question of title as between parties having conflicting claims thereto, there was no special appeal. SHUMBUL SINGH *v.* TOONDUN SINGH . **24 W. R., 469**

20. ——————— *Special appeal.—"Right to vary rent."*—A suit for rent under R100 is not taken out of the purview of Bengal Act VIII of 1869, section 102, by the fact of the rate of rent having been varied by the decision of the Court, unless the Judge determined "the right to vary the rent." WATSON & Co. *v.* MOHENDRO NAUTH PAUL **[23 W. R., 436**

SREENATH ROY *v.* AINOODDEEN SHAHA **[25 W. R., 103**

21. ——————— *Special appeal.—Question as to whether rent has varied.*—Bengal Act VIII of 1869, section 102, does not apply where the point decided is simply whether the rent fixed by a previous decision has been subsequently altered and a new arrangement come to. NURUBDESSUR PERSHAD ROY *v.* JUNGOLE . . . **24 W. R., 49**

22. ——————— *Special appeal.—Question as to variation of rent.*—In a suit for arrears of rent under R100, in which the question was whether the landlord had the right to raise, and had raised the rent, and the Judge decided that there had been no alteration in the rent,—*Held*, no appeal lay to the High Court. ROY JUNG BAHADOOR *v.* JUGDEO ROY **[25 W. R., 247**

23. ——————— *Special appeal.—Question of title.*—Where the Judge practically came to no determination at all, on the erroneous supposition that a review had been wrongly admitted by the Munsif, a special appeal was held to be not barred. GOOR DYAL ROY *v.* DEKA NOONYA . **22 W. R., 446**

24. ——————— *Special appeal.—Co-sharer.—Suit for rent.*—The plaintiff, one of several co-sharers of a talook, sued to recover her share of rent, making her co-sharers, who resisted her claim, defendants. The first Court raised and tried questions of title between the plaintiff, her co-sharers, and the ryot, and decided in favour of the plaintiff. The lower Appellate Court, without expressing any opinion on the rights of the parties, dismissed the suit on the ground that it was not maintainable. On special appeal it was contended that no appeal would lie, as the amount of the claim was less than R100, and no question of title was determined by the judgment; but this objection was overruled, on the ground that the decree of the lower Appellate Court, dismissing the suit, had the effect of deciding the question of title against the plaintiff. On appeal under section 15 of the Letters Patent,—*Held* that the judgment, rather than the decree, is to be looked at in applying section 102, Bengal Act VIII of 1869. No appeal lay from the judgment of the lower Appellate Court, inasmuch as that judgment showed not only that no question of title was determined, but that the Judge did not even consider it. KARIM SHEIKH *v.* MUKHODA SOONDERY DASSEE . **15 B. L. R., 111 : 23 W. R., 268**

Reversing decision in MOKHODA SOONDEREE DOSSEE *v.* KUREEM SHEIKH . **23 W. R., 11**

25. ——————— *Special appeal.—Question of title.*—Where in a suit under Bengal Act VIII of 1869, section 82, to contest the demand of the distrainer, a question as to area was raised merely as subordinate to the issue as to the amount of rent due without any dispute as to the relationship of landlord and tenant, the case was held not to come within the provisions of section 102. HURO PERSHAD CHUCKERBUTTY *v.* SREEDAM CHUNDER CHOWDHRY **[20 W. R., 15**

HURISH CHUNDER CHUCKERBUTTY *v.* HUREEB BEWAH . . . . **20 W. R., 16**

26. ——————— *Special appeal.—Question of title.*—Where in a suit for rent the Judge simply upholds as against an intervenor the possession of the party found to have succeeded on the death of the last owner to the quiet possession of his estate under a show of title and gives him a decree for rent, he does not determine a question of title so as to admit an appeal under section 102, Bengal Act VIII of 1869. KALLY CHURN BANNERJEE *v.* GOPAL CHUNDER BANERJEE . . **26 W. R., 100**

27. ——————— *Special appeal.—Question of title.*—In a suit for rent under R50, in which no question to enhance or vary the rate was decided, and in which, although the first Court went into the question of title, the lower Appellate Court came to no decision on the point,—*Held* that the case fell within the purview of Bengal Act VIII of 1869, section 102, and no special appeal lay. BHUGWAN DUTT MISSER *v.* NOWNEEDH LALL **[25 W. R., 153**

28. ——————— *Special appeal.—Decision on genuineness of document in order to decide as to amount of rent.*—Where a suit for rent of certain years, not exceeding R100, based upon a kabuliat and jummabundi, was dismissed in appeal, on the ground that those documents were forged, and the lower Appellate Court, in order to arrive at a decision as to the amount of rent due, enquired into, and decided upon, the genuineness of the mokurrari pottah set up by the defendant,—*Held* that Bengal Act VIII of 1869, section 102, precluded any special appeal in the case. MAHOMED TOQUE (COURT OF WARDS) *v.* FOUZDAR ROY . **25 W. R., 14**

29. ——————— *Special appeal.—Question of title.*—In a suit for rent, in which the sum claimed was less than R100, the defendant pleaded that the plaintiff had ceased to have any interest in the land, and the suit was dismissed. There was no finding as between the plaintiff and any other person claiming title to the land. *Held*, that a special ap-

BENGAL RENT ACT, VIII OF 1869, s. 102—*continued.*

peal to the High Court was barred by section 102, Bengal Act VIII of 1869. *Kashee Ram Doss* v. *Maharanee Sham Mohinee, 23 W. R., 227;* and *Dilbur* v. *Issur Chunder Roy, 21 W. R., 36,* cited and followed. DONZELLI *v.* TEKAN NODAF [2 C. L. R., 558

30. ——————— *Special appeal.—Question of title.*—In a suit for ejectment valued under R100, the defendants, who were sued as yearly tenants, replied that their tenure was a maurasi gujasta tenure, and in proof of their allegation adduced evidence which was not displaced by the plaintiffs. The lower Courts considered that the defendants allegation was well founded. *Held* that, although the value of the suit was under R100, an appeal was not barred by the provisions of section 102 of Bengal Act VIII of 1869, as the lower Court had determined a question of law as to whether the tenure was gujasta. BIJJO NATH SAHOO *v.* RAMDOUR ROY [7 C. L. R., 369

31. ——————— *Special appeal.—Question of title.*—Separate suits for rent by *A.* and *B.* having been instituted against the tenants of certain land to which both laid claim, a suit was filed by *A.* to establish his title against *B.*, and pending that suit the rent suits which were each for a sum under R100, and which had been appealed to the District Judge, were stayed. The suit between *A.* and *B.* having been decided against *A.*, the District Judge dismissed his suits against the tenants. *Held*, on appeal, that no question of title could be said to have been decided in such suits, and that consequently no second appeal lay. DURGA NARAIN MISSER *v.* GOBURDHUN GHOSE [9 C. L. R., 86

32. ——————— *Special appeal.—Parties having conflicting claims.*—Where there was a question of title raised between the plaintiff and an intervenor, and the Judge dismissed the suit for want of proof of relationship of landlord and tenant between them,—*Held* that, the suit being for less than R100, no special appeal lay to the High Court. HURRY MOHUN MOZOOMDAR *v.* DWARKANATH SEIN [18 W. R., 42

DILBUR *v.* ISSUR CHUNDER ROY [21 W. R., 36

NANKOO KOEREE *v.* NUND COOMAR PAUREY [22 W. R., 326

KASHEE RAM DOSS *v.* SHAM MOHINEE [23 W. R., 227

KRIPAMOYEE DEBIA *v.* DROPUDEE CHOWDHRAIN 24 W. R., 213

33. ——————— *Special appeal.—Suit for arrears of rent.—D. C. S.*, the zemindar, brought a suit against *B.*, a ryot, for recovery of arrears of rent valued below R100, to which *N. C. A.*, who claimed under a mokurrari title, was made a party under section 73, Act VIII of 1859. The Munsif passed a decree in favour of the plaintiff. On appeal by *N. C. A.*, which was heard and decided by the Subordinate Judge, on reference by the District Judge, the decree of the first Court was reversed, and the suit dismissed. *Held*, a special appeal lay to the High Court. DAYAL CHAND SAHOY *v.* NABIN CHANDRA ADHIKARI . 8 B. L. R., 180: 16 W. R., 235

ISWAR CHUNDRA SEN *v.* BEPIN BEHARI ROY [8 B. L. R., 188, note: 16 W. R., 132

34. ——————— *Special appeal.—Decision of varying rent.*—Where a Judge found in a rent suit, that although R30-6-6 had for a great number of years been paid by the tenant, R29-15 only was paid as rent, the remainder being a kind of cess or fee for testing the coin paid,—*Held*, that he did not determine any question which amounted to a varying of the rent of the tenant. DWARKANATH SINGH ROY *v.* NUBO COOMAR BOSE . . 20 W. R., 270

35. ——————— *Special appeal.—Claims by plaintiff as zemindar, and defendant as mortgagee, to rent.*—In a suit in which plaintiff claims rent as zemindar, and defendant, admitting his own tenancy, claims it as mortgagee, there cannot be said to be conflicting claims to a title to, or some interest in, land within the meaning of Bengal Act VIII of 1869, section 102. RAJKISHEN MOOKERJEE *v.* PEAREE MOHUN MOOKERJEE . . . 24 W. R., 114

36. ——————— *Special appeal.—Question against intervenor.*—The circumstance that a question has been determined at the hearing of the appeal in a rent suit, by which an intervenor may be injuriously affected, will not make the appeal cognizable as a special appeal, unless the decision has involved some title or interest, in land, of parties having conflicting claims thereto. RAJ KISHEN MOOKERJEE *v.* SREENATH DUTT . 23 W. R., 408

37. ——————— *Special appeal.—Rent suit under R100.—Title.—A.* and *B.*, both of whom set up a claim to certain land, brought separate rent suits against the tenants. In none of these suits did the amount claimed exceed R100. Subsequently to the institution of the rent suits, *A.* sued *B.* to establish his title to the land in dispute. The District Judge, before whom the rent suits came on appeal, allowed them to stand over until the decision in the suit between *A.* and *B.* That suit was decided in favour of *B.*, and the Judge then decided the rent suits instituted by *B.* in his favour, and dismissed the suits instituted by *A.* *Held*, that no second appeal would lie in the rent suits, as no question of title between parties having conflicting claims was decided in them. DOORGA NARAIN SEN *v.* RAM LALL CHHUTAR . . . . . I. L. R., 7, 330

S. C. DURGA NARAIN MISSER *v.* GOBURDHUN GHOSE . . . . . 9 C. L. R., 86

38. ——————— *Special appeal.—Suit for rent below R100.—Landlord and tenant.*—In a suit for rent below R100, the defendant set up the title of a third person (the third person was, however, no party to the proceedings), and the lower Court finding that the relationship of landlord and tenant existed between the parties, and that the rent was unpaid, decided the suit on that ground in favour of

BENGAL RENT ACT, VIII OF 1869, s. 102 —*continued.*

the plaintiffs. The defendant appealed to the District Judge, who decided that the defendant had paid the rent, and reversed the decision of the Court below. The plaintiffs appealed to the High Court, but were met with the objection that no special appeal would lie. *Held*, that section 102 of Bengal Act VIII of 1869 prohibited the appeal, the case being one between landlord and tenant, and there consequently being no question relating to title as between parties having conflicting claims. ROMAPROSAD ROY *v.* SHORUP PARAMANICK . I. L. R., 8 Calc., 712

——— s. 103.—*Civil Procedure Code, 1859, s. 119.—Ex parte decree.—Re-hearing.*—Section 103 of Bengal Act VIII of 1869 does not apply to applications for a re-hearing after an *ex parte* decree, on the ground of ignorance of the suit. DRABAMAYI GUPTIA *v.* TARACHARAN SEN [7 B. L. R., 207: 16 W. R., 17

——— s. 108.

See BENGAL ACT III OF 1870.
[10 B. L. R., Ap., 21: 19 W. R., 128
10 B. L. R., Ap., 22, note: 15 W. R., 75

BENGAL TENANCY ACT, VIII OF 1885, s. 5.

See GENERAL CLAUSES CONSOLIDATION ACT, 1868, s. 6.
[I. L. R., 13 Calc., 86

BEQUEST TO A CLASS.

See HINDU LAW—WILL—CONSTRUCTION OF WILLS—PERPETUITIES, TRUSTS, AND BEQUESTS TO A CLASS.
[I. L. R., 2 Calc., 262
I. L. R., 4 Calc., 455

BEQUEST TO IDOL.

See CASES UNDER HINDU LAW—ENDOWMENT.

See HINDU LAW—WILL—CONSTRUCTION OF WILLS—BEQUEST TO IDOL.
[2 B. L. R., A. C., 137, note

BEQUEST TO ONE SON TO EXCLUSION OF OTHERS.

See CASES UNDER HINDU LAW—WILL—POWER OF DISPOSITION—DISHERISON.

BETROTHAL, CEREMONIES OF—

See SPECIFIC PERFORMANCE.
[I. L. R., 1 Calc., 74

BHAGDARI TENURES.

See CASES UNDER BOMBAY ACT V OF 1862.

See CUSTOM . . 5 Bom., A. C., 123
[I. L. R., 5 Bom., 482

See SETTLEMENT—MODE OF SETTLEMENT.
[2 Bom., 244: 2nd Ed., 231

BHOULI RENT.

See ENHANCEMENT OF RENT—EXEMPTION FROM ENHANCEMENT BY UNIFORM PAYMENT OF RENT—VARIATION OF NATURE OF RENT.
[I. L. R., 1 All., 301

See LANDLORD AND TENANT—RENT IN KIND.
[2 B. L. R., Ap., 27: 11 W. R., 151

BHOULI TENURE.

See BENGAL RENT ACT, 1869, s. 52.
[I. L. R., 2 Calc., 374

BIGAMY.

See ABETMENT . I. L. R., 4 Calc., 10
[I. L. R., 6 Bom., 126
W. R., 1864, Cr., 13

See COMPLAINANT.
[I. L. R., 10 Bom., 340

1. ——— **Authority of caste to declare marriage avoid.**—*Penal Code, s. 494.*—Courts of law will not recognise the authority of a caste to declare a marriage void, or to give permission to a woman to re-marry. *Bonâ fide* belief that the consent of the caste made the second marriage valid, does not constitute a defence to a charge, under section 494 of the Penal Code, of marrying again during the lifetime of the first husband, or to a charge of abetment of that offence under that section combined with section 109. REG. *v.* SAMBHU RAGHU . . . I. L. R., 1 Bom., 347

2. ——— **Publication of banns of marriage.**—*Penal Code, s. 494.*—The act of causing the publication of banns of marriage is an act done in the preparation to marry, but does not amount to an attempt to marry. Where, therefore, a man, having a wife living, caused the banns of marriage between himself and a woman to be published, he could not be punished for an attempt to marry again during the lifetime of his wife. THE QUEEN *v.* PETERSON
[I. L. R., 1 All., 316

3. ——— **Conversion of a Hindu wife to Mahomedanism.**—*Marriage with a Mahomedan.—Penal Code, s. 494.*—The conversion of a Hindu wife to Mahomedanism does not, *ipso facto*, dissolve her marriage with her husband. She cannot, therefore, during his lifetime enter into any other valid marriage contract. Her going through the ceremony of *nika* with a Mahomedan is consequently an offence under section 494 of the Indian Penal Code. THE GOVERNMENT OF BOMBAY *v.* GANGA
[I. L. R., 4 Bom., 330

4. ——— **Divorce among Rajput Gujaratis in Khandesh.**—*Penal Code, ss. 494 and 109.—Marrying again during the lifetime of husband.—Deed of divorce by husband.—Validity of divorce.*—A member of the caste of Ajanya Rajput Guzars residing in Khandesh executed a deed of divorce to his wife. The Court held on the evidence that the deed was proved, and that in this caste a husband was for a sufficient reason, such as incontinence, allowed to divorce his wife; that the deed in the present case

BIGAMY.- Divorce among Rajput Gujaratis in Khandesh—*continued.*

had not been executed for a sufficient reason; and that, consequently, the parties entering into a second marriage were guilty of an offence under section 494 of the Penal Code (XLV of 1860); and that the priest who officiated at that marriage was an abettor under sections 494 and 109. Mere consent of persons to be present at an illegal marriage, or their presence in pursuance of such consent, or the grant of accommodation in a house for the marriage, does not necessarily constitute abetment of such marriage. EMPRESS *v.* UMI . . . . . [I. L. R., 6 Bom., 126

5. ——— **Nika marriage.**—*Penal Code, ss. 494 495.*—A nika marriage falls within the purview of sections 494 and 495 of the Penal Code. QUEEN *v.* JUDOO . . . 6 W. R., Cr., 60

6. ——— **Dissolution of marriage at will.**—*Re-marriage (natra) in lifetime of first husband.—Invalid marriage.—Custom.—Held,* that a custom of the Talapada Holi caste that a woman should be permitted to leave the husband to whom she has been first married, and to contract a second marriage (*natra*) with another man in his lifetime and without his consent, was invalid, as being entirely opposed to the spirit of the Hindu law; and such marriage was "void by reason of its taking place during the life of such husband," and therefore punishable as regards the woman under section 494 of the Penal Code. REG. *v.* KARSAN GOJA. REG. *v.* BAI RUPA . . 2 Bom., 124: 2nd Ed., 117

7. ——— **Hindu Christian convert relapsing into Hinduism.**—A Hindu Christian convert, relapsing into Hinduism and marrying a Hindu woman, cannot be convicted of bigamy on the ground that he has another wife living, whom he married while a professing Christian. ANONYMOUS [3 Mad., Ap., 7

8. ——— **Custom as to Marriages.**—*Penal Code, s. 494.*—A conviction under section 494 of the Penal Code for marrying again during the lifetime of a husband or wife, cannot be upheld where there is evidence to show that such marriages are not unusal among persons of the same caste as the accused, and it is not proved that such marriages are void. IN THE MATTER OF CHAMIA [7 C. L. R., 354

BILL BEFORE THE LEGISLATURE.

See COMPOUNDING OFFENCE. [I. L. R., 3 All., 283

BILL OF COSTS.

See ATTORNEY AND CLIENT. [3 B. L. R., O. C., 96
I. L. R., 3 Calc., 473

See LIMITATION ACT, 1877, ART. 84 (1871, ART. 85) . I. L. R., 1 Bom., 253, 505

See TAXATION OF BILL OF COSTS. [7 B. L. R., Ap., 50
2 Hyde, 89

BILL OF EXCHANGE.

See LIMITATION ACT, 1877, ART. 69. [14 W. R., O. C., 5

See PARTIES—PARTIES TO SUITS—NEGOTIABLE INSTRUMENTS. [I. L. R., 3 Calc., 541
I. L. R., 3 Bom., 182

See CASES UNDER HINDU LAW—CONTRACT—BILL OF EXCHANGE.

See INTEREST—MISCELLANEOUS CASES—BILL OF EXCHANGE. [2 C. L. R., 349

See MAHOMEDAN LAW—BILL OF EXCHANGE . 7 B. L. R., 434, note

1. ——— **Evidence of dishonour and of presentment.**—*Noting on bill.*—The mere noting on the bill, even if it disclose the name of the notary in full, is not evidence of the presentment or of the dishonouring of the bill. BOMBAY CITY BANK *v.* MOONJEE HURRIDOSS . . Bourke, O. C., 274

2. ——— **Notice of dishonour.**—*Reasonable notice.*—In an action brought in the district of Patna against the indorser and acceptors of bills of exchange, after a part-payment by the acceptors, no objection having been taken as to the misjoinder of defendants, and the Judge having omitted to find whether the indorser had received notice of dishonour or not,—*Held,* the case must be remanded to ascertain, first, whether notice had been given within reasonable time, and if not, whether thereby the indorser had been injured or exposed to material risk of injury; and, secondly, whether (English law not being applicable to the case), by the usage of merchants at Patna, a part-payment by the acceptors and receipt by the plaintiff discharged the indorser from liability. GOPAL DAS *v.* ALI . . . 3 B. L. R., A. C., 198

S. C. after remand. ALI *v.* GOPAL DOSS [13 W. R., 420

3. ——— *Reasonable notice.*—Even when English law regarding bills of exchange does not apply, the holder of the bill is bound to give the maker notice of dishonour in reasonable time. If the maker, for want of notice, has sustained injury or risk of injury, he is no longer liable. PIGUE *v.* GOLAB RAM . . . . 1 W. R., 75

JEETUN LALL *v.* SHEO CHURN . 2 W. R., 214

4. ——— *Reasonable notice.*—Ordinarily notice of the dishonour of a bill of exchange drawn in India and payable in England should be posted by the first mail which leaves England after the dishonour of the bill. THE UNCOVENANTED SERVICE BANK *v.* DUFFIN [3 N. W., 99

5. ——— *Dishonour of cheque taken in payment of bill of exchange when due.*—The defendant indorsed to the plaintiff a bill of exchange drawn by *N. S. & Co.,* and accepted by *C. N. & Co.* The bill, at the time it was indorsed to the plaintiff by the defendant, bore the previous indorsement of *N. S. & Co.,* to the defendant. The bill fell due on December 3rd, 1870, which was a Saturday,

BILL OF EXCHANGE.—Notice of dishonour—*continued.*

and on that day the plaintiff sent his jemadar to *C. N. & Co.*, the acceptors, to present the bill for payment. The bill was taken by *A.*, one of the members of the firm of *C. N. & Co.*, who gave a cheque for the amount, and took a receipt from the plaintiff's jemadar, striking out the signature of *C. N. & Co.* as acceptors, but without the plaintiff's consent. The plaintiff's jemadar took the cheque immediately to the bank, but the bank was closed. Thereupon he returned to *C. N. & Co.*, and informed them that the bank was closed and demanded cash. The plaintiff alleged that it was then stated that the cheque would be honoured on Monday. The plaintiff's jemadar then went and informed the gomashta of the plaintiff of what had been done. The plaintiff's gomashta sent him to the defendant's firm to give him notice of what had taken place. It was alleged that at this interview the defendant's liability was admitted in case the cheque was not honoured, and the plaintiff's jemadar was advised to wait until Monday, the defendant stating that he also had a cheque for R7,000 from *C. N. & Co.* This was denied by the defendant. On Monday, 5th December, the cheque was presented to the bank for payment, and was dishonoured. The plaintiff's gomashta went to the defendant's koti, and gave notice of the dishonour of the bill and cheque, and asked him to pay the amount of the bill. The defendant asked for the bill, and the plaintiff's gomashta went to *C. N. & Co.* and brought back the bill, with the name of *C. N. & Co.*, which had been struck out, replaced. The defendant, seeing the bill was overdue, refused to pay the amount. The cheque was thereupon returned to *C. N. & Co.*, and the bill retained by the plaintiff, who, on 6th December, caused written notice of dishonour to be given to the defendant. *Held*, that the cheque must be taken to have been merely a conditional payment, and when it was dishonoured the liability on the original bill revived. *Held*, also, that reasonable notice of dishonour was given, whether the bill be taken to have been dishonoured on the Saturday or on the Monday. SOMARIMULL *v.* BHAIRO DAS JOHURRY . . . . . **7 B. L. R., 431**

GAPINATH *v.* ABBAS HOSSEIN **[7 B. L. R., 434, note**

6. ——— Accommodation acceptor.— *Principal and surety.—Discharge of surety.—Equitable mortgage.—Trust deed for benefit of creditors.—Contract Act (IX of 1872), ss. 132, 139.—Evidence Act (I of 1872), s. 92.*—In the years 1870 and 1873, *A.* drew certain bills of exchange upon *B.*, which were accepted by *B.* for the accommodation of *A.*, and indorsed by *A.* to the Bank of Bengal. In May 1876, *A.*, by letter, agreed to execute a mortgage of a certain portion of his property, consisting of a share in a Privy Council decree, to *B.*; and in the meantime to hold such property at the disposal of *B.*, his successors and assigns. In the month of June 1876, *A.* became unable to meet his liabilities, and in the month of August following executed a conveyance of all his property to the Official Trustee upon trust for the benefit of *A.'s* creditors. The bank assented to and executed this deed after it had been assented to and executed by some of the other creditors. The deed did not contain any composition with or release by the creditors, nor any covenant on their part not to sue *A.* In a suit by the bank against *B.* as acceptor of the bills,—*Held*, that *B.* was not precluded by the provisions of section 132 of the Contract Act and section 92 of the Evidence Act from pleading that he was an accommodation acceptor only; but *held*, that the letter of May 1876 constituted a good equitable mortgage, and that *B.* was not thereafter entitled, as against the bank, to the equitable rights of an accommodation acceptor. *Held*, further, that the trust did not impair the "eventual remedy" of *B.*, and that therefore he was not discharged from his suretyship under the provisions of section 139 of the Contract Act. POGOSE *v.* BANK OF BENGAL **[I. L. R., 3 Calc., 174**

7. ——— Failure of payment at sight. —*Liability of parties to draft.—Effect of acceptance.*—Immediately on failure of payment of a draft at sight, whatever may be the real state of the account between the drawer and drawee, the former becomes liable to the payee for the amount which would place him at the stipulated time and place in the same position as if the money had been duly paid. Where there is no acceptance, no cause of action can arise to the payee against the drawee. Nor is the legal relation between the drawer and the payee altered by a partial acceptance, the contract being in its nature indivisible; much less can any mere promise to pay part at a future time in any way satisfy the payee's claim, or postpone his right to reimbursement of his loss from the drawer. SHETH KAHANDAS NARANDAS *v.* DAHIABHAI . **I. L. R., 3 Bom., 182**

8. ——— Suit on bill by indorsee for value against acceptor.—*Sale by indorsee of goods against which bill drawn.—Acceptor entitled to credit for amount of proceeds of sale.*—*J.* consigned goods to defendant, and, for the price, drew on the defendant two bills of exchange, each for the sum of R1,406-4-0, payable thirty days after sight, which were duly accepted by defendant. *J.* indorsed the bills for value to the plaintiffs, who, in default of payment by defendant, sold the goods, and credited him with the amount realised. After giving him credit for this amount, there remained due by the defendant to the plaintiffs, in respect of the said bills, a sum of R1,017. The plaintiffs abandoned R17 of this amount, and sued the defendant for R1,000 in the Small Cause Court at Bombay. In that suit the defendant pleaded that the goods, in respect of which the bills were drawn, were damaged, and that he had, therefore, refused to accept them, as he was entitled to do. The Judge thereupon dismissed the suit on the authority of *Shortt* v. *Abdul Rahman, 6 Bom., O. C., 53*, holding that the plaintiffs could not, under the circumstances, give the defendant credit for the goods, and that the claim was not, therefore, within the jurisdiction of the Small Cause Court. The plaintiffs then brought the present suit in the High Court upon the bills of exchange, alleging that they held the proceeds of the goods for the consignor. The defendant contended that in no case could the plaintiffs recover from

BILL OF EXCHANGE.—Suit on bill by indorsee for value against acceptor—*continued.*

him more than the amount of the bills, less the proceeds of the goods. *Held*, that the defendant was entitled to credit for the net proceeds of the sale of the goods. The plaintiffs had by the sale already realised part of the amount due to them; and to allow them now to recover from the defendant the whole amount due on the bills, would be to permit them to realise this part of their claim a second time: in that case they would be bound to hand over the amount so realized to the drawers. But the drawers when they negotiated the bills with the plaintiffs got all they were entitled to, and would have to account, in equity, to the defendant for anything further obtained by them. *Held*, therefore, that the defendant was exonerated to the amount of the proceeds of the goods, but was liable for the remainder of the sum claimed by the plaintiffs. AGRA BANK *v.* ABDUL RAHIMAN . . . . **I. L. R., 6 Bom., 1**

9. ——— Remission of, for sale for specific purpose.—*Property in bill of exchange.—Suit for value of, on misappropriation.*—Where bills of exchange are remitted for sale, and the proceeds directed to be applied to a specific purpose, the property in the bills remains in the remitter until the purpose for which they were remitted is satisfied. And where the money realised by the sale was wrongfully applied by the agent, it was held by the Judicial Committee (affirming the judgment of the Court at Calcutta) that the remitter was entitled to recover the value of the bills in assumpsit, upon an indebitatus count from the purchaser of them, who had notice of the purpose for which they were remitted, and the misapplication of the proceeds by the agent. MUTTY LAL SEAL *v.* DENT **[5 Moore's I. A., 328**

10. ——— Agency.—The drawer of a bill of exchange cannot plead agency, unless it is shown on the face of the bill that he drew it as an agent. PIGOU *v.* RAM KISHEN . . **2 W. R., 301**

11. ——— Endorser, Liability of.—*Held*, that an endorser of a bill is in the nature of a new drawer, and is liable to the holder in default of acceptance or payment by the drawer; and that an endorser cannot be absolved from liability because the drawer was exonerated or not impleaded. JUMNA DAS *v.* MEHUR SINGH . . . **1 Agra, 182**

BILL OF LADING.

See CHARTER PARTY.

1. ——— Varying bill of lading.—*Shipping order.—Custom.*—In a suit instituted by a shipper to obtain bills of lading from the captain, in accordance with the terms of the order granted by the ship's charterers,—*Held*, that the captain was entitled to vary the bills of lading in respect of any excess of measurement over the dimensions specified in the order, and that an alleged custom, precluding such variation, after the goods have been received on board ship, was contrary to law. It is the duty of the shipper to comply strictly with the terms of the shipping order. GENTLE *v.* THOMSON **[1 Ind. Jur., O. S., 69**

BILL OF LADING *-continued.*

2. ——— Ship in port only on Sunday.—*Non-delivery of goods.—Lord's Day Act, 29 Chas. II, c. 7.*—The owners of a steamer by their bill of lading stipulated that they would not land specie, but would deliver it on presentation of bills of lading, or carry it on at the consignee's risk, if delivery were not taken during the steamer's stay in port. The steamer arrived in port late on Saturday, and sailed at day break on Monday without delivering the specie shipped by the plaintiff, who sued for damages. *Held*, that the Lord's Day Act, 29 Charles II, clause 7, did not apply to Moulmein; and that even if it had done so, it could not prevent the shipowners from availing themselves of the stipulation they had made, and that no action for damages was maintainable against them. GRASEMANN *v.* GARDNER. **[3 W. R., Rec. Ref., 3**

3. ——— Liability of shipmaster.—When a shipmaster undertakes that goods shipped by him shall be delivered subject to the exceptions and conditions mentioned in a bill of lading, in good order and condition, he takes upon himself the consequences and contingencies other than the exceptions expressed in the bill of lading, or which are implied by law. SHETLIFF *v.* SCOTT . . . **22 W. R., 39**

4. ——— Construction.—*River navigation in India.—Difficulties or casualties of navigation.*—Plaintiff sued to recover the value of certain hides which were lost in defendant's flat. The bill of lading contained, among other exceptions, the words "difficulties or casualties of navigation and all and every danger and accident of the river and navigation whatsoever." In evidence it was proved that the flat was destroyed by some projection embedded in the river. *Held*, that the casualty was comprised among the exceptions in the bill of lading, and further that having regard to the dangerous navigation of Indian rivers, parties entering into contracts of a similar nature should protect themselves by insurance. DHAUNSEE *v.* INDIA GENERAL STEAM NAVIGATION CO. . **1 Ind. Jur., O. S., 125: 1 Hyde, 283**

5. ——— *Insufficiency of package.—Negligence.*—The defendants by a condition annexed to their bill of lading stipulated that they should not be responsible for "leakage or breakage or other consequences arising from the insufficiency of the address or package." The plaintiff shipped for conveyance from Hong-Kong to Bombay certain goods on board a steamer of the defendants, in packages which were proved to be insufficient. These goods, in accordance with a condition to that effect contained in the bill of lading, were transhipped at Galle. On their being landed in Bombay it was found that all the packages were broken, and in a much more damaged condition than is usual in the case of such goods carried from Hong-Kong to Bombay in similar packages. The contents had to a large extent escaped from the packages, but were otherwise uninjured. *Held* that, under a bill of lading in the above form, the *onus* of proving that the packages were insufficient, and that the injury which they had sustained was the consequence of such insufficiency, lay upon the defend-

BILL OF LADING.—Construction—*continued.*

ants, but that when the result of the evidence on both sides was to leave it in doubt whether the injury was caused by negligence, or was the consequence of the insufficiency of the packages, the plaintiff was not entitled to recover. THE P. & O. STEAM NAVIGATION CO. *v.* SOMAJI VISHRAM

[5 Bom., O. C., 113

6. ——————— *Insufficiency of package.—Negligence.—Mercantile usage, Evidence of.*—The defendants carry between Hong-Kong and Bombay. By a condition annexed to their bill of lading they stipulated that they should not be responsible for damage to goods arising from insufficiency of package. The plaintiff shipped certain goods in the defendants' steamer, in packages which, though in fact insufficient, were packages of the kind ordinarily used for the conveyance of such goods from Hong-Kong to Bombay. On their being landed in Bombay it was found that the packages were more or less broken, and the contents were in some instances injured, and had to a small extent escaped from the packages. In an action brought to recover damages in respect of such injury, it was held that evidence of mercantile usage or of custom would be admissible to show that the words "insufficiency of package" should not be taken in their ordinary sense, but as meaning insufficient according to a special custom of the China trade. *Held*, also, that the evidence of those packages being ordinary China packages, and of such packages having always been carried by the defendants without objection, was not sufficient, in the absence of proof of negligence, to fix the defendants with liability for damage done to them, there being no proof that it had been the practice either of the defendants or any other ship-owners protected by a similar clause in their bill of lading to make compensation for injury to goods contained in such packages. P. & O. STEAM NAVIGATION CO. *v.* MANICKJEE NASERVANJEE PADSHA . **4 Bom., O. C., 169**

7. ——————— *Carriers by sea.—Liability for damage to goods.—Negligence.*—A steam navigation company was employed by plaintiff to carry cargo from Calcutta to Rangoon and to deliver it into the receiving ship, or to land it at the consignee's expense, their liability ceasing as soon as the goods were free from the ships' tackle. When the ship arrived at port, the consignee not having had his own boats alongside, the goods were put into other boats, one of which, through the negligence of the boatmen, was swamped and the contents damaged. Plaintiff sued for damages. *Held* that; as defendants were not shown to have neglected the duty of taking reasonable and proper care in the selection of boats, they were not liable for the loss incurred. BULLOCH BROTHERS & CO. *v.* TOAY AUNG. . **24 W. R., 74**

8. ——————— *Exemption from damage occasioned by neglect of Company's servants.—Suit to recover goods destroyed.—Contract Act, s. 151.*—The plaintiff shipped two plate-glass show-cases from Calcutta to Rangoon by a steamer of the defendant company, and signed a bill of lading which contained the following clause: "Carried and delivered subject to the conditions after mentioned ..... loss or damage for any act, neglect or default whatsoever of the pilot, master or mariners or other servants of the company, &c., excepted." In landing the two cases, one of them was entirely destroyed owing to the carelessness of the company's servants. The plaintiff sued the company, setting out that the damage was occasioned by the negligence of the company's servants. The defendant company (who were not subject to the Carriers Act) relied on the above-mentioned clause in their bill of lading. *Held*, that the defendant company were protected by their bill of lading, the terms of which had been accepted by the plaintiff. JELLICOE *v.* BRITISH INDIA STEAM NAVIGATION CO.

[I. L. R., 10 Calc., 489

9. ——————— *Liability of master.—Negligence.—Onus probandi—Estoppel.*—The defendant, master of the steamer *Scindia*, signed a bill of lading, by which he agreed with *C. & Co.* of London to deliver at Calcutta to them or their order four casks of brass wire, which were shipped on board the *Scindia*. The casks were described in the bill of lading as bearing a certain mark, beneath which was the word "Calcutta" as being the port of destination, and they were stated as being carried subject to the following exceptions: "The ship is not liable for obliteration or absence of marks, numbers, address or description of goods shipped: and expenses and losses by detention of ship or cargo, caused by incorrect marking, or by incomplete or incorrect description of contents, shall be borne by the owners of the goods. In case any part of the within goods cannot be found during the ship's stay at the port of destination, they are, when found, to be sent back by first steamer at the ship's risk and expense, and subject to any proved claim for loss of market. The ship shall not be liable for incorrect delivery, unless each package shall have been distinctly marked by the shippers before shipment with the port of destination." The bill of lading was endorsed by *C. & Co.* to the plaintiff, a trader in Calcutta, who, on the arrival of the *Scindia* at that port, applied for delivery of the four casks; and it then appeared that they had been landed at Colombo. In a suit to recover the price of the goods,—*Held*, the defendant was estopped from alleging that the casks were not marked as stated in the bill of lading. It was open, however, to the defendant to prove that the casks did not on their arrival at Colombo bear the word "Calcutta," and thus to bring himself within the clause in the bill of lading exempting the ship from liability for obliteration or absence of marks; but on proof of this, in order to disentitle the plaintiff to succeed, the defendant must show that the absence or obliteration caused the landing at Colombo. It was found on the evidence that he had failed to do this, and a decree was given for the plaintiff. MADHUB CHUNDER DEY *v.* LAW . **13 B. L. R., 394**

10. ——————— *Liability for loss.—Absence of negligence.*—*A. & Co.* at Madras shipped by the B. I. S. N. steamer *Mahratta* a box of coral to be delivered to their agent *M.* at Bimlipatam. At the time of shipment they declared the

BILL OF LADING.—Construction—*continued.*

value and paid enhanced freight on account of such value. By the bill of lading the company undertook to deliver the case in good order at Bimlipatam to the consignee *M.*, subject to certain conditions annexed. By one of these conditions, if the consignee did not take delivery when the ship was ready to discharge, the goods might be warehoused at the merchant's risk, and the company's liability was to cease when the goods left the ship's side. The consignee did not take delivery at the ship's side, and the company's agent at Bimlipatam took the case to the Custom House, as he was bound to do by the regulations of the port. If the Superintendent of the Custom House had known that the case contained corals, it would have been placed in an inner room, but the company's agent did not know the contents of the case, and therefore was unable to give any such information to the Superintendent. While the case was lying at the Custom House, application was made on plaintiff's behalf to the company's agent for delivery of the case upon the usual guarantee. The agent refused to deliver the case without the production of the bill of lading. Afterwards the bill of lading was received from Madras and the case was delivered up. At some time between its leaving the ship's side and delivery to the consignee, the case was opened and a portion of the contents stolen. *Held*, that the defendants were not liable. MACKINNON, MACKENZIE, *v.* MINCHIN [6 Mad., 353

11. ——————— *Declaration of value and nature of contents.*—*A.* was the consignee and holder of a bill of lading signed by *B.* at Bombay, as master of the steam-vessel *John Bright*, for the safe carriage and delivery of a box addressed to *A.*, which in fact contained diamonds of the value of R11,670, three rubies, and three emeralds, in all of the value of R15,940. On the face of the bill of lading was printed, "This bill of lading is issued subject to the following conditions." One condition was that a "written declaration of the contents and value of the goods is required by the owner, and must be delivered by the shipper to the owner's agents with the bills of lading. A wrong description of contents or false declaration of value shall release the owner from all responsibility in case of loss, &c., and the goods shall be charged double freight on the real value, which freight shall be paid previous to delivery." The declaration in this case was contained in the following letter from the shipper to the agent of the ship-owner: "Dear Sir,—Be good enough to give me an order for a small box containing diamonds to the value of about R14,000, to be shipped on board the steamer *John Bright* for Calcutta. Yours, &c." The box was lost by the negligence of *B.* or his servants. In a suit by *A.* to recover "the value of the goods, *viz.*, R14,000,"—*Held*, that all the ship-owner was entitled to was that the shipper should make a declaration of what *bonâ fide* he believed to be the value. The declaration as to contents was not vitiated by the omission to enumerate all the different species of articles contained in the box. Upon the evidence, the declaration as to the value and nature of the contents was *bonâ fide*; therefore *A.* was entitled to recover the value of the diamonds lost. DHUNJEEBHOY BYRAMJEE MEHTA *v.* BETHAM . . . 2 Ind. Jur., N. S., 305

BILL OF LADING.—Construction—*continued.*

12. ——————— *Leakage.—Breakage.—Damage caused by leakage from other goods.*—Piece-goods were carried from London to Bombay under a bill of lading, the exceptions in which protected the master from "leakage, breakage, rust, decay, loss, or damage from machinery, boilers . . . . misfeasance, error in judgment, negligence or default of . . . . . persons in the service of the ship . . . and the ship not being liable for any consequences of causes therein excepted, however originating." The piece-goods, on their arrival in Bombay, were found to be damaged by oil and by chafing,—*i.e.*, by rubbing against other goods in the hold,—but there was no evidence to show how such damage was occasioned. *Held*, that the term "leakage" did not include leakage from other goods on to the piece-goods, nor did "breakage" include damage caused by chafing, and that, as no negligence was proved, the master was not protected by the exception "damage from negligence." GRAHAM *v.* HILLE [10 Bom., 60

13. ——————— ——————— *Leakage, Damage done by.—Provision for place of claim, Effect of, on jurisdiction of Court.*—Plaintiff shipped some bales of cloth from Calcutta to Rangoon under a bill of lading by which the defendants were bound to deliver,—accidents, loss or damages from fire, machinery, boilers, steam, and all the accidents of the sea, rivers, land-carriage and steam navigation, &c., excepted. On the voyage one of the boilers burst, and steam and water escaping, some of the bales were damaged. *Held*, that the damage was within the exceptions of the bill of lading, and therefore that the defendants were not liable to make good the loss. *Quære*,—Whether, notwithstanding the exceptions in the bill of lading, the defendants might not have been made liable in a suit on the implied warranty if it had been proved as a fact that the boiler was not reasonably fit for the voyage. BRITISH INDIA STEAM NAVIGATION CO. *v.* IBRAHIM MOOSUM . . 8 W. R., 35

14. ——————— *Loss by fire.—Carriers.—Wharfingers.*—Under the terms of a bill of lading, "goods were to be delivered from the ship's tackle as fast as the steamer could discharge, failing which the agents were to be at liberty to land the goods at their godowns;" the bill of lading further, among other exceptions, provided "that the ship-owners should not be liable for loss by fire." The steamer, on arriving at the port of discharge, came alongside the wharf, and commenced unloading at the custom-house godowns without giving the consignees the option of landing the goods from the ship's tackle. The consignees, however, did not object to the goods being landed at the godowns, and they paid, also without objection, a sum for the wharfage of a part of the goods in their godowns. *Held* that the ship-owners, if the goods placed in the godowns were in their possession as carriers, were protected under the clause of the bill of lading providing against fire, as much as if the fire had occurred on board ship; and on the other

BILL OF LADING.—Construction—*continued.*

hand, if the goods were in the possession of the ship-owners as wharfingers, they were not liable for the loss, inasmuch as the goods were destroyed by fire without any default on their part. CHIN HONG & Co. *v.* SENG MOH & Co.

[I. L. R., 4 Calc., 736 : 3 C. L. R., 585

15. ——————— *Charges for landing and wharfage.—Liability of consignees.*—A bill of lading, given by the defendants to the plaintiff for certain goods, contained a stipulation that the goods were to be taken from the steamer's tackles by the consignees as fast as the steamer could discharge, failing which, the steamer's agents were to be at liberty to land the same into godowns; the cost of lighterage, godown rents, &c., thereby incurred to be borne by the respective consignees. *Held*, that under this bill of lading the ship-owners were entitled to charge for landing and wharfage, only in default of the consignees failing to take the goods from the steamer's tackles within reasonable time. *Held* (*per* PONTIFEX, *J.*), that for the speedy discharge of their vessel the ship-owners were entitled to land and wharf the goods, though not to charge for landing and wharfage, unless the plaintiff had had an opportunity of landing the goods himself. COSSIM HOSSEIN SOORTU *v.* LEE PHEE CHUAN

[I. L. R., 5 Calc., 477 : 5 C. L. R., 157

16. ——————— *Loss by fire before delivery.—Exemption from liability.*—The defendant received goods on board his steamer under a bill of lading which exempted him from liability for loss occasioned "by the Act of God, the Queen's enemies, *fire*, and all and every other dangers and accidents of the seas, rivers, and navigation of whatsoever kind or nature," and lawfully landed them on the Custom-house Bunder at Bombay, where they were accidentally burned before they were delivered to the consignee. *Held*, that he was protected by the above exception in the bill of lading. HONG-KONG AND SHANGHAI BANKING CORPORATION *v.* BAKER

[6 Bom., O. C., 71

Held, on appeal, that so long as the goods remained in his custody after being so landed, he was protected from liability under the above exemption in the bill of lading . . . **S. C. 7 Bom., O. C., 186**

17. ——————— *Delivery in dock.—"Landing or cranage charges."—Practice of dock to recover from consignee.—Liability of ship-owner.*—Certain boilers consigned to the plaintiff in Bombay were shipped at Liverpool in two steamers belonging to the same owners, under two bills of lading in these terms: "Shipped in good order and condition, &c., to be delivered, subject to the exceptions and conditions hereinafter mentioned, in the like good order and condition, from the ship's tackles (where the ship's responsibility shall cease) at the aforesaid port of Bombay," &c. One of the exceptions and conditions above referred to was as follows: "The ship-owner shall have the option of discharging in dock, and of making delivery of the goods under the bills of lading either over the ship's side or from lighters, or a store-ship, or custom-house, or warehouse, at merchant's risk." Freight was prepaid in Liverpool. On their arrival at Bombay the two steamers went into the Prince's Dock, belonging to the Port Trust, and discharged the boilers, by means of the Port Trust cranes, on to the dock wharves. The plaintiff subsequently sent to remove the boilers, but was not allowed by the dock authorities to do so until he had paid to them various sums, amounting in the aggregate to R930, on account, as stated in the bill furnished him by the Port Trust, of "landing charges" for the said boilers. The bills also contained certain additional charges for "wharfage." These the plaintiff was ready to pay, but the "landing charges" he paid only under protest, and in order to get possession of his goods, and now sought to recover the same from the defendants, who represented the ship-owners. It was the practice of the Port Trust to recover these charges in all cases from the consignees of goods discharged in their dock, and the charge was said to be levied on all goods landed on the wharves of the dock, whether by the dock's cranes, or by the ship's own tackles. The charge was incurred the moment the goods touched the wharf. In their rates, sanctioned by Government, which by their Act the Port Trust were entitled to charge, this charge was called, not a "landing charge," but a "dock and cranage" charge. Had the plaintiff been given delivery of these goods in the stream, and afterwards himself landed them at any wharf belonging to the Port Trust in the Port of Bombay, the Port Trust would have sought to have made the same charge for allowing the goods to be landed, whether that was done by their appliances or not. *Held*, that the ship-owner, and not the consignee, was bound to pay these charges, they being in reality charges for work and labour done in and about the landing of the goods—an operation which, under the bills of lading, was within the duty of the ship-owner. *Per* LATHAM, *J.*—The ship having elected to discharge in the dock, it was her duty to land the goods on the wharf. Every charge which had to be incurred before that could be done, was a charge antecedent to delivery, and one, therefore, which must be paid by the ship-owner. SCOTT *v.* FINLAY . . . **I. L. R., 7 Bom., 386**

18. ——————— *"Weight, contents, and value unknown."—Act IX of 1856, s. 3.—Assignee of bill of lading for value.*—A bill of lading purporting to be for 50 tons of coals and containing a printed clause, "weight, contents, and value unknown," and similar words written above the signature of the master, does not amount to an admission by the master that he has received 50 tons of coal on board. Upon the true construction of the Bills of Lading Act (IX of 1856), section 3, a bill of lading in the above form is not, in the hands of a consignee for value, conclusive evidence against the master of the shipment of 50 tons. NICOL AND Co. *v.* CASTLE . . . . . **9 Bom., 321**

19. ——————— *Freight, Payment of.—Incorporation in bill of lading of terms of charter-party.—Cargo.—Freight payable on intake measurement.—Measurement at port of delivery.—*

BILL OF LADING.—Construction—*continued.*

Discrepancy in measurements.—Evidence—Burden of proof.—Suit by consignee for excess freight.—*K. V.* at Moulmein consigned to the plaintiff at Bombay 135 logs of teak timber shipped on board the defendant's ship. The bill of lading, which was signed by the defendant, described the logs as marked *K. V.*, and measuring tons 115-12-10, and it provided for the payment of freight thereon at Bombay, at the rate of ₨17 per ton of 50 cubic feet on right delivery. The last clause of the bill of lading was in the handwriting of the defendant, and was as follows: "Marks, number, quantity, and measurement unknown: all other conditions as per charter-party." The charter-party was expressed to be between the owners of the ship and Messrs. *B.*, of Rangoon, as charterers of the whole ship, and provided for the payment of freight "at the rate of ₨18 per ton of 50 cubic feet for all timber, one rate throughout, except 100 tons broken stowage at half freight, by intake measurement." On arrival of the ship at Bombay, the plaintiff, as consignee of the timber and holder of the bill of lading, paid the defendant (the captain of the ship) ₨1,500 on account of freight, and took delivery of the 135 logs. On measuring them he found that, according to his method of measurement, the total measurement of the 135 logs came only to tons 58-27-11-6, and not tons 115-12-10 as mentioned in the bill of lading. He claimed, therefore, to be chargeable with freight only on the smaller quantity (*viz.*, ₨995-8), and to recover from the defendant the difference (*viz.*, ₨504-8) between that sum and ₨1,500 paid on account as for an overpayment of freight. It was proved that all the timber on board had been measured at Moulmein by an employé of the charterers acting apparently as agent of all the different shippers, and that the measurements in the bills of lading were supplied by this person to the defendant as the measurements of the different consignments. It was also proved that the 135 logs received and measured by the plaintiff in Bombay were the same logs that were shipped under the bill of lading, and that the plaintiff's measurement of them was correct according to the mode of measurement which he adopted. There was no evidence as to what was the mode of measurement followed at Moulmein, nor, except the statements in the bill of lading, as to what was the actual intake measurement of the timber there. *Held*, that the effect of the last clause in the bill of lading was to incorporate into that document the clause of the charter-party which provided that freight should be payable on the intake measurement; that the burden of proving what the intake measurement actually was lay upon the plaintiff, who sought to recover back money which he alleged he had paid in excess of what was due; and that, in the absence of such evidence on behalf of the plaintiff, the statement of quantity contained in the bill of lading was *primâ facie* evidence of the intake measurement of the timber. CURSETJI RUSTOMJI SETNA *v.* WILLIAMS . . **I. L. R., 5 Bom., 313**

20. ——————— *Freight, Payment of.—Lien of ship-owner.*—Where a bill of lading, dated at the port of shipment, contains the words "freight for the said goods being paid here," it operates as a receipt for the freight. The ship-owner is not bound to deliver the same to the shipper until payment of the sum to be charged for the carriage of the goods; but such sum is not freight, and the ship-owner has no lien for the amount upon the goods, nor the bill of lading which represents them. SOOMAR JAFFER *v.* ABDOOL KURREEM **[I Ind. Jur., N. S., 230**

BILL OF LADING.—Construction—*continued.*

21. ——————— *Freight, Lien for, on cargo.—Advances on account of freight.—Master's lien for freight.—Charter-party.*—By a charter-party made in London, the ship *W.* was chartered to carry a cargo from Liverpool to Calcutta, where she was to load from the factors of the charterer a full homeward cargo to be carried by her to Europe. Freight for the whole round, out and home, was made payable on safe delivery of the homeward cargo, but at so much per ton of the outward cargo delivered in Calcutta. The master was to have a lien on the cargo for freight, &c.; cash not exceeding £800 was to be advanced to the ship in Calcutta on account of freight, but subject to insurance; and £600 was to be advanced by the charterer's acceptance at three months, or in cash under discount, at charterer's option, on the sailing of the vessel from Liverpool, less five per cent. for insurance. The charterer himself loaded the ship, and the master signed a bill of lading which declared the cargo to be shipped by the charterer to be delivered at Calcutta, as the agents of the charterer might direct, unto order or to his assigns, freight to be paid as per charter-party. In the margin of the bill was written, "Received in advance of the within freight, £600 as per charter-party." The £600 had been paid, not in cash, but by the charterer's bill at three months. The charterer became bankrupt and the bill was dishonoured, and the fact of the bankruptcy and dishonour was known in Calcutta when the ship arrived there. On the ship's arrival in Calcutta, *J. O. & Co.*, who were the holders for value of the bill of lading, demanded delivery of the cargo. The master claimed a right of lien, and refused to deliver unless *J. O. & Co.* would pay the £600 bill which had been dishonoured, and would further advance £800 for the ship's use, and load a homeward cargo, according to the terms of the charter-party. *Held*, that *J. O. & Co.* took the bill of lading with notice of the charter-party, but that, under the circumstances, the master had no lien, and was bound to deliver the cargo to *J. O. & Co.* OGLE *v.* NASHHOLM . **Bourke, O. C., 171**

22. ——————— *Freight, Lien for, on cargo.—Advances on account of freight.—Lien of owners.*—Goods were shipped deliverable to the order of the shippers or their assigns. The bill of lading stated that "freight for said goods was to be paid as per charter-party, with average accustomed, reserving lien in full on cargo for full amount as stipulated therein." The charter-party showed "that *H. & Co.* undertook to supply a full cargo for the ship, and that *R. H.*, agent for the ship, agreed with *H. & Co.* that the said ship should proceed to London dock, or any other suitable dock,

BILL OF LADING.—Construction—*continued.*

for loading salt at party's option, or so near thereto as she can safely get, to be at all times afloat and in safety, and then load for the charterer's agent a full and complete cargo of salt, not exceeding what the master considers sufficient cargo, which the charterers engage to ship, not exceeding what she can reasonably carry with her stores, provisions, and furniture, and being so loaded shall therewith proceed to Calcutta, or so near thereto as she may safely get, and there deliver as per bills of lading, and on being paid freight at the rate of twenty-three shillings per ton." The freight to be paid thus: "£500 by charterer's acceptance at two months on sailing, less 2½ per cent. insurance; or cash on sailing, less 5 per cent. interest and insurance, at charterer's option, and the balance in cash on delivery as master requires, at current rate of exchange; 2 per cent. commission to charterers in lieu of consignment." *Held*, that "a sum of money payable before the arrival of the ship at her port of discharge, and payable by the shippers of the goods at the port of shipment, is not freight in the strict legal acceptation of the term, with all the incidents of freight in giving the ship-owner the right of lien, unless it is stipulated for." Here the owners had a lien upon the goods for freight, notwithstanding that the bill of exchange for £500 had been given. THOMAS *v.* OGLE

[Bourke, A. O. C., 100

23. ——————— *Freight, Lien for, on cargo.—Advances on account of freight.—Dishonour of bills.*—The captain of a ship has no lien on the cargo in respect of a portion of the freight stipulated to be advanced, and advanced by bills afterwards dishonoured, nor in respect of a portion of the freight stipulated to be advanced at the port of discharge. A lien cannot arise in any case when the master has not a right to retain the goods till the freight is paid. Such advances are not freight, but advances to be made under discount, and upon the security of the captain's bill on the freighter. The master has no lien at law or in equity in respect of breaches of covenants in the charter-party, other than those relating to the payment of freight for goods actually carried. PENINSULAR AND ORIENTAL STEAM NAVIGATION COMPANY *v.* SMALL

[Bourke, O. C., 309

24. ——————— *Claim for short delivery.—Place for preferring claim.—Condition precedent.*—Where a bill of lading contained a clause to the following effect: "Any claim for short delivery or damage done to goods, and all other claims whatsoever to be made at the port of Calcutta, and at no other port, and the goods are shipped and this bill of lading granted subject to this express condition," it was held by the Recorder of Rangoon to operate so as to make the preferring of a claim in Calcutta a condition precedent to a suit in this Court. *Held*, by the High Court, that this opinion was correct, and that a suit for short delivery, under the bill of lading, could not be maintained without a claim being made in Calcutta. MAHOMED ISHMAILJEE NADA *v.* THE BRITISH INDIA STEAM NAVIGATION COMPANY

[9 W. R., 396

BILL OF LADING.—Construction—*continued.*

25. ——————— *Claim for short delivery.—Place for preferring claim.*—A bill of lading contained a provision that any claim for short delivery or for damage done to goods should be made at the port of Calcutta and not elsewhere. *Held*, that this clause did not affect the plaintiff's right of suit in the Court at Rangoon, and that if the defendants meant to object that no claim had been made in Calcutta before the commencement of the suit, they should have done so in proper time, *viz.*, in their written statement. An objection on that ground taken for the first time at the hearing of the appeal was disallowed. THE BRITISH INDIA STEAM NAVIGATION COMPANY *v.* IBRAHIM MOOSUM

[8 W. R., 35

26. ——————— *Claim for short delivery to be made at a certain place within a certain time.—Reasonable condition.—Common carrier, Liability of.—Carriers Act, III of 1865.*—A stipulation by persons carrying on extensive business as carriers that they should be apprised of claims made on them for default on the part of their servants, at a specified place and no other, and within a time which will render enquiry likely to be attended with some result, is not unreasonable. The defendants were owners of a fleet of steam-ships plying periodically along the coasts of British India, by which they undertook to convey for freight parcels of goods for all persons indifferently from and to specified ports. They stipulated in their bills of lading that claims for short delivery should be made at the port of Calcutta only, within one month after delivery, of any portion of the goods entered in the bill of lading. *Held*, in a suit against defendants for compensation for value of goods short delivered, that this was not an unreasonable stipulation, and that a claim made on the agents of the defendants, who were authorised only to retain the goods, receive freight, and give delivery, was not a sufficient compliance with the condition. *Held*, also, that defendants were common carriers, though not for the purposes of the Indian Carriers Act, and that their character of carriers continued so long as the goods remained in their hands and undelivered. BRITISH INDIA STEAM NAVIGATION COMPANY *v.* HAJEE MAHOMED ESACK & Co. . . . . **I. L. R., 3 Mad., 107**

BILL OF SALE.

See CASES UNDER EVIDENCE—PAROL EVIDENCE—VARYING OR CONTRADICTING WRITTEN INSTRUMENTS.

See VENDOR AND PURCHASER—BILLS OF SALE.

BILLS OF EXCHANGE ACT, V OF 1866.

See NEGOTIABLE INSTRUMENTS, SUMMARY PROCEDURE ON—

BILLS OF EXCHANGE, POWER TO ISSUE—

See COMPANY—POWERS, &c., OF DIRECTORS . . . 7 B. L. R., 58
[I. L. R., 5 Bom., 92
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BILLS OF EXCHANGE—PRESUMPTION OF PAYMENT.

See SHIPMENTS . 5 B. L. R., 619

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See OUDH ESTATES ACT.
[I. L. R., 4 Calc., 836

BLINDNESS.

See HINDU LAW—INHERITANCE—DIVESTING OF, EXCLUSION FROM, &c.—BLINDNESS . . 2 B. L. R., F. B., 103
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BLANK STAMPED PAPERS, SIGNATURE ON—

See ESTOPPEL—ESTOPPEL BY DEEDS, &c.
[I. L. R., 5 Calc., 39

BLANK TRANSFER, REGISTRATION OF—

See COMPANY—TRANSFER OF SHARES, &c.
[I. L. R., 8 Calc., 317

BOARD OF REVENUE, POWERS OF—

See SETTLEMENT—MISCELLANEOUS CASES.
[3 B. L. R., Ap., 82

BOABD OF REVENUE, SANCTION OF—

See PARTITION—MISCELLANEOUS CASES.
[5 B. L. R., 135

BOARDING-HOUSE KEEPER.

See INNKEEPER AND GUEST.
[3 Bom., O. C., 137

BOMBAY ABKARI ACT, 1878, s. 3 and s. 56.

See AUTREFOIS ACQUIT.
[I. L. R., 10 Bom., 181

1. ——— ss. 14, 20, 64, 65, 66, and 67. — *Tree.* — *Toddy-producing tree* — The words "any tree" in section 14 and "every toddy-producing tree" in section 20 of the Bombay Abkari Act V of 1878, mean all trees in the Bombay Presidency to which the Act applies, from which toddy is drawn or produced, and not merely those in regard to which no special rights of drawing toddy previously existed. ARDESIR JEHANGIR *v.* THE SECRETARY OF STATE FOR INDIA . . . I. L. R., 6 Bom., 398

BOMBAY ABKARI ACT, 1878, s. 24.

See BOMBAY REVENUE JURISDICTION ACT (X OF 1876) . I. L. R., 9 Bom., 462

2. ——— s. 24.—*Juice of toddy-producing trees.—Land revenue.—Per* BIRDWOOD, *J.*—The expression "land revenue" as used in Act X of 1876 does not include either the duties leviable, under Regulation XXI of 1827, on the manufacture of spirits, or the taxes on the tapping of toddy trees, the levy of which in certain districts was legalised by section 24 of the Bombay Abkari Act, No. V of 1878. A farmer of duties on the manufacture of spirits is not authorised to levy a duty on any juice in trees, either under Regulation XXI of 1827, or Act X of 1876, or Bombay Act V of 1878. Juice in toddy-producing trees is not spirit, which includes toddy in a fermented state only. NARAYAN VENKU KALGUTKAR *v.* SAKHARAM NAGU KOREGAUMKAR
[I. L. R., 9 Bom., 462

3. ——— ss. 43 and 53.—*Abkari—Possession of distilling materials.*—Mere possession, without a license, of utensils for distilling liquor, is not an offence punishable under section 43 of the Abkari Act (Bombay), No. V of 1878. It is only in cases where such possession is not satisfactorily accounted for that, under section 53, it is to be presumed, until the contrary is proved, that a person in possession of such utensils has committed an offence under section 43. QUEEN-EMPRESS *v.* PESTANJI BARJORJI
[I. L. R., 9 Bom., 456

4. ——— ss. 43, cl., *f*, and 53.—*Mowa flowers, Possession of.—Liability of seller of the flowers where purchaser makes illicit use by distilling liquor therefrom.—Burden of proof.*—Mere possession of mowa flowers does not constitute an offence under section 43 of the Abkari Act V of 1878, unless such possession is made out by the prosecution to have been for the purposes of distilling liquor therefrom. Nor is a seller of these flowers criminally responsible for any illicit use of them after they have passed from his control. IN RE THE PETITION OF LIMDA KOYA . I. L. R., 9 Bom., 556

BOMBAY ACT—1862—V.

1. ——— *Bhagdari tenure.—Partition among narvadars, bhagdars.*—There is nothing in Bombay Act V of 1862 which debars a Civil Court from making a decree for the partition of narvadari land among the bhagdars, even though such partition may cause a further division of recognised subdivisions of bhags. VERIBHAI *v.* RAGABHAI
[I. L. R., 1 Bom., 225

2. ——— *Bhagdari tenure.—Dismemberment of bhag.—Narva.—Bhag.—Alienation previous to Bombay Act V of 1862.*—The principal object of Bombay Act V of 1862 is to prevent the further dismemberment of bhags or shares in bhagdari villages: it renders null and void any future alienation of any portion of a bhág, other than a recognised subdivision, but it does not invalidate previous alienations. A sale of a portion of a bhag, previously to the passing of Bombay Act V of 1862, amounts to a dismemberment of the bhag, and what remains in the bhag-

BOMBAY ACT—1862—V—*continued.*

dar's hands continues to be a complete bhag, while the portion separated from it becomes a new bhag. BHAI SHANKER *v.* THE COLLECTOR OF KAIRA **[I. L. R., 5 Bom., 77**

3. ———— *Bhagdari tenure.—Purchase by stranger of building erected on gabhan.*—In a suit brought by a *bhagdari*, or shareholder in a bhagdar village, to recover possession of a *gabhan*, or building-site, and a *vada*, or homestead, appurtenant to his bhag, from a stranger who had purchased at an auction sale a building erected on the *gabhan* by a third person with the bhagdar's consent,—*Held* (reversing the decision of the District Court), that the purchaser of the building had only acquired a right to remove the building materials, and that he had no right, by reason of his having purchased the building, to continue, without the bhagdar's consent, in possession of the *gabhan* and *vada*, which by the Bhagdari Act could not be alienated apart or separately from the bhag, or some recognised subdivision thereof. PRANJIVAN GAVAN *v.* JAISHANKAR BHAGVAN . **4 Bom., A. C., 46**

4. ———— *Bhagdari tenure.—Alienation of less than the whole of a bhag.—Power of Collector to declare such alienation void.—Suit to have the declaration set aside.*—In 1860, prior to the coming into force of the Bombay Bhagdari Act, V of 1862, *W.*, a recognised holder of a bhag in the Broach district, divided it equally among his four sons, *A.*, *B.*, *C.*, and *D.*, who immediately entered into possession of their respective shares. In 1876 *A.* and *C.* sold their shares to the plaintiff. *B.* and *D.* protested against the sale as being a dismemberment of a bhag; and the plaintiff was called upon by the Collector, under section 3 of the Act, to deliver the deed to be cancelled, but declined to do so, and applied that the sale should be recognised. By an order the Collector refused to grant his prayer. The plaintiff, therefore, brought a suit to set aside the order. Both the lower Courts rejected his claim. On appeal to the High Court,—*Held*, confirming the decree of the lower Appellate Court, that the sale to the plaintiff, having been effected after the Bombay Bhagdari Act (V of 1862) had come into force, was void. A bhag, as contemplated by the Act, would seem to mean an aliquot share of a village subject to an aliquot portion of the total land-tax imposed on it, and not any subdivision by partition or otherwise. *Bhai Shankar* v. *Collector of Kaira, I. L. R. 5 Bom., 77*, distinguished. GOLAM NAROTAM *v.* THE SECRETARY OF STATE FOR INDIA IN COUNCIL . . . **I. L. R., 8 Bom., 596**

5. ———— **ss. 1 and 2.**—*Sale of unrecognised portion of a bhag.—Application by Collector to set it aside.*—*N.* held an unrecognised fourth share in a certain bhag. *R.* obtained a decree against *N.*, and in execution of it sold his right, title, and interest in the bhag on the 28th February 1876. It was purchased by *B.* The sale was subsequently confirmed, and *B.* was put in possession of a portion of the land. On the 30th September 1880 the Collector applied to the Court to set aside the sale, on the ground that it was illegal under Bombay Act V of 1862. It appeared that the Collector did not know till November 1877 that the land sold was an unrecognised portion of the bhag, and not the whole of it. *Held*, that the sale might be set aside under the provisions of section 2 of Act V of 1862, notwithstanding its confirmation and the subsequent delivery of possession. *Quære*,—Whether any provision of limitation applied to such applications under the Bhagdari Act. COLLECTOR OF BROACH *v.* RAJARAM LALDAS **[I. L. R., 7 Bom., 542**

6. ———— **ss. 1 and 3.**—*San mortgage.—Bhagdari and narvadari tenures.—Mortgage before passing of the Act.—Execution of decree.—Operation of Act.*—The plaintiff, in 1874, sued on a *san* mortgage, dated 15th November 1861,—*i.e.*, five months before the passing of Bombay Act V of 1862,—to recover a sum of money by sale of the mortgaged property, which formed part of a bhag in a bhagdari village, which bhag the defendant had purchased at a Court's sale subsequent to the date of the mortgage. *Held* (assuming section 1 of the Act to apply), that it does not bar the right of action; that, therefore, a Civil Court would be bound to make a decree, even though it might anticipate that section 1 of the Act would stand in the way of the execution of that decree. *Semble*,—That, after a decree has been passed against a portion of a bhag, the Collector might recognise such portion as a division of the bhag, if assured that justice required that the decree should be executed. *Held*, further, that no retrospective operation can be given to section 1 of the Act, so as prejudicially to affect existing rights. The words "attachment or sale by the process of any Civil Court," used therein, were intended to prevent attachment and sale under simple money-decrees, and not to prevent the sale of mortgaged property in satisfaction of a valid mortgage. RANCHODDAS DOYALDAS *v.* RANCHODDAS NANABHAI **[I. L. R., 1 Bom., 581**

7. ———— *Sale of unrecognised portion of a bhag.—Application by Collector to set it aside.—Limitation Acts, IX of 1871 and XV of 1877, sch. II, art. 178.*—No law of limitation applies to proceedings taken by a Collector under Bombay Act V of 1862. The words in the first section of that Act, "no portion of a bhag, &c., shall be liable to seizure, sequestration, attachment, or sale by the process of any Civil Court," mean that no portion of a bhag shall be seized, sequestered, attached, or sold by the process of any Civil Court, and any such seizure, sequestration, attachment, or sale is thereby rendered absolutely illegal and void. Section 3 of the Act has no bearing on sales by order of a Civil Court, but is intended to apply to unlawful sales and alienations of portions of bhags made out of Court, or by private individuals. It is under section 2 that the Collector is authorized and bound to move in order to get the process of a Civil Court set aside or quashed. COLLECTOR OF BROACH *v.* DESAI RAGHUNATH **[I. L. R., 7 Bom., 546**

8. ———— **s. 3.**—*Bhagdari and narvadari tenures, Sale of unrecognised portion of.—Civil Procedure Code, 1859, s. 213.—Undivided share, Sale of.—Partition.*—The sale of a portion of a bhag or share in a bhagdari or narvadari village, other than a re-

BOMBAY ACT—1862—V—*continued.*

cognised subdivision of such bhag or share, or of a building site appurtenant to it, is illegal under section 3 of Bombay Act V of 1862; and a judgment-creditor cannot, in execution of his decree, evade the law by describing his debtor's separate portion in a bhag as his "right, title, and interest in the whole bhag;" for, under section 213 of the Code of Civil Procedure, the creditor is bound to specify the debtor's share or interest to the best of his belief, or so far as he has been able to ascertain the same. *Quære,* —If the sale of an undivided share in a bhag be lawful; but even if it be, the purchaser cannot insist upon the possession of any particular portion of the bhag, as representing the share of his debtor. All he can do is to sue for partition. But *quære* if such partition could be made. ARDESIR NASARVANJI *v.* MUSE NATHA AMIJI . . I. L. R., 1 Bom., 601

——— VI (Talookdari Act).

See LAND REVENUE . 12 Bom., Ap., 276

See SERVICE TENURE.
[I. L. R., 1 Bom., 586

——— Operation of Act.—*Right of alienation in Ahmedabad Zillah.*—The Bombay Talookdari Act (Bombay Act VI of 1862) did not affect talookdari villages, the right, title, and interest of the talookdar in which had been sold before that Act came into operation, though possession of such villages had not then been obtained by the purchaser. *Quære,*—As to the right of talookdars in the Ahmedabad Zillah to alienate their talookdari villages. COLLECTOR OF AHMEDABAD *v.* SAMALDAS BECHARDAS
[9 Bom., 205

——— 1863—II.

See SETTLEMENT—EFFECT OF SETTLEMENT.
[1 Bom., 171

——— s. 6, cl. 2.—*Non-recognition of adoption.—Provision for benefit of Government only.*—The provision in Bombay Act II of 1863, section 6, clause 2, as to the non-recognition of adoption by any Civil Court, relates only to the question of the assessability of lands when raised between Government and a claimant of exemption. It is not open to a party to rely upon a provision, of which Government only is entitled to take advantage. VASUDEV ANANT *v.* RAMKRISHNA AND SHIVRAM NARAYAN
[I. L. R., 2 Bom., 529

——— s. 8, cl. 3.

See ENDOWMENT.
[I. L. R., 5 Bom., 393

See HINDU LAW—ENDOWMENT—ALIENATION OF ENDOWED PROPERTY.
[I. L. R., 10 Bom., 34

——— III.

See DISTRICT JUDGE, JURISDICTION OF—
[5 Bom., A. C., 26

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS—BOMBAY.
[11 Bom., 39

BOMBAY ACT—1863—VI.

See MASTER AND SERVANT.
[I. L. R., 7 Bom., 119

——— VII.

See LAND REVENUE.
[12 Bom., Ap., 1, 225, 276

——— s. 2.

See SERVICE TENURE.
[8 Bom., A. C., 195
I. L. R., 9 Bom., 198

——— ss. 2, 6, 9.

See CONTRACT ACT, ss. 69, 70.
[I. L. R., 6 Bom., 244

See CONTRIBUTION, SUIT FOR—VOLUNTARY PAYMENTS.
[I. L. R., 6 Bom., 244

——— s. 7.

See SETTLEMENT—EXPIRATION OF SETTLEMENT . . I. L. R., 4 Bom., 367

——— ss. 27 & 32.

See DUTIES.
[2 Bom., 253: 2nd Ed., 239

——— s. 32.

See JURISDICTION OF CIVIL COURT—REVENUE . . 5 Bom., A. C., 202

——— IX.

See APPEAL IN CRIMINAL CASES—ACTS—BOMBAY COTTON FRAUDS ACT.
[3 Bom., Cr., 12

See CASES UNDER COTTON FRAUDS ACT.

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—BOMBAY ACT IX OF 1863.
[3 Bom., Cr., 12

——— 1864—V.

See EXECUTION OF DECREE—MODE OF EXECUTION—GENERALLY.
[5 Bom., A. C., 158

See HIGH COURT, JURISDICTION OF—HIGH COURT, BOMBAY—CIVIL.
[9 Bom., 249

See JURISDICTION OF REVENUE COURT—BOMBAY REGULATIONS AND ACTS.
[I. L. R., 1 Bom., 624

See LIMITATION ACT, 1877, ARTS. 13 AND 47 (1859, s. 1, CL. 5 AND CL. 7).
[10 Bom., 479

See MAMLATDAR, JURISDICTION OF—
[5 Bom., Cr., 46

See PENAL CODE, s. 188.
[3 Bom., Cr., 53
5 Bom., Cr., 21

See RIGHT OF SUIT—COSTS.
[8 Bom., A. C., 29

BOMBAY ACT—1865—I.

1. ——— *Revenue survey.—Entry of tenants in Registers.—Landlord and tenant.*—The mere entry of the names of the tenants of a khot in the Government registers as occupants under the Revenue Survey Act, No. I (Bombay) of 1865, does not constitute an injury to the landlord of a tangible kind, of which the Civil Courts can take cognizance. The khot's rights as landlord, if they can be established, cannot be prejudiced by any proceeding under the Survey Act, there being nothing in that Act, or the rules framed under it, which affects the rights of subjects of the Government *inter se.* The utmost benefit which the tenants can derive, as against their landlord, from being entered as occupants under the Act, is a right to claim a deduction of the amount of assessment paid by them direct to the Government. If they deny his title, he can sue them either to establish his title and recover the full rent due to him under his contract with them, or to eject them as holding possession of his lands by a title which they themselves repudiate. BAM *v.* SURVEY COMMISSIONER AND THE COLLECTOR OF RATNAGIRI
[I. L. R., 3 Bom., 134

2. ——— *Bom. Reg. XVII of 1827.—Building-sites in towns before Bom. Act IV of 1868.—Semble,*—That Bombay Regulation XVII of 1827 and Bombay Act I of 1865 were not applicable to building-sites in towns and cities, until Bombay Act I of 1865 was expressly made applicable to such sites by Bombay Act IV of 1868. DADABHAI NARSIDAS *v.* SUB-COLLECTOR OF BROACH
[7 Bom., A. C., 82

3. ——— *Revenue survey.—Boundary dispute.*—" Boundary dispute," as used in the Survey Act (Bombay Act I of 1865), means a contention between two neighbouring land-proprietors as to where a boundary line or boundary marks has or have been fixed by the survey officers. After the functions of the latter officers have ceased in a district, the Collector, acting under Act III of 1846, is the proper officer to determine such a dispute, and fix the proper position of the boundary marks. But where a landholder claims to recover from a neighbouring holder land alleged to have been usurped or encroached upon by the latter, the person aggrieved must file his plaint in Court (which in the case of a claim for mere possession may be the Court of the Mamlatdar or the ordinary Civil Court), where the determination of the Collector as to the proper position of the boundary line or marks (although it of itself confers or withdraws no right of possession) affords valuable evidence in adjudicating upon the rights of the parties. PITAMBAR DHARI *v.* SAMBHAJIRAV
8 Bom., A. C., 185

——— s. 11.

See KHOTI TENURE . 7 Bom., A. C., 41

——— *Entry into private house for survey purposes.—Quære.*—Whether section 11 of Act I of 1865 (Bombay) justifies surveyors in entering private houses for the purpose of measuring them. REG. *v.* BHAGTIDAS BHAGVANDAS
[5 Bom., Cr., 51

BOMBAY ACT—1865—I, s. 14.

See INSPECTION OF DOCUMENTS.
[11 Bom., 231

——— s. 25.

See LAND REVENUE.
[12 Bom., Ap., 1, 225

——— s. 25.—*Power of Government to raise assessment.—Bom. Reg. XVII of 1827, s. 4, cls. 2 & 3.*—The words in section 25 of Bombay Act I of 1865 confer upon Government no absolute power in all cases to fix any assessment they may please. But that section, as also section 4, clause 2, Regulation XVII of 1827, distinctly limit the power of Government to raise the assessment on land held partially exempt by right. Government, however, may set aside such limitations at their discretion by a Legislative enactment, as provided by clause 3 of the above Regulation. But Government can exercise this power only under "specific" rules. In Bombay Act I of 1865, section 25, no such "specific" rules are to be found as would indicate that the Legislature intended to set aside the provisions of clause 2, section 4, Regulation XVII of 1827, and to enable the revenue officers to ignore all exemptions except those which they may themselves choose to recognise. Where plaintiff had enjoyed "Savai sut" or a remission of one fourth for a period of more than thirty years with respect to lands on which assessment became leviable in 1805 A.D. he was held by the High Court to have established a prescriptive right to such a remission. COLLECTOR OF COLABA *v.* GANESH MARESHVAR MEHENDALE
[10 Bom., 216

——— s. 32.—*Village cattle.—Sanction of Revenue Commissioners to grazing.*—The phrase "village cattle" in section 32 of Bombay Act I of 1865 does not include the cattle of any roving grazier who may choose to squat for a few months on the public ground of a village. That Act does not vest the right of sanctioning such a diversion of the village grazing ground in the villagers themselves, but in the Revenue Commissioner, whose consent must be obtained. COLLECTOR OF THANA *v.* BAL PATEL
[I. L. R., 2 Bom., 110

——— s. 34.

See LIMITATION ACT, 1877, ART. 144—ADVERSE POSSESSION.
[I. L. R., 8 Bom., 585

——— ss. 35, 48.—*Power of local legislature.—Government land.—Suit to set aside attachment on land.—Building, Erection of.*—In a suit for setting aside a summary attachment, under Bombay Act I of 1865, placed by the Collector on land held on a settlement for a period not exceeding thirty years, the value was held to be five times the assessment, and the stamp duty calculated upon it, irrespective of the actual market value, or the amount for which the land was attached. The holder of a cocoanut cart in Bandora, in the island of Salsette, in the Thana district, paying an annual assessment of R39 to Government, built a bungalow upon it without the permission of the Collector, who under the

BOMBAY ACT—1865—I, ss. 35, 48—*continued.*

rule purporting to have been issued by the Government of Bombay on the 1st February 1869 in accordance with the provisions of section 35 of Bombay Act I of 1865, demanded from him a fine equal to sixty times the assessment, and on the plaintiff's failure to pay the fine, summarily attached the land under the provisions of section 48 of that Act. *Held (1st)*,—That the Government of Bombay had no authority to make the rule of 1st February 1869, and that section 35 of the Survey Act providing no penalty for building without the Collector's permission, the attachment was illegal. *Secondly*,—That the expressions "Government Land" and "Land belonging to Government" in Bombay Act I of 1865 mean land of which Government is the proprietor, and do not apply to land in which the proprietary right in the soil vests in a private individual, whether or not it be subject to the payment of assessment to Government. *Quære*,—Whether the amount of the fine contemplated in section 35 of Bombay Act I of 1865, if not paid, is a charge leviable by summary attachment under section 48. COLLECTOR OF THANA *v.* DADABHAI BOMANJI . I. L. R., 1 Bom., 352

——— **s. 36.**—*Revenue survey.—Right of tenant to hold land on paying ordinary assessment.—Usage having force of law.*—Section 36 of Bombay Act I of 1865, applies only to lands to which a revenue survey has been extended under that Act. Prior to the passing of the above Act, by usage having the force of law, Government was unable to eject an ordinary tenant of land so long as the latter was willing to pay the reasonable assessment upon the land occupied by him. This usage might be limited or varied by special contract,—*e.g.*, by the terms of a lease inconsistent with it. DULIA KASAM *v.* ABRAMJI SALE [8 Bom., A. C., 11

——— **s. 38.**

See KHOTI TENURE . 7 Bom., A. C., 41

——— **s. 40.**

See LANDLORD AND TENANT—PROPERTY IN TREES PLANTED ON LAND. [6 Bom., A. C., 188

——— **s. 42.**—*Survey settlement.—Notice of increased assessment.*—Section 42 of (Bombay) Act I of 1865 (which prohibits an occupant from relinquishing his holding, unless he gives a written notice to the Collector on or before the 31st of March in each year) is not applicable only to the holders of land under a survey settlement, but by implication imposes on the revenue officers the obligation of giving the holder notice when an increased assessment is about to be demanded from him, within a reasonable time before the latest date on which he can exercise his right of relinquishing his lands. GOVIN VINAYAK GADRE *v.* COLLECTOR OF RATNAGIRI [6 Bom., A. C., 101

——— **s. 48.**

See s. 35 . . I. L. R., 1 Bom., 352

See LAND REVENUE [I. L. R., 1 Bom., 70

BOMBAY ACT—1865—I.

——— **s. 49.**

See LAND REVENUE. [12 Bom., Ap., 1, 225

——— **II.**

See MUNICIPAL TAX . 9 Bom., 217

See SERVICE TENURE. [I. L. R., 9 Bom., 198

——— **ss. 4 & 11.**

See RIGHT OF SUIT—MUNICIPAL OFFICERS, SUITS AGAINST— [5 Bom., O. C., 145

——— **ss. 131 & 160.**

See INJUNCTION—SPECIAL CASES—PUBLIC OFFICERS WITH STATUTORY POWERS. [8 Bom., O. C., 85

——— **s. 240.**—*Ejectment, Suits for.—Suit for mesne profits of land for which plaintiff sues in ejectment.*—Bombay Act II of 1865, section 240, does not apply to suits in the nature of an action of ejectment. *Quære*,—Whether a claim to recover the mesne profits of land for which the plaintiff sues in ejectment comes within the provisions of Bombay Act II of 1865, section 240. *Price* v. *Khilat Chandra Ghose, 5 B. L. R., Ap., 50*, and the judgment of PHEAR, *J.*, in *Poorno Chandra Roy* v. *Balfour 9 W. R., 535*, approved. SAKABJI NASSARVANJI DANDAS *v.* JUSTICES OF THE PEACE FOR THE CITY OF BOMBAY . . . . 12 Bom., 250

——— **III.**

See CONTRACT—WAGERING CONTRACT [12 Bom., 51 I. L. R., 9 Bom., 358

See PROMISSORY NOTE. [8 Bom., A. C., 131

——— **IV.**

See SUBSISTENCE MONEY. [5 Bom., A. C., 84

——— **1866—II.**

See JURISDICTION OF CIVIL COURT. [6 Bom., A. C., 72

——— **III.**

See CASES UNDER GAMBLING.

——— **s. 1, cl. 2.**—*Act, Interpretation of.—Three miles.—Held*, that the words "three miles" in (Bombay) Act III of 1866, section 1, clause 2, must be construed as three miles measured in a straight line along the horizontal plane, that being the most convenient meaning of the words, and the most capable of being ascertained. REG. *v.* BHIKOBA VINOBA . . . . 4 Bom., Cr., 9

——— **VII.**

See HINDU LAW—DEBTS. [2 Bom., 64: 2nd Ed., 61 10 Bom., 361 I. L. R., 8 Bom., 220

BOMBAY ACT—1866—VIII.

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—BOMBAY ACT VIII OF 1866. [I. L. R., 4 Bom., 167

——— X, s. 1, cl. 7.

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—BOMBAY ACT V OF 1879. [I. L. R., 8 Bom., 591

——— 1867—III—(Military Cantonments).

See SANCTION TO PROSECUTION—NATURE, FORM, AND SUFFICIENCY OF SANCTION. [7 Bom., Cr., 87

See SENTENCE—IMPRISONMENT—IMPRISONMENT AND FINE . 7 Bom., Cr., 87

——— IV.

See MUNICIPAL TAX . 9 Bom., 217

See RIGHT OF SUIT—MUNICIPAL OFFICERS, SUITS AGAINST— [5 Bom., O. C., 145

——— VII.

See BOMBAY DISTRICT POLICE ACT.

——— VIII.

See BOMBAY VILLAGE POLICE ACT.

——— 1868—IV.

See BOMBAY ACT I OF 1865. [7 Bom., A. C., 82

1. ——— *Liability to assessment.—Possession without payment of land in a town.*—Where land in a town in the Presidency of Bombay was found to have been in plaintiff's possession from 1858 to 1871, without any payment by him of land revenue to Government,—*Held*, that it was not liable to pay assessment under Bombay Act IV of 1868. VRIJAVALABHDASS KHUSHALDAS *v.* COLLECTOR OF AHMEDABAD . . 10 Bom., 190

2. ——— s. 5, cl. 1, para. 2.—*Bombay Act I of 1865.—Building-sites.—Exemption from payment of Government land revenue.*—On the 6th April 1836, the Collector of Ahmedabad demised by lease a building-site in that city to the plaintiff's grandfather for a term of ninety-nine years. No rent was reserved by the lease as then presently payable, but it contained a provision that the lessee should pay, in respect of the said site, such land tax as might "fall upon all." The lessee and his heirs held the site from the date of the lease down to 1878 without paying or being required to pay any land tax or rent to Government. In 1878, however, Government levied from the plaintiff R2-11-0 as land revenue assessed on the site. Plaintiff thereupon sued the Collector of Ahmedabad for recovery of the amount, on the ground that the assessment and levy were illegal. *Held*, that the plaintiff's building-site was exempted from liability to assessment by Bombay Act IV of 1868, section 5, clause 1, paragraph 2,

BOMBAY ACT—1868—IV s. 5, cl. 1, para. 2—*continued.*

which enactment applied to the case. *Held*, also, that this exemption was not to continue beyond the term for which the site had been demised by Government, but that on its expiration it would be open to Government to resume the land altogether, or to re-let it on such terms as to assessment, or otherwise, as might be the pleasure of Government. The origin of Bombay Act IV of 1868 mentioned, and the provisions contained in it, relating to exemption from the payment of assessment, referred to and discussed. COLLECTOR OF AHMEDABAD *v.* BALABHAI KEVALDAS . . . . I. L. R., 4 Bom., 505

——— s. 15.

See INSPECTION OF DOCUMENTS. [11 Bom., 231

——— 1869—III—s. 8.

——— *Local cess.—Landlord and tenant.—Fraudulent collection of cess.*—The plaintiffs sued to recover back from the defendant the amount levied by him as local cess on certain *wanta* lands belonging to the plaintiffs, the defendant claiming to be the superior holder of the village in which the lands were situated. The amount was levied by the defendant through the assistance of the mamlatdar under Bombay Act III of 1869, section 8. The defendant contended that, in consequence of a demand from Government, he had paid local cess on the whole of his talooka, including the village in which the plaintiffs' lands were situated, and was therefore entitled, under sections 69 and 70 of the Contract Act (IX of 1872), to recover from them the amount which he had paid to Government as a portion of the cess which rateably fell upon their lands. It was found that the defendant was not the proprietor of the lands held by the plaintiffs, and that the relation of landlord and tenant did not exist between them; also that defendant paid local cess for the plaintiffs' lands fraudulently and with the intention of thereby making evidence of title to their lands, knowing that he had no lawful or just claim to them. *Held*, that the defendant was not the superior holder of the lands, within section 8 of Bombay Act III of 1869, and was, therefore, not entitled to the assistance of the revenue officers of Government to recover the cess provided by that section for superior holders as against tenants and occupants, although he might have paid the local cess due on the land in the plaintiffs' possession; and that, consequently, the aid of the mamlatdar was illegally and improperly given to the defendant for the recovery of the amount from the plaintiffs. *Held*, also, that the defendant was not a person "interested in the payment" of the money made by him to Government within the meaning of section 69 of the Contract Act, assuming that a portion of that sum was demanded by Government in respect of the plaintiffs' *wanta* lands, and that they were "bound by law to pay" it to Government. *Held*, further, that the defendant did not "lawfully" make the payment within the meaning of section 70 of the Act, inasmuch as he did so fraudulently and dishonestly. DESAI HIMATSINGJI *v.* BHOVABHAI KAYABHAI [I. L. R., 4 Bom., 643

BOMBAY ACT—1872—III.

See BOMBAY MUNICIPAL ACT.

——— **1873—I.**

See INJUNCTION—SPECIAL CASES—PUBLIC OFFICERS WITH STATUTARY POWERS. [I. L. R., 1 Bom., 132

See LIBEL . I. L. R., 1 Bom., 477

——— **VI.**

See BOMBAY DISTRICT MUNICIPAL ACT.

See COLLECTOR . I. L. R., 1 Bom., 628

——— **1874—III.**

See CASES UNDER HEREDITARY OFFICES ACT (BOMBAY).

See LIMITATION ACT, 1877, ART. 62. [I. L. R., 10 Bom., 665

——— **1876—II.**

See LAND REVENUE. [I. L. R., 9 Bom., 483

——— **III.**

See MAMLATDARS' COURTS ACT.

See RES JUDICATA—JUDGMENTS ON TECHNICAL POINTS . I. L. R., 6 Bom., 477

See SANCTION TO PROSECUTION—WHERE SANCTION IS NECESSARY. [I. L. R., 5 Bom., 137

——— **1878—IV.**

See BOMBAY MUNICIPAL ACT.

——— **1879—V (Land Revenue), s. 87.**

See BOMBAY LAND REVENUE ACT.

See BOMBAY REVENUE JURISDICTION ACT, X OF 1876 . I. L. R., 9 Bom., 462

——— **s. 162.**

See KHOTI TENURE. [I. L. R., 8 Bom., 525

——— **s. 214.**

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—BOMBAY ACT V OF 1879. [I. L. R., 8 Bom., 591

——— **1880—I.**

See KHOTI TENURE [I. L. R., 8 Bom., 525

BOMBAY CIVIL COURTS ACT, 1869.

See DISTRICT JUDGE, JURISDICTION OF— [I. L. R., 5 Bom., 65
6 Bom., A. C., 166

——— **s. 24.**

See VALUATION OF SUIT. [I. L. R., 1 Bom., 528, 543

BOMBAY CIVIL COURTS ACT, 1869, s. 26.

See APPEAL—BOMBAY ACTS. [9 Bom., 286

——— **s. 32.**—*Act X of 1876, s. 15.—Guardian under Minors' Act, XX of 1864.—Officer of Government.*—The nazir of a Civil Court, who is appointed guardian of the estate of a minor under Act XX of 1864, is not an officer of Government within the meaning of section 32 of Act XIV of 1869 as amended by section 15 of Act X of 1876. An officer of Government, in order to come within those enactments, must be a party to a suit *in his official capacity.* MOHAN ISHWAR *v.* HAKU RUPA [I. L. R., 4 Bom., 638

BOMBAY DISTRICT MUNICIPAL ACT, VI OF 1873.

——— **s. 3.**—*Place, Definition of.—Otá of a house.*—The word "place," as defined in section 3 of Bombay Act VI of 1873, does not include a house, or *otá* of a house. IN RE THE PETITION OF PABA KHOJI . . . . I. L. R., 9 Bom., 272

——— **ss. 3 & 17.**—*Street.—Court.—Public right of way.—Removal of erection.*—The plaintiff was the owner of two houses and mortgagee of a third house out of a set of six which surrounded an open court in the town of Dhandhuka, and which, including the court, originally belonged to a single individual. The plaintiff built an "*otá*" or verandah, and put up a wooden bench in front of his house, which the Municipality of the town ordered to be removed. In a suit by the plaintiff to have this order set aside, the District Court found that the occupant of each house had the right of way across the court, which was used as the means of access to the houses which surrounded it by persons having business with the house-holders. *Held*, that such limited access by the public was not sufficient to show that the court ceased to be private property, and was converted into a "street" vesting in the Municipality within the meaning of sections 3 and 17 of Bombay District Municipality Act, VI of 1873; and that the Municipality had not any right to interfere with the plaintiff's erection, whatever liability he might have incurred to an action by any of the other house-holders who occupied the court. KALIDAS *v.* THE MUNICIPALITY OF DHANDHUKA . I. L. R., 6 Bom., 686

——— **s. 11, cl. 1.**—*Notice of meeting, Omission to give.—Validity of resolution passed.*—The provisions of section 11, clause 1, as to notice of meeting, are not directory, but obligatory; and notice to all the commissioners of the meeting being a material part of the machinery provided by the Act for imposing a legal tax, was a condition precedent to the validity of that tax. Consequently, where a resolution was come to without conforming to those provisions, it was held to be not legal, and, whether sanctioned or not by the Government, it always retained its inherent defect. JOSHI KALIDAS SEVAKRAM *v.* DAKOR TOWN MUNICIPALITY . . . I. L. R., 7 Bom., 399

1. ——— **s. 21.**—*Diposal by Government of objections to tax.—Jurisdiction of Civil Court.*—Section 21, which enables the Government to dispose of

BOMBAY DISTRICT MUNICIPAL ACT, VI OF 1873, s. 21—*continued.*

objections made to a tax by the inhabitants of a town, is quite consistent with the well-established jurisdiction of the Civil Court to decide as to the validity of any fresh tax or impost, and affords no sufficient ground for the conclusion that the intention of the Legislature was to take away that jurisdiction. JOSHI KALIDAS SEVAKRAM *v.* DAKOR TOWN MUNICIPALITY . . . I. L. R., 7 Bom., 399

2. ——— *Octroi duties.—Imposition of tax.—Inhabitants' objections.—Consideration by Municipality and opinion.*—The requirements of clause 2, section 21 of Bombay District Municipality Act, VI of 1873, which enacts that "any inhabitant of the Municipal District objecting to such tax, toll, or impost, may, within a fortnight from the date of the said notice, send his objection in writing to the Municipality, and the Municipality shall take such objection into consideration and report their opinion thereon to the Governor in Council," is not satisfied by the Chairman of the Managing Committee considering the objections of the inhabitants and reporting his opinion to the Governor in Council or his representative the Commissioner of a Division. The provision for forwarding the opinion of the Municipality on the objections is an essential part of the machinery provided by that section for the legal imposition of a tax. MUNICIPALITY OF POONA *v.* MOHANLAL . . . I. L. R., 9 Bom., 51

——— s. 33.

See s. 74 . . I. L. R., 9 Bom., 568

——— ss. 36, 39.

See s. 74 . . I. L. R., 2 Bom., 527

——— s. 66.—*Selling vegetables in verandah of house.*—Selling vegetables on the *otá* of a house is not using the *otá* "as a market" within the meaning of section 66. Accordingly, a person who sold vegetables on the *otá* of his house was held not thereby to have committed any offence under section 66 of the Municipal Act (Bombay), VI of 1873. IN RE THE PETITION OF PABA KHOJI. I. L. R., 9 Bom., 272

1. ——— s. 74 and ss. 36, 39.—*Notice by Municipality.—Offence under Act.*—Non-compliance with notices issued by the Municipality under section 36 or clause 1 of section 39 of the Bombay District Municipal Act, No. VI of 1873, is not an offence punishable under the Act, as clause 1 of section 74 of that Act does not apply to either of those provisions. The latter clause applies only to the 2nd clause of section 39. IN RE TUKARAM VITHAL [I. L. R., 2 Bom., 527

2. ——— s. 74 and s. 33.—"*External alteration.*"—*Opening of a new doorway in a building without notice to Municipality.*—Opening a new external door is an "external alteration" of the building in which the door is opened, and such act done without the notice to the Municipality, contemplated by section 33 of the Bombay Act VI of 1873, is an offence punishable under section 74 of the same Act. *Semble,*—Where such act does not cause

BOMBAY DISTRICT MUNICIPAL ACT, VI OF 1873, s. 74 and s. 33—*continued.*

any inconvenience to any person, a slight nominal fine is an adequate punishment. QUEEN-EMPRESS *v.* GUJRIA . . . . I. L. R., 9 Bom., 568

——— s. 86.

See LIMITATION ACT, 1877, s. 14. [I. L. R., 8 Bom., 529

1. ——— *Suit against Municipality for damages.*—Section 96 of Bombay Act VI of 1873 is not applicable to suits in the nature of actions of ejectment, but only to suits for damages. JOHARMAL *v.* MUNICIPALITY OF AHMEDNAGAR [I. L. R., 6 Bom., 580

2. ——— *Illegal tax.—Notice of action for refund.—Time within which to bring suit.—Limitation.*—On the 18th March 1880, the Dakor Town Municipality, acting under the powers conferred upon them by the Bombay Act VI of 1873, convened a meeting at which it was resolved to impose a house-tax on the town; and also another meeting on the 2nd of April 1880, at which a classification of the houses was made and the rates fixed. The Revenue Commissioner, N. D., on behalf of the Government, sanctioned the resolutions on the 2nd of June 1880. Notice of the meeting of the 18th of March 1880 was not served on three of the commissioners, they being absent at the time from Dakor, and no notice specifying the business to be transacted therein was posted up at the kutcherry as required by section 11, clause 1 of the Act. *K.*, a householder, sent a notice to the Municipality on the 25th of January 1881, impeaching the legality of the tax. On the 3rd of June 1881, he paid the tax—namely, R2,—for which he had been rated, and on the 6th of January 1882 he sued for a refund of the said sum from the Municipality. *Held,* that the suit was not brought too late to satisfy the requirements of section 86 of the Act. When the notice of the 25th of January 1881 was sent by *K.*, he had no cause of action against the Municipality for anything done; no notice, therefore, such as is contemplated by section 86, was ever sent by *K.*, and, consequently, there could be no final order on such notice from which the three months prescribed by that section would run. *Quære,*—Whether section 86 of the Bombay Act VI of 1873 applies to an action for money had and received. JOSHI KALIDAS SEVAKRAM *v.* DAKOR TOWN MUNICIPALITY [I. L. R., 7 Bom., 399

3. ——— *Notice.—Municipality.—Nature of action.*—A person suing a Municipality constituted by Bombay Act VI of 1873 for the refund of money illegally levied from him as house-tax is bound to serve a previous notice on the said Municipality as required by section 86 of the Act. The object of that provision would appear to be to give municipal bodies or officers, who in the *bonâ fide* discharge of their public duties may have committed illegal acts not justified by their powers, an opportunity of tendering sufficient amends for such acts before being harassed with an action. Section 86 of the Act is not confined to an action of damages, but is applicable to every claim of a pecuniary character arising out of

BOMBAY DISTRICT MUNICIPAL ACT, VI OF 1873, s. 86—*continued.*

the acts of municipal bodies or officers, who in the *bonâ fide* discharge of their public duties may have committed illegalities not justified by their powers. RANCHOD VARAJBHAI *v.* MUNICIPALITY OF DAKOR [I. L. R., 8 Bom., 142

BOMBAY DISTRICT POLICE ACT, VII OF 1867.

See JURISDICTION OF CRIMINAL COURTS—EUROPEAN BRITISH SUBJECTS. [7 Bom., Cr., 6

——— **s. 23.**—*Police officer below the rank of Inspector, Power of, to prosecute.—Criminal Procedure Code, 1882, s. 495.*—The provisions of section 23 of Bombay Act VII of 1867 have not been superseded by section 495 of the Criminal Procedure Code (Act X of 1882), but are still in force. QUEEN-EMPRESS *v.* HONKERAPA . I. L. R., 8 Bom., 534

——— **s. 27.**—*Prohibition of music in private house.*—Section 27 of Bombay Act VII of 1867 does not empower the police to prohibit the use of music in private houses. REG. *v.* LUKHMA CHANGO [9 Bom., 153

——— **ss. 28, 29.**—*Order under s. 28.—Powers of Police under the Act, s. 28.*—An order issued under section 28 of the Bombay District Police Act (VII of 1867) need not be in writing: disobedience of a verbal order given under that section is punishable under section 29. The words of section 28 of the District Police Act, which authorise the police to keep order in the neighbourhood of places of worship during the time of public worship, confer upon the police a power of regulating traffic and putting a stop to noises in the neighbourhood of places of worship during the time of worship, but do not limit their general powers of keeping order at and within all places of public resort, temples, jatras, or the like, when necessary. REG. *v.* BASSUJI GUNGARAIN . . . . . 7 Bom., Cr., 2

——— **s. 31.**

See SENTENCE — IMPRISONMENT — IMPRISONMENT IN DEFAULT OF FINE. [5 Bom., Cr., 43

——— *Operation of section.—Notification by Government.—Magistrate.*—Bombay Act VII of 1867, section 31, became at once operative in all places where a Magistrate was resident, without having been specifically extended thereto by Government notification. REG. *v.* KERUBIN RAMSHET [5 Bom., Cr., 100

——— **s. 42.**

See LIMITATION ACT, 1877, s. 14 (1859, s. 14) . . . . 10 Bom., 204

BOMBAY LAND REVENUE ACT (BOMBAY ACT V OF 1879), s. 87.

See BOMBAY REVENUE JURISDICTION ACT (X OF 1876) . I. L. R., 9 Bom., 462

BOMBAY LAND REVENUE ACT (BOMBAY ACT V OF 1859), s. 87—*continued*

——— *Mamlatdar's order.*—A mamlatdar's order, under section 87 of Bombay Act V of 1879, does not preclude the parties from having recourse to the Civil Courts, if dissatisfied with it. GANESH HATHI *v.* MEHTA VYANKATRAM HARJIVAN [I. L. R., 8 Bom., 188

——— **ss. 119 and 121.**—*Fixing boundaries.—Boundaries, Effect of decision of Revenue authorities as to.—Meaning of the term "determinative."*—In 1877 a dispute arose between plaintiffs and defendant as to the boundaries of certain land, being survey Nos. 88 and 87, of which the plaintiffs and the defendant were respectively occupants under Government. In 1879 the boundaries were fixed by a revenue officer under the orders of the Collector, and the piece of land in dispute was found to belong to the plaintiffs as occupants of survey number 88. Subsequently the defendant having encroached upon it and dispossessed the plaintiffs, the present suit was filed. The Court of first instance awarded the plaintiffs' claim, holding that the decision by the revenue officer was conclusive as to the boundary. The defendant appealed, and the lower Appellate Court reversed the lower Court's decree. On appeal by the plaintiffs to the High Court,—*Held*, restoring the decree of the Court of first instance, that, under the provisions of section 121 of Act V of 1879, the decision of the Collector as to the boundaries was conclusive, and that the plaintiffs were entitled to possession. BAI UJAM *v.* VALIJI RASULBHAI [I. L. R., 10 Bom., 456

BOMBAY LEGISLATIVE COUNCIL.

See GOVERNOR OF BOMBAY IN COUNCIL. [I. L. R., 8 Bom., 264 [8 Bom. A C., 195

BOMBAY MINORS' ACT (XX OF 1864).

See MINOR—MINORS' ACT (BOMBAY), 1864.

BOMBAY MUNICIPAL ACT III OF 1872, s. 220 (amended by IV of 1878).

——— *Houses.—City of Bombay.—Ridge ventilation.—Notice.*—The Municipal Commissioner for the City of Bombay issued a notice requiring the owner of a range of buildings to put it in a proper state by providing ridge ventilation within seven days, which the owner did not comply with. *Held*, that section 220 of Bombay Municipal Act III of 1872 as amended by Bombay Act IV of 1878 does not empower the Municipal Commissioner to direct structural alterations, that the notice requiring ridge ventilation to be provided was illegal, and the owner by refusing to comply with it committed no offence. EMPRESS *v.* SADANAND KRISHNAJI . I. L. R., 8 Bom., 151

——— **sch. B.**—*Spirits.—Toddy juice.*—Toddy juice, whether in a fermented or unfermented state, is not "spirits" within the meaning of Bombay Act III of 1872, and is therefore not liable, on importation into Bombay, to a town duty of annas 4 per gallon imposed on spirits by schedule B of that Act. HARMASJI KARSETJI *v.* PEDDER . 12 Bom., 199

BOMBAY POLICE AMENDMENT ACT (I of 1876).

See SANCTION TO PROSECUTION—WHERE SANCTION IS NECESSARY.
[I. L. R., 4 Bom., 357

BOMBAY REGULATION—1800—I, s. 13.

See LIMITATION—BOMBAY REGULATION I OF 1800.
[5 W. R., P. C., 31: 1 Moore's I. A., 154
[1 Moore's I. A., 414

BOMBAY REGULATION—1808—I, s. 4.

See ENHANCEMENT OF RENT—RIGHT TO ENHANCE . . 11 Bom., 162

——————— **1823—VI.**

See DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES—BREACH OF CONTRACT.
[1 Agra, 69

——————— **1827—II, s. 5.**

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, 1882, s. 622.
[I. L. R., 10 Bom., 610

——————— **s. 5, cl. 2.**

See HIGH COURT, JURISDICTION OF—BOMBAY . . . . 9 Bom., 249

BOMBAY REGULATION—1827—II, s. 16, cl. 2.

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODES.
[2 Bom., 112: 2nd Ed., 106

——————— **s. 21.**

See JURISDICTION OF CIVIL COURT—CASTE.
[I. L. R., 5 Bom., 83
I. L. R., 6 Bom., 725
I. L. R., 7 Bom., 323

See RIGHT OF SUIT—CASTE QUESTIONS.
[I. L. R., 2 Bom., 470

——————— **s. 43.**

See PUBLIC SERVANT.
[4 Bom., A. C., 93

——————— **s. 47.**

See PLEADER—APPOINTMENT AND APPEARANCE . I. L. R., 8 Bom., 105

——————— **s. 52.**

See PLEADER—REMUNERATION.
[9 Bom., 33

——————— **IV, s. 26.**

See CUSTOM . . . 1 Bom., 36

See ENGLISH LAW.
[2 Bom., 38, 2nd Ed., 36
2 Bom., 55, 2nd Ed., 52

See PARSIS . . 5 Bom., A. C., 109

BOMBAY REGULATION—1827—IV.

——————— **s. 27, cl. 1.**—*Family custom or usage.—Duty of the Courts.*—Clause 1, section 27, Regulation IV of 1827 (Bombay), imposes no obligation on the Courts to ascertain whether there is family rule or usage, where there is no allegation of such fact in the pleadings, or where the parties have waived, resort to the course prescribed by the Regulation. MODEE KAIKHOOSROW HORMUZJEE *v.* COOVERBAEE
[4 W. R., P. C., 94: 6 Moore's I. A., 448

——————— **V.**

See GRANT—RESUMPTION OR REVOCATION OF GRANTS . 14 Moore's I. A., 551

See CASES UNDER LIMITATION—BOMBAY REGULATION V OF 1827.

See POSSESSION—EVIDENCE OF TITLE.
[I. L. R., 1 Bom., 592

——————— *Prescriptive right.—Title by long possession.*—The holder of a cocoanut oart in Bandora, in the island of Salsette, in the Thanna district, paying an annual assessment of R39 to Government, built a bungalow upon it without the permission of the Collector, who, under the rule purporting to have been issued by the Government of Bombay on the 1st February 1869 in accordance with the provisions of section 35 of Bombay Act I of 1865, demanded from him a fine equal to sixty times the assessment, and on the plaintiff's failure to pay the fine, summarily attached the land under the provisions of section 48 of that Act. *Held* that, by virtue of uninterrupted enjoyment for more than thirty years, the plaintiff had, under section 1 of Regulation V of 1827, acquired a prescriptive title to the land, and had become its absolute proprietor. COLLECTOR OF THANA *v.* DADABHAI BOMANJI . I. L. R., 1 Bom., 352

——————— **s. 7.**

See MAJORITY, AGE OF—
[5 Bom., A. C., 95

——————— **s. 12.**

See LIMITATION ACT, 1877, ART. 132.
[I. L. R., 9 Bom., 233

——————— **VII.**

See ARBITRATION—ARBITRATION UNDER SPECIAL ACTS AND REGULATIONS—BOMBAY REGULATION VII OF 1827.
[6 Moore's I. A., 134

——————— **VIII.**

See CERTIFICATE OF ADMINISTRATION—CERTIFICATES UNDER BOMBAY REGULATION VIII OF 1827, &c.
[4 Bom., A. C., 178
7 Bom., A. C., 31
8 Bom., A. C., 152

See REPRESENTATIVE OF DECEASED PERSON.
[8 Bom., A. C., 152

——————— *Certificate of heirship.—Minor.*—Under the provisions of Regulation VIII of 1827

BOMBAY REGULATION—1827—VIII— *continued.*

a certificate of heirship cannot to a minor. BAI BAIBA *v.* BAI DAGUBA [I. L. R., 6 Bom., 728

——— IX.

See REGISTRATION ACT, 1877, s. 17. [3 Bom., A. C., 167

——— s. 6.

See REGISTRATION ACT, 1877, s. 50. [1 Bom., 60
9 Bom., 121

——— XII, ss. 5 & 41.

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—RAILWAY ACT, 1854. [3 Bom., Cr., 54

——— s. 19.

See NUISANCE—MISCELLANEOUS CASES. [8 Bom., Cr., 23

——— s. 32.

See EVIDENCE—CRIMINAL CASES—CHEMICAL EXAMINER . 6 Bom., Cr., 75

——— XIV.

See OFFENCE COMMITTED BEFORE PENAL CODE . . . . 1 Bom., 93

——— XVI.

See HEREDITARY OFFICES ACT (BOMBAY). [I. L. R., 5 Bom., 283, 435, 437
I. L. R., 6 Bom., 211
I. L. R., 7 Bom., 420

——— XVII.

See BOMBAY ACT I OF 1865. [7 Bom., A. C., 82
10 Bom., 216

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS—BOMBAY. [12 Bom., Ap., 1, 225, 275, 276

See LAND REVENUE. [10 W. R., P. C., 13
11 Moore's I. A., 295
12 Bom., Ap., 1, 225

——— s. 3.

See LAND REVENUE. [I. L. R., 9 Bom., 483

——— s. 5.

See LAND REVENUE. [I. L. R., 1 Bom., 70

——— s. 16.

See CHARGE—FORM OF CHARGE—SPECIAL CASES. [8 Bom., Cr., 115

See SESSIONS JUDGE, JURISDICTION OF— [8 Bom., Cr., 115

BOMBAY REGULATION—1827—XVII— *continued.*

——— s. 31, cl. 3.

See JURISDICTION OF REVENUE COURTS—BOMBAY REGULATIONS AND ACTS. [2 Bom., 193: 2nd Ed., 185

——— XVIII.

See APPELLATE COURT—OTHER ERRORS AFFECTING MERITS . 11 Bom., 129

See CASES UNDER STAMP (BOMBAY REGULATION XVIII OF 1827).

——— XIX, s. 2.

See JURISDICTION OF REVENUE COURT—BOMBAY REGULATIONS AND ACTS. [5 Bom., O. C., 1

——— XXI.

See BOMBAY REVENUE JURISDICTION ACT (X OF 1876) . I. L. R., 9 Bom., 462

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—BOMBAY REGULATION XXI OF 1827 . . 3 Bom., Cr., 39, 50
[7 Bom., Cr., 59
8 Bom., Cr., 118
9 Bom., 116, 343

See OPIUM . . . 1 Bom., 50
[7 Bom., Cr., 39

See SESSIONS JUDGE, JURISDICTION OF— [9 Bom., 166

See MAHOMEDAN LAW—KAZI. [I. L. R., 1 Bom., 633
I. L. R., 3 Bom., 72

——— XXIX.

See AGENT OF FOREIGN SOVEREIGN. [1 Bom., 96

——— 1829—III.

See COTTON FRAUDS REGULATION. [1 Bom., 17

——— 1830—XIII.

See AGENT OF FOREIGN SOVEREIGN. [1 Bom., 96

——— 1831—XVIII.

See DISTRICT JUDGE, JURISDICTION OF— [5 Bom., A. C., 26

BOMBAY REVENUE JURISDICTION ACT, X OF 1876, ss. 3, 4, 5.

——— *Abkari.—Land revenue.—Toddy spirit.—Bombay Abkari Act, No. V of 1878, ss. 24, 29, 54, and 67.—Land Revenue Code, Bombay Act No. V of 1879, s. 87.—Reg. XXI of 1827, s. 60.*— The plaintiff sued to recover from the defendant, a farmer of abkari duties on the manufacture of spirits, under section 60 of Bombay Regulation XXI of 1827, a sum of money alleged to have been illegally levied by him as tax or rent through the mamlatdar in respect of certain cocoanut trees tapped by the plaintiff in 1877-78 and 1878-79. *Held*, that the Civil Courts have jurisdiction to entertain such a suit. If th

BOMBAY REVENUE JURISDICTION ACT, X OF 1866, ss. 3, 4, 5—*continued.*

claim be held to be one in respect of land revenue, it falls within the exception contained in clause (*c*) of section 5 of Act X of 1876. If it is not, section 4 of the Act has no application. *Per* BIRDWOOD, *J.*—The expression "land revenue," as used in Act X of 1876, does not include either the duties leviable, under Regulation XXI of 1827, on the manufacture of spirits, or the taxes on the tapping of toddy trees, the levy of which in certain districts was legalised by section 24 of the Bombay Abkari Act, No. V of 1878. A farmer of duties on the manufacture of spirits is not authorized to levy a duty on any juice in trees, either under Regulation XXI of 1827, or Act X of 1876, or Bombay Act V of 1878. Juice in toddy-producing trees is not spirit, which includes toddy in a fermented state only. NARAYAN VENKU KALGUTKAR *v.* SAKHARAM NAGU KOREGAUMKAR [I. L. R., 9 Bom., 462

BOMBAY SURVEY ACT.

See BOMBAY ACT I OF 1865.

See LAND REVENUE. [I. L. R., 1 Bom., 70

BOMBAY VILLAGE POLICE ACT (VIII OF 1867).

See EVIDENCE—CRIMINAL CASES—CHEMICAL EXAMINER . 6 Bom., Cr., 75

——— s. 9.

See SANCTION TO PROSECUTION—WHERE SANCTION IS NECESSARY. [I. L. R., 4 Bom., 357

——— *Police patil neglecting to report encroachment made by villagers on public road.*—Conviction of a police patil for neglecting to report an encroachment made by the villagers on the public road reversed, as the circumstances of the case did not bring it within the provisions of section 9 of Bombay Act VIII of 1867. REG. *v.* UKHA SAV [7 Bom., Cr., 88

——— s. 13.

See SANCTION TO PROSECUTION—WHERE SANCTION IS NECESSARY. [I. L. R., 4 Bom., 479

BONÂ FIDE BELIEF.

See JUDICIAL OFFICERS, LIABILITY OF— [I. L. R., 1 Mad., 89

BONÂ FIDE HOLDER FOR VALUE.

See TROVER . . 6 B. L. R., 581

BONÂ FIDE PURCHASER.

See LIMITATION ACT, 1877, ART. 134 (1859, s. 5) . . 2 B. L. R., A. C., 155
[15 B. L. R., 176, note
6 B. L. R., 530
14 B. L. R., 386
5 W. R., 238
7 W. R., 138
11 W. R., 36
5 Mad., 385

BONA FIDES.

See DEFAMATION . I. L. R., 4 Calc., 124
4 W. R. Cr., 22
2 N. W., 473
I. L. R., 6 All., 220
8 Bom., Cr., 168
I. L. R., 3 All., 342, 664, 815
I. L. R., 4 Bom., 298
I. L. R., 9 Bom., 269

See JUDICIAL OFFICERS, LIABILITY OF— [I. L. R., 1 All., 280

See LIMITATION ACT, 1877, ART. 134 (1871, ART. 134) . I. L. R., 1 Bom., 269

BOND.

See CASES UNDER INTEREST—MISCELLANEOUS CASES—BOND.

See CASES UNDER INTEREST—OMISSION TO STIPULATE, &c.

See CASES UNDER INTEREST—STIPULATIONS AMOUNTING TO PENALTIES, &c.

See LIMITATION ACT, 1877, s. 20 (1871, s. 21) . . I. L. R., 1 Mad., 228

See CASES UNDER LIMITATION ACT, 1877, ART. 66.

See CASES UNDER MORTGAGE—MONEY DECREE ON MORTGAGE.

See CASES UNDER REGISTRATION ACT, 1866, s. 53.

See STAMP ACT 1869, SCH. I. [7 B. L. R., 510

See STAMP ACT, 1879, s. 3. [I. L. R., 7 Bom., 137
I. L. R., 8 Bom., 297
I. L. R., 8 Mad., 15, 87

See STAMP ACT, 1879, s. 7. [I. L. R., 2 All., 654

See STAMP ACT, 1879, SCH. II, ART. 12. [I. L. R., 3 All., 788

——— Attachment and sale of—

See CIVIL PROCEDURE CODE, 1882, s. 268. [I. L. R., 2 Bom., 558

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—RECEIVER. [I. L. R., 2 Bom., 558

——— Creating charge on immoveable property.

See CASES UNDER REGISTRATION ACT, 1877, s. 17.

——— Money decree on—

See CASES UNDER MORTGAGE—MONEY DECREE ON MORTGAGE.

See CASES UNDER REGISTRATION ACT, 1866, s. 53.

——— Payable on demand.

See LIMITATION ACT, 1877, s. 2. [I. L. R., 3 All., 340, 415
I. L. R., 2 Mad., 397
I. L. R., 4 Bom., 87

BOND—*continued.*

——— **Payable by instalments.**

See CASES UNDER LIMITATION ACT, 1877, ART. 75.

——— **For payment of portion of rent.**

See CO-SHARERS—SUITS BY CO-SHARERS WITH RESPECT TO JOINT PROPERTY—MISCELLANEOUS SUITS.

[I. L. R., 4 Calc., 539

——— **Recitals in—**

See ONUS PROBANDI—DOCUMENTS RELATING TO LOANS, &c.

——— **Suit on joint—**

See RES JUDICATA—CAUSE OF ACTION.

[10 B. L. R., 200

——— **To secure costs of appeal.**

See PRACTICE—CIVIL CASES—SECURITY FOR COSTS . I. L. R., 5 Calc., 437

1. ——— **Condition in bond for money lent.**—*Right of suit.*—An agreement to put a party in possession of certain lands if default be made in the payment of money lent does not preclude that party from suing for the money lent if he elect to do so. ANNASAMI *v.* NARANAYEN

[2 Ind. Jur., O. S., 12

2. ——— **Admission of liability on bond.**—*Remission on condition.—Default.—Right of suit.*—When the full sum specified in a bond was admitted to be due, the fact of the plaintiff having, on condition of the payment of half the amount by a certain day, agreed to remit his claim to the other half, cannot affect his right to recover the entire amount due on the defendant failing to fulfil the condition. VENGAPPAYAN *v.* RAJAPAYAN

[1 Mad., 208

3. ——— **Bond with collateral agreement to accept rents.**—*Right of suit.*—In a suit to recover money (principal and interest) alleged to have been due on a bond, defendant pleaded that subsequent to the execution of the bond plaintiff had taken from the obligor an ijara and a dur-ijara and executed ijara-kabuliats, agreeing to accept payment of the bond by setting off the rents due under the kabuliats. It was found that the kabuliats stipulated that during their term the rent should, year after year, and instalment by instalment, be credited in payment of the bond debt, and that at the end of the term of the ijara, accounts should be settled and the balance paid, neither party being at liberty to put an end to the lease. *Held*, that till the termination of the lease plaintiff could not sue on the bond, his right of suit having been suspended during the continuance of the ijara and dur-ijara, the stipulations in which qualified the stipulation in the bond for absolute payment at the end of a specified period. DYA CHAND OSWAL *v.* MOOKTEEDA DABEE

[13 W. R., 24

4. ——— **Cause of action.**—*Limitation.*—*J.*, after entering into a bond for the payment of

BOND.—Cause of action—*continued.*

a sum of money, adopted one *S.*, who took the family estate at *J.'s* death. While in the enjoyment of the estate the bond-holders brought a suit against him to realise the debt and obtained a decree. Under the decree the obligees sought to sell the property which by the time of the execution had come into the hands of *R.* (a great-nephew of *J.'s*), who sued and eventually succeeded in having *J.'s* adoption declared void. *R.* then sued to set aside, so far as it affected him, the decree for the sale of the property, and in this suit also he eventually succeeded. The representative of the original bond-holders then brought a suit against *R.* to recover the money due on the bond. *Held*, that plaintiff's right of suit first arose, not from the last decree in favour of *R.*, but from the time when the debt became due under the terms of the bond. RAJKRISTO SING *v.* HURO SOONDUREE CHOWDRAIN . . 13 W. R., 313

5. ——— *Suit to recover share of bond debt.*—In a suit by the widow of one of three judgment-creditors to recover the third part of a bond debt which had been decreed in their favour, and of which execution had been taken out,—*Held* that, as she had failed in her endeavour to be made a party to the original suit, her only course was to sue for her share of the money received under the decree; though she might have sued to have herself declared a sharer in the decree, her not adopting that form of action held not to bar her suit. As the entire sum due on the bond, with penal interest to date of decree, had been recovered, plaintiff's cause of action had fully accrued, though a balance of interest was still due. BUZMOONISSA *v.* ROWSHAN JAHAN

[10 W. R., 397

6. ——— *Suit on bond before due date.—Denial of execution.—Held*, reversing the decision of the Court below, that the denial of the execution of a bond in the Criminal Court by the defendant does not give the plaintiff any cause of action to recover the amount of the bond before due date. SUJEEWUN SINGH *v.* RUNPAL SINGH

[10 W. R., 351

7. ——— **Failure to deliver bond.**—*Suit for amount before due date.*—If an obligor fraudulently withholds delivery of a bond which has been executed, within a reasonable time after the receipt of the money, the obligee has a right to sue for the return of the money before the time fixed for payment. PEAREE MONEE DOSSEE *v.* THAKOOR DOSS DUTT . . . . 21 W. R., 443

8. ——— **Right of one of several heirs to sue creditor for share of debt.**—*Joint obligation.—Obligation.—Act XXVII of 1860.—Contract Act, IX of 1872, ss. 42, 45.—Held* by the Full Bench (MAHMOOD, *J.*, dissenting), that when, upon the death of the obligee of a money-bond, the right to realise the money has devolved in specific shares upon his heirs, each of such heirs cannot maintain a separate suit for recovery of his share of the money due on the bond. KANDHIYA LAL *v.* CHANDAR

[I. L. R., 7 All., 313

BOND—*continued.*

9. ——— Suit by obligee against some of obligors taking fresh bond from the rest.—Where an obligee sues some of the persons jointly liable to him under a bond, and takes another bond from the rest for what he considers to be their share of the debt, he does not discharge the latter from their liability to contribute according to the shares in which they are liable among themselves, nor does his transaction with them (they not being sureties) destroy the joint liability. SHUSHEE MOHUN PAL CHOWDHRY *v.* RAM KOOMAR KOONDOO [22 W. R., 193

10. ——— Bond used to pay debt of third party.—*Liability of third party.*—The fact that the money raised on a bond is used to pay a debt due by a third party (*G.*) does not make such third party liable to the party who executed the bond, unless the latter joined in the bond at the request of the third party or of some one acting under his authority. GOUR KISHORE DUTT CHOWDHRY *v.* OZEER ALI [24 W. R., 99

11. ——— Fraudulent alteration of hypothecation clause.—The obligee of a bond for the payment of money, in which a certain share of a village had been hypothecated as collateral security, having fraudulently altered such bond so as to make it appear that a larger share of such village was hypothecated, sued the obligor to recover the money due on such bond by the sale of such larger share. The obligor admitted the execution of the bond and that a certain sum was due thereon. *Held*, on the question whether under these circumstances the obligee was entitled to relief as regards his claim for money, that he was not so entitled, inasmuch as the bond on which his suit was brought must be discarded, being a forgery, and therefore the suit as brought failed. GANGA RAM *v.* CHANDAN SINGH [I. L. R., 4 All., 62

12. ——— Appropriation of payment.—*Mode of calculating interest.—Reg. XV of 1793.* Where payment was made upon a bond, the amount paid being less than the interest due,—*Held*, the payment ought to go to reduce the amount of interest due, and the creditor in a suit upon the bond was entitled to a decree for the principal and balance of interest up to date of decree. LUCHMESWAR SING *v.* LUFT ALI KHAN . 8 B. L. R., P. C., 110

13. ——— Failure of bond.—*Evidence.—Non-registration.*—In an action on a bond and mortgage, which was not registered, and the *factum* of which was denied, the Principal Sudder Ameen decided in favour of the plaintiffs; but such judgment being reversed by the High Court, the Judicial Committee, considering that too much weight had been given to the fact of non-registration, reversed that finding, and, after a careful analysis of the evidence, found the bond to be genuine. GANGAPRASAD *v.* MAWJI LAL [9 B. L. R., 426: 16 W. R., P. C., 30

14. ——— Presumption of payment.—*Possession of bond by obligor.*—The presumption of payment of a bond which arise sfrom its possession

BOND.—Presumption of payment—*continued.*

by the obligor, loses much of its force when raised, not between the original creditor and the debtor, but between the debtor and the purchaser of the debt at an execution sale. DEBENDRA KUMAR MANDAL *v.* RUP LALL DASS . I. L. R., 12 Calc., 546

15. ——— Evidence of payment.—*Error in account.—Waiver.—Estoppel.—Indorsement.*—Where the defendant executed to the plaintiff a bond for the payment of the balance found to be due from the defendant to the plaintiff upon an adjustment of the account of their mutual dealings, which bond contained the following stipulation: "I shall pay the money after causing the payment to be entered on the back of this bond, or after taking a receipt for the same. I shall not lay any claim to any payment made except in this way,"—*Held* that, though the defendant at the time of the adjustment disputed the correctness of the account, yet that, by having executed the bond and made payments under it, he must be held to have waived his objection, and in a suit on the bond could not be permitted to reopen the question of the correctness of the balance, though he might possibly have been allowed to do so had he alleged that he had discovered errors in the account after the execution of the bond, and had he specified some of the alleged errors. *Held*, also, that the stipulation in the bond could not be permitted to control courts of justice as to the evidence which, keeping within the rules of the general law of evidence in this country, they may admit of payments; and the Anglo-Indian law of evidence not excluding oral evidence of payments, it would be against good conscience and the policy of the law to reject it, though the absence of indorsements is a circumstance of some importance, which ought not to be overlooked, but is by no means conclusive. *Bekana Tatiah* v. *Vasuntum Chinna, Mad. S. D. A., 1855, pp. 49 and 50*, impeached. *Sushachellum Chetty* v. *Gobindappa, 5 Mad., 451; Kashinath Balal Oka* v. *Narria Jan, Bom. Sp. Ap. 438 of 1872*; and *Nugur Mull* v. *Azeemoolah, 1 N. W., 146*, approved. NARAYAN UNDIR PATIL *v.* MOTILAL RAMDAS [I. L. R., 1 Bom., 45

KALEE DOSS MITTRA *v.* TARACHAND ROY [8 W. R., 316

See GIRDHAREE SINGH *v.* LALLOO KOONWAR . . . 3 W. R., Mis., 23

16. ——— Novation of bond.—*Surety, Liability of.*—*B.* became surety under a bond to Government for the treasurer of a Collectorate. The Collector yearly examined the accounts and struck a balance, which he certified to be correct. *B.* on each such occasion executed a new bond, but the old bonds were not cancelled or given up. On subsequent enquiry, the treasurer was discovered to have embezzled moneys during each year. *Held* that, on such discoveries being made, *B.* was still liable under the old bonds, there having been no novation. LALA BANSHIDHAR *v.* GOVERNMENT OF BENGAL [9 B. L. R., 364: 14 Moore's I. A., 86: 16 W. R., P. C., 11

BOND.—Novation of bond—*continued.*

17. ——————— *Bond given in renewal of former bonds.*—Where a bond is given in renewal of former bonds, such bond constitutes a new security, to take effect from its date. HAMED BUX *v.* BINDRABUN . . . . . **2 N. W., 37**

18. ——————— *Fraud.—Undue influence and threats.*—The three childless widows of a zemindar instituted a suit against the rightful heir to their husband's estate, in which they unsuccessfully disputed his legitimacy. Previously thereto they had obtained advances of money from the present plaintiff, and executed in his favour an agreement and a bond, whereby they secured to him the payment of large sums in case they recovered their husband's estate, and virtually gave to him the entire control of their suit. Subsequently they agreed with the rightful heir to compromise the suit, which compromise, however, was never acted upon, partly owing, it was alleged, to the subsequent conduct of the heir. At the date of the compromise, the heir, who had just attained his majority, and was without proper counsel or assistance, and acted under threats from the plaintiff, a powerful and wealthy banker, that he would carry on the litigation against him *per fas aut nefas*, was induced, contrary to his own judgment and sense of right, and without any evidence that the sum claimed was really due to the plaintiff, to execute a bond in his favour, whereby he bound himself to pay a large sum of money claimed by the plaintiff as being due from the widows; the plaintiff on his part agreeing that he would treat such payment as a satisfaction of his claim against the widows, but, meanwhile, that he would retain the securities which he held from them. In a suit brought by the plaintiff against the heir to enforce the last-mentioned bond,—*Held*, that the bond was wholly invalid and fraudulent as against the defendant, and that as there was no privity of contract between the plaintiff and defendant independently of the bond, it could not stand as a security for anything which might be justly due from the widows. *Semble*, —The transaction, even if valid, did not amount to a novation; for the plaintiff never abandoned his claim against the widows, but only agreed to abandon his remedy against them in case he obtained satisfaction of his claim from the heir. CHEDAMBARA CHETTY *v.* RENJA KRISHNA MUTHU PUCHANJA NAIKAR

[13 B. L. R., 509: 22 W. R., 148: L. R., 1 I. A., 241

Affirming decision of High Court . **7 Mad., 85**

19. ——————— *Bond for payment of bills of exchange.—Collateral security.—Presumption.*—Where a person who is indebted on certain bills of exchange accepted by him, gives a bond for securing payment of the whole amount with interest by instalments should be paid, raises a presumption that the bond was only intended to be a collateral security, and not a substitution for the obligation arising from the bills of exchange. Such a presumption may be impliedly rebutted by other circumstances. *Weston* v. *Foster*, 2 *Bing. N. C.*, 693, cited. RADHA GOBIND SHAHA *v.* THE BANK OF BENGAL . . . . . **2 C. L. R., 565**

BOND—*continued.*

20. ——————— **Bond payable by instalments.**—*Limitation.—Act XIV of 1859, s. 1.—Cause of action.*—Where a bond, payable by instalments, provided that upon default in payment of any one of the instalments the whole amount secured by the bond should become payable,—*Held*, that a suit to recover the money due upon the bond, brought after a lapse of more than three years from the date when the first default was made, though within three years from the date of the last payment, was barred by lapse of time. HURRONATH ROY *v.* MAHEROOLAH MOLLAH

[B. L. R., Sup. Vol., 618: 7 W. R., 21

21. ——————— *Cause of action.—Decree payable by monthly instalments.*—When a bond is entered into to pay off money due under a decree monthly by instalments, each monthly instalment becomes a separate cause of action, and limitation applies to each instalment separately. KHIDU *v.* KALI SAHU

[3 B. L. R., Ap., 112: 12 W. R., 71

22. ——————— *Default.—Cause of action.*—Where a bond was given to secure a debt which was to be repaid by seven annual instalments, and the bond provided that upon failure to pay a single instalment the whole principal sum secured should immediately become due and recoverable with interest,—*Held*, that the cause of action in respect of the principal and interest arose on failure to pay the first instalment. KARUPPANA NAYAK *v.* NALLAMMA NAYAK . . . . **1 Mad., 209**

MADHO SINGH *v.* THAKOOR PERSHAD

[5 N. W., 35

23. ——————— *Limitation.—Waiver.—Quære,*—Whether a suit on a bond for payment by instalments, with a clause making the whole amount payable on default in payment of any instalments, must be instituted within three years from the time of the first default. Payments made and accepted afterwards may operate to waive the effect of a default, and to restore the provision for payment by instalments. HULLODHUR BANGAL *v.* HOGG . . . . . **1 W. R., 189**

See BEEN *v.* BALFOUR . **Bourke, 120**

Contra, MADHO SINGH *v.* THAKOOR PERSHAD . . . . **5 N. W., 35**

SUMBHOO CHUNDER SHAHA *v.* BARODA SOONDUREE DEBEA . **5 W. R., 45**

24. ——————— Suit upon a bond executed by the defendants to the plaintiff for the payment of a sum of money by instalments. The bond contained a proviso that on default being made in the payment of any one instalment the whole amount should become due. Default was made in the payment of several instalments, but subsequently payments were made by the defendants and accepted by the plaintiff on account of the unpaid instalments. The defendants pleaded the law of limitation. The suit was brought more than three years after the first default in payment of an instalment had been made, but within three years from the time when, taking

BOND.—Bond payable by instalments— *continued.*

into account the payments that had been made, the first instalment claimed became due. *Held*, that these payments as regards both parties must be considered as if made at the time fixed; that the defendants could not rely upon the stipulation as making the whole debt due, and fixing the period from which the time of limitation ran; and that, the first of the instalments claimed having become due within three years, the suit was not barred. RAM KRISHNA MAHADEV *v.* BAYAJI BIN SANTAJI **[5 Bom., A. C., 35**

But *see* GUMNA DAMBERSHET *v.* BHIKU HARIBA **[I. L. R., 1 Bom., 125**

25. ——————— *Execution of decree.—Failure to keep decree alive.—Suit on bond.*—In execution of a decree, seven out of nine judgment-debtors, with the consent of the decree-holder, filed an instalment-bond, agreeing to pay the amount of the decree with interest thereon in two instalments. The decree-holder neglected to take proceedings to keep alive the decree, and his application to execute the decree was disallowed. In a suit brought by the decree-holder against the persons who had executed the instalment-bond for the amount of principal and interest due thereon,—*Held*, that the suit was maintainable. ASHIDHARI CHOWDHRY *v.* JAGESSUR KUMAR . . . . **6 B. L. R., Ap., 32**

S. C. ASHIDHAREE CHOWDHRY *v.* JUGGESSUR KUMAR . . . . **14 W. R., 430**

26. ——————— *Waiver of default.—Limitation.*—Suit brought on 24th April 1873 for principal and interest due on a bond dated 30th October 1850. The debt was payable by eight annual instalments, on failure of any one of which the whole amount was to be payable on demand. No instalment was paid, and when the suit was brought defendant pleaded that the suit was barred, as three years had elapsed from the date on which the last instalment became due. *Held*, that the usual clause, that on failure to pay one instalment the whole amount shall be payable on demand, gave a mere election to plaintiff of converting the obligation into a different one; that that election was never exercised, and that the document continued one securing the payment of a debt by instalments, as to all of which the action had long been barred; and that it was unnecessary, therefore, to consider whether, in the present case, "on demand" must not be construed according to its meaning at the period at which the words were written. EATHAMAKALA SUBBAMMAH *v.* RAGHIAH . **7 Mad., 293**

27. ——————— *Construction of bond.—Payments towards interest and principal.*—Defendants were indebted to the plaintiff in the sum of R1,400. With the object of liquidating this debt with interest at 12 per cent. per annum, the parties executed a bond whereby it was agreed that the defendants should grant an ijara lease of certain property for the term of fourteen years to the plaintiff's husband; and that the rent reserved on this lease should be paid by the lessee to the plaintiff during the terms in semi-annual payments each of R83-12. *Held*, that on the proper construction of this agreement, the semi-

BOND.—Bond payable by instalments— *continued.*

annual instalments were to be applied first to the reduction of the principal money due, and not to the payment of the interest. SHUBNOMOYEE DOSSEE *v.* UMA SOONDERY CHOWDHRAIN . **2 C. L. R., 138**

28. ——————— *Cause of action.—Waiver of default in payment.*—When a sum of money is payable under a bond by instalments with a condition that, in default of paying one instalment, the whole amount shall then become due, and default is made, but the obligee subsequently accepts payments of one or more sums as an instalment or instalments due under the bond, such acceptance amounts to a waiver of the condition of forfeiture, and puts an end to the cause of action which had accrued, so that the bond is set up again as a bond payable by instalments, and no cause of action under the condition arises until some fresh default is made in the payment of a subsequent instalment. PASSAMMA ROW GARU *v.* TOLETI VENKIYA . . . . . **5 Mad., 198**

See on the same principle HUR PERSHAD *v.* KHOWANEE . . . . **5 N. W., 18**

29. ——————— *Default.—Waiver.*—Where, after default in payment of an instalment upon a bond, conditioned that upon such a default the whole amount of the bond should become due, plaintiff accepted payment of such instalment, as also of several subsequent ones,—*Held*, that by so doing the parties reverted to the old arrangement for payment by instalments, or made a new one to the same effect, and that the penalty occasioned by the first default could not be enforced. GYAN CHUND *v.* JAWAHUR . . . . . **2 N. W., 83**

30. ——————— *Waiver of default.—Limitation Acts, 1871 and 1877, art. 75.—Civil Procedure Code, 1859, s. 194; 1877, s. 210.—Power of Court to alter contract between the parties.*—Where a bond is payable by instalments, and expressly stipulates for the payment of the whole debt on failure in the payment of any instalment, the law of limitation runs on the whole amount of the bond against the obligee from the day on which the obligor first makes default in the payment of any instalment, unless the obligee waive the default, and afterwards from the day on which any fresh default is made in respect of which there is no waiver. The obligee may waive the default under Acts IX of 1871 and XV of 1877, schedule II, article 75, but the Courts have no authority to compel him to waive it. Neither Act VIII of 1859, section 194, nor Act X of 1877, section 210, confers any authority on the Courts to relieve a contracting party from such an express stipulation in a bond payable by instalments as to the consequence of default in punctual payment of the instalments. A debt being presently due, an agreement to pay it by instalments, with a stipulation that on default the creditor may demand immediate payment of the whole balance due with interest, is not to be relieved against in equity. Such a stipulation is not in the nature of a penalty, inasmuch as its object is only to secure payment in a particular manner. The defendant executed to the plaintiff a bond payable by instalments, and expressly stipulating for the pay-

BOND.—Bond payable by instalments— *continued.*

ment of the whole amount on failure to pay any instalment on the day fixed. He paid the first instalment, but made default in paying the second, which fell due on the 3rd August 1878. On the 20th August plaintiff sued to recover the whole balance due on the bond. Defendant admitted the bond, but pleaded tender of the amount of the second instalment soon after the due date, and prayed for payment by instalments without any interest. The first Court passed a decree in the plaintiff's favour for the amount claimed with costs, but ordered defendant to pay R100 and the costs at once, and the balance by yearly instalments of R100 each, with interest at six per cent. till payment. The District Judge, on appeal, affirmed the decree, with a slight variation as to interest, which he directed the defendant to pay on overdue instalments only. *Held* by the High Court, on second appeal, that neither of the lower Courts had jurisdiction, without the consent of the parties, to substitute, for the contract made by them, terms which the Court preferred. *Held*, also, that plaintiff was entitled to sue on the day after that on which the default was made,—*viz.*, on the day after that fixed for the payment of the instalment,—and that the Subordinate Judge had no power to rule the contrary. RAGHO GOBIND PARANJPE *v.* DIPCHAND [I. L. R., 4 Bom., 96

31. ——— *Waiver of default.—Limitation Act, 1871, art. 75.*—Where a bond is payable by instalments, with a provision that upon default of payment of any instalment the whole sum then unpaid shall become due with interest, the creditor, though he can elect but once to enforce this provision, may waive the benefit of it not only on the first but on any subsequent default. SATRACHERLA *v.* SETARAMA . . . I. L. R., 3 Mad., 61

32. ——— *Default in payment.—Expiration of time for specific enforcement of contract.*—A bond for money provided that on failure on the part of the obligor to pay interest as agreed in the bond, and within a certain period from the date of the bond, the obligee might sue for possession of the immoveable property mortgaged in the bond. Default was made in the payment of interest as agreed, but the obligee deferred bringing a suit for possession of the mortgaged property so long that the time mentioned in the bond expired before he could obtain a decree. *Held*, that under these circumstances a decree for possession of the property could not be granted to him. BALWANT SINGH *v.* GUMANI RAM . . . . I. L. R., 5 All., 591

33. ——— *Suit on bond.—Limitation.—Burden of proof.—Indorsement of payment of instalments.*—Where a defendant sets up the defence of limitation, he must plead it, and show that the claim is barred. If, when the plaintiff has proved his case, the facts show that the cause of action accrued at a date earlier than the period of limitation, and the plea of limitation has been set up by the defendant, the latter will be entitled to take advantage of the plaintiff's evidence that the claim is barred, and to have judgment given in his favour. The obligee of a bond, by which obligor covenanted to pay the sum of R3,800 by annual instalments of R200, and in which it was also agreed that payments of the instalments should be indorsed on the bond, brought a suit against the obligor alleging default in payment, and claiming to recover the amount of the bond. He gave credit for payment of the instalments for seven years, and alleged that his cause of action arose upon default in payment of the eighth instalment. The bond showed on its face indorsements of the payments for which credit was given. The obligor alleged that no instalments were paid after the third year, that therefore the debt became due at an earlier date than that stated by the plaintiff, and that the claim was barred by limitation. *Held*, that inasmuch as the defendant adduced no evidence to show that the later instalments were not paid, and inasmuch as the evidence produced by the plaintiff did not show that the debt accrued at a date earlier than the limitation period, the plea of limitation failed. RADHA PRASAD SINGH *v.* BHAJAN RAI . I. L. R., 7 All., 677

34. ——— **Power of Court to alter terms of specially-registered bond.**—*Act VIII of 1859, s. 194.—Order to pay by instalments.—Superintendence of High Court.*—By a bond specially registered under Act XVI of 1864, the obligor stipulated to pay the entire amount secured thereby with interest at the rate therein mentioned on a day therein mentioned. There was a further stipulation that, on default of payment, the bond was to be enforced as a decree. On failure of payment the obligee applied for execution under section 53, Act XX of 1866, but the Subordinate Judge ordered the payment to be made by instalments. On an application to the High Court under section 15 of the Charter Act,—*Held*, that the Subordinate Judge had no jurisdiction to pass a decree on the bond altering or varying its terms. Section 194, Act VIII of 1859, did not apply. KHETTRA MOHUN BABOO *v.* RASHBEHARI BABOO . 5 B. L. R., 167: 13 W. R., 252

35. ——— **Bond registered under Act XVI of 1864, ss. 51 and 52.**—*Execution in default of payment of interest.*—Where a bond was registered under sections 51 and 52 of Act XVI of 1864, and by its terms a fixed amount of interest was to be paid at the end of every month,—*Held* that, by virtue of special registration, the obligee was entitled to move for execution in respect of each instalment of interest due. MANTHARESWARA AIYAR *v.* KAMALA NAIKER . . . 3 Mad., 88

BONUS, REFUND OF, SUIT FOR—

See SALE FOR ARREARS OF RENT—EFFECT OF SETTING ASIDE SALE. [I. L. R., 4 Calc., 778

BOTTOMRY-BOND.

1. ——— **Advance for repair of ship.**—*Master's lien for wages.—Priority.*—*A.*, the agent for a ship in port at Bombay, lent the master money on a bond, in the nature of a bottomry-bond, which he obtained from the master under pressure of necessity. It appeared that *A.* at the time of the making

BOTTOMRY-BOND.—Advance for repair of ship—*continued.*

of the bond had funds of his principal's in hand. *Held*, that the master's lien for wages has priority over the bond-holder. IN THE MATTER OF THE "GOOD SUCCESS." MACQUEEN *v.* FUZZUL MAHOMED ESSAU . . . **1 Ind. Jur., N. S., 303**

2. ——— Supply of necessaries to foreign ship.—*Claim for, against proceeds of ship.—Statute 7 Geo. I., chap. 21, s. 2.*—The Statute 7 George I., Chapter 21, section 2 (which declared void all contracts by way of bottomry made by any subject of His Majesty on any ship in the service of foreigners bound or designed to trade to the East, and all contracts for loading or supplying such ships with goods, &c., or with any provisions, stores, or necessaries, &c.), is repealed by implication. When a suit is brought by material men for necessaries supplied to a foreign ship against the surplus proceeds of such ship lying in the registry of the Court, and there is no opposition on the part of the owners of these proceeds, the Court has a discretionary power to allow the claim of the material men to be paid out of such unclaimed proceeds. IN RE THE PROCEEDS OF THE "ASIA." EX PARTE HORMASJI **[5 Bom., O. C., 64**

3. ——— Master's lien for wages.—*Sale of ship.—Charterer.—Priority.*—The charterer of a ship advanced money to enable her to complete the voyage, and obtained as security a "bottomry-bond," signed by both the master and owner. On the completion of the voyage, the charterer got the ship arrested and sold, and the money was brought into Court. Before any order had been made for the payment of the proceeds out of Court, the master also had got the ship arrested at his suit for wages due, but no decree had been obtained. Subsequently the charterer, without notice to the master, obtained an order of Court for the payment of the proceeds of sale to satisfy his bottomry-bond. Thereupon the master applied to restrain the charterer from taking the money out of Court until the claim for wages had been first satisfied. *Held*, that the master had a lien on the proceeds for wages due to him at the time of the sale of the ship, prior to that of the bottomry-bond-holder, and that he was entitled to have the proceeds retained in Court until the hearing of his claim. IN THE MATTER OF THE SHIP "PORTUGAL" . . . **5 B. L. R., 258**

4. ——— Master's lien for disbursements and wages.—*Towage.—Priority of lien.*—A ship was chartered for a voyage from Calcutta to Jedda and back. While at Jedda, the master found it necessary to borrow money for the wages of the crew and other purposes; and with the consent of the owner, tenders were invited by advertisement for a sum for which a bottomry-bond was to be given. Several tenders were made, and one by the charterer of the ship was accepted. A bottomry-bond was executed by the master, with the consent of the owner, in which was included the expense of certain repairs which had been found necessary at an intermediate port on the voyage from Calcutta, and for which the master had made himself liable. By

BOTTOMRY-BOND.—Master's lien for disbursements and wages—*continued.*

the bond the master bound himself, his heirs, executors, and administrators, for the payment of the sum named therein, and part of the consideration was expressed to be the payment of the debt which the master had incurred at the intermediate port. On arriving in the Hooghly, the ship was taken in charge by a pilot, under whose advice the master engaged a steamer to tow her to Calcutta. He was sued in Calcutta for the hire of the steamer, and had to pay the claim. When the ship arrived in Calcutta, the bond-holder obtained a decree on his bond, and had the ship arrested and sold; but on the application of the master, who had put in a claim for wages, the Court ordered that the proceeds should remain in Court pending the consideration of the master's claim. In a suit by the master to recover the balance of wages due to him as master of the ship, and for the expense of the steamer which towed the ship up the river to Calcutta,—*Held*, the towage was a disbursement fairly made, and of which the bond-holder had the benefit; the master, therefore, had a lien on the ship for such disbursement. *Semble*,—The master also had a lien for wages down to the time when he was duly discharged, and not merely down to the time of the arrival in port and arrest of the ship. The master, however, having bound himself by the terms of the bond, was precluded thereby from setting up his lien against that of the bond-holder, to whom, on the face of the bond, he had constituted himself a debtor. IN THE MATTER OF THE SHIP "PORTUGAL" **[6 B. L. R., 323**

5. ——— Right of suit.—A suit will not lie in an ordinary bottomry-bond given by the master of a vessel against the owner to recover the amount thereof. GLADSTONE, WYLLIE AND CO., *v.* HARRISON . . . . . **24 W. R., 50**

BOUGHT AND SOLD NOTES.

See CONTRACT.—BOUGHT AND SOLD NOTES.
[3 Moore's I. A., 448
Bourke, O. C., 354
2 Ind. Jur., N. S., 221

See EVIDENCE—PAROL EVIDENCE—VARYING OR CONTRADICTING WRITTEN INSTRUMENTS . . **9 B. L. R., 245**

BOUNDARIES.

See DECREE—FORM OF DECREE—GENERAL RULES AS TO FORM.
[I. L. R., 4 Calc., 69

BOUNDARIES, ALTERATION OF—

See ZEMINDAR—POWER OF ZEMINDAR.
[W. R., 1864, 355

BOUNDARIES, SPECIFICATION OF—

See CASES UNDER PLAINT—FORM AND CONTENTS OF PLAINT—BOUNDARIES.

BOUNDARY.

See SUNDERBUNS BOUNDARY.
[2 B. L. R., P. C., 33

See JURISDICTION OF CIVIL COURT—REVENUE COURTS—ORDERS OF REVENUE COURTS . . . 16 W. R., 109

——— Disputed—

See BENGAL ACT V OF 1875.
[I. L. R., 6 Calc., 453
I. L. R., 13 Calc., 280

See BOMBAY LAND REVENUE ACT, 1879, ss. 119, 121.
[I. L. R., 10 Bom., 456

——— Fluctuating—

See ACCRETION—NEW FORMATION OF ALLUVIAL LAND—RIVERS OR CHANGE IN COURSE OF RIVERS.
[11 B. L. R., 265: 18 W. R., 160
L. R. I., A. Sup. Vol., 34

——— Marks (Madras).

See ACT XXVIII OF 1860.
[I. L. R., 1 Mad., 192
I. L. R., 7 Mad., 280

1. ——— Demarcation of boundary line.—*Beng. Reg. X of 1822, ss. 2, 3, and 8.—Suit for declaration of boundary contrary to survey award.—Proprietary rights, Exercise of.—Presumption of ownership.—Beng. Reg. XI of 1825, s. 5, cl. 12.*—At the time of the Permanent Settlement the northern boundary of the pergunnah Shoosung (situated in Mymensingh, at the foot of the Garrow hills) was not defined by Government. From before that time, and certainly for more than sixty years, the zemindars of the pergunnah have always, but in an irregular and uncertain manner, exercised certain rights in the Garrow hills and over the inhabitants, who are half savages, such as hunting elephants, cutting wood, levying cesses on the inhabitants when possible (including in some parts of the hills a tribute of one rupee per hut), and exacting occasional services from them. Government held a survey, and declared the northern boundary of pergunnah Shoosung to be a line running along the base of the Garrow hills. The zemindar thereupon sued to set aside the survey, and for a declaration that the northern boundary lay many miles further north, and that the intermediate hill country belonged to him as forming part of pergunnah Shoosung. *Held* (by SETON-KARR, *J.*), that the acts of possession proved by the zemindar were sufficient under the circumstances to prove his proprietary right in the disputed tract, and for the passing of a decree in his favour. *Held* (by MACPHERSON, *J.*), that they were not sufficient to entitle him to a decree, being acts of mere easement independent of possession. *Held* by PEACOCK, *C. J.*, JACKSON and PHEAR, *JJ.*, on appeal under the Letters Patent.—The rules laid down by Regulation X of 1802 were intended to take effect only within the tract of country described in section 2, within which the administration of civil and criminal justice, &c., was by section 3 declared to be vested in an officer to be denominated the Civil Commissioner of the north-eastern parts of Rungpore.

BOUNDARY.—Demarcation of boundary line—*continued.*

The proviso in section 8 was not intended to give substantive powers to the Governor General in Council in respect of other tracts of the country, and clause 2 of the same section did not intend to take away the power of any Civil Court except within that tract. The proviso contained in section 8 does not authorise Government to separate any part of the Garrow country beyond that described in section 2 from the district and from the general Regulations, but merely directs the separation of such tracts from the estates of the neighbouring zemindars, and the discontinuance of the collection of cesses by the zemindars from the Garrows. By clause 2, section 8, the jurisdiction of the Civil Courts is taken away only in respect of acts of the above description, done under the authority of the Government; but that does not take away the right of a zemindar to contest a survey award drawing a line which deprives him of part of his zemindari and his permanently-settled estate. Where a Rajah had exercised rights and collected dues on certain hills and in forests north of an alleged line, and it was the unanimous opinion of all the revenue authorities that the forests were within his permanently-settled estate, the assumption by them and Government of such line as the boundary of the Rajah's estate, throwing upon him the *onus* of proving his claim to any portion north of that line, was held to be arbitrary and anomalous. If such proceedings were adopted under clause 12, section 5, Regulation IX of 1825, they were wholly irregular, and the irregularity can be no ground for excluding the Court from examining them. When a man is found exercising, on both sides of a boundary line, without objection, rights of ownership or incorporeal rights, and when it is not shown that there is any other owner of the soil, or that any objection to the exercise of such rights was made during a long course of years, his acts cannot be treated as the encroachments of a wrong-doer. *Per* PHEAR, *J.*—Where acts of user illustrate all the modes of enjoyment of which a disputed property can reasonably be expected to be capable, it can be rightly attributed to proprietorship of the tract upon which they were exercised. GOVERNMENT *v.* RAJKISHEN SINGH
[8 W. R., 343; and on appeal, 9 W. R., 426

2. ——— Disputed boundary.—*Survey—Suit for land from lessee of adjoining mouzah.*—In a suit by the lessee of a mouzah to recover possession of a piece of land from a lessee of an adjoining mouzah, both making title under one zemindar, where a survey had taken place at a time when both mouzahs to which respectively the land was claimed as belonging were in his possession, and when neither of the leases were in existence,—*Held*, that the suit involved simply a question of boundary, and what was to be ascertained was to which mouzah the land in dispute was found to belong at the time of the survey. AMEEREE BEGUM *v.* GOBIND PANDEY
[15 W. R., 35

3. ——— Question of boundary.—*Privy Council, Practice of.—Reports of Deputy Collectors at local investigations.*—Unless there be very good grounds for dissenting and differing from the

BOUNDARY.—Question of boundary— *continued.*

reports made by the Deputy Collectors upon local investigations, the Courts even in India, and *a fortiori* the Courts in England, in dealing with boundary questions ought to give great weight to them and to be guided by them. The Privy Council will never interfere with the finding of an Indian Court upon a question of boundary, unless they are clearly satisfied that there has been some plain miscarriage in the conduct or decision of the case upon which they can put their hands, and make it the ground for an order reversing or varying the decree. RAM GOPAL ROY *v.* GORDON, STUART AND CO.

[17 W. R., 285 : 14 Moore's I. A., 453

4. ——— Ascertaining and defining boundaries.—The appellant having obtained a decree in 1854 declaring him entitled to erect boundary pillars according to a certain khusrah,—*Held*, that it was now a work of great difficulty to ascertain and define the boundaries, and that the Court in executing that decree was not precluded from taking into consideration other decrees between the same parties, not as contradicting or altering that khusrah, but as explaining and supporting the views taken by the Court of what the boundaries really were according to the khusrah. RAJENDRO KISHORE SINGH *v.* HYABUL SINGH . . . . . **17 W. R., 379**

BREACH OF CONDITION.

See WILL—CONSTRUCTION.

[12 B. L. R., 1
14 B. L. R., 60 : 22 W. R., 377 : L. R., 1 I. A., 387

BREACH OF CONTRACT.

See CASES UNDER ACT XIII OF 1859.

See CASES UNDER CONTRACT—BREACH OF CONTRACT.

See CASES UNDER DAMAGES—SUITS FOR DAMAGES—BREACHES OF CONTRACT.

See DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES—BREACH OF CONTRACT.

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION—BREACH OF CONTRACT.

See CASES UNDER LIMITATION ACT, 1877, ARTS. 115, 116 (1859, S. 1, CLS. 9 & 10).

BREACH OF PEACE, DISPUTE LIKELY TO CAUSE—

See CASES UNDER POSSESSION, ORDER OF CRIMINAL COURT AS TO—LIKELIHOOD OF BREACH OF PEACE.

See CASES UNDER RECOGNIZANCE TO KEEP THE PEACE.

BREACH OF TRUST.

See CASES UNDER CRIMINAL BREACH OF TRUST.

See CASES UNDER CRIMINAL MISAPPROPRIATION.

See PARTNERSHIP PROPERTY.

[13 B. L. R., 307, 308, note ; 310, note

BREACH OF WARRANTY.

See CHARTER-PARTY.

See CASES UNDER VENDOR AND PURCHASER—BREACH OF WARRANTY.

BRITISH SHIP.

See SHIP, REGISTRY OF—

[4 Moore's I. A., 179

BROACH ENCUMBERED ESTATES ACT, XIV OF 1877.

——— **s. 19.**—*"Suit."—Application for execution of decree.*—The term "suit" in the last paragraph of section 19 of Act XIV of 1877 includes applications for execution of decrees. BHULJI BECHAR *v.* BAWAJI DAJI . **I. L. R., 5 Bom., 448**

BROACH TALOOKDARS' RELIEF ACT, XV OF 1871, s. 23.

——— *Manager of Thakoor's estate.—Liability for damages for attachment in execution.*—The Broach Talookdars' Relief Act, XV of 1871, does not bar the cognizance, by the Civil Court, of a suit to recover the amount improperly levied as rent of rent-free land, and to obtain a declaration that such land is not subject to the payment of rent, albeit that, under section 23 of the Act, the manager of a Thakoor's estate is exempt from personal liability for anything done by him *bonâ fide* pursuant to the Act, and is not subject to an action for damages on account of the attachment of the plaintiff's property. ASMAL SALEMAN *v.* THE COLLECTOR OF BROACH

[I. L. R., 5 Bom., 135

BROTHER.

See HINDU LAW—INHERITANCE—SPECIAL HEIRS—MALES—NEPHEW.

[I. L. R., 2 Calc., 379

See CASES UNDER HINDU LAW—INHERITANCE — SPECIAL HEIRS — FEMALES — SISTER.

BROTHERS OF THE WHOLE AND HALF BLOOD.

See CASES UNDER HINDU LAW—INHERITANCE—SPECIAL HEIRS—MALES—HALF BLOOD RELATIONS.

BROTHER'S SON.

See HINDU LAW—ADOPTION.

[I. L. R., 3 Calc., 587

BUILDING LEASE.

——— *Party wall, Liability for cost of.—Agreement to refer disputes to a third person.—Effect of such agreement on the right to sue.—Award of such third person essential to right of action.—Surveyor's certificate.—Limitation.—Covenant—Right to sue.—Stranger to consideration.—Landlord and tenant.*—The plaintiff sued to recover from the defendant half the cost of a party wall. The plaintiff and defendants were lessees of adjoining pieces of land under agreements made between them respectively and the Secretary of State for

BUILDING LEASE—*continued.*

India in Council as lessor. The terms and conditions of the two agreements were the same. By these agreements the plaintiff and defendant respectively agreed to build houses upon the said pieces of land in the manner therein specified, and the agreements contained the two following clauses: (1) "The buildings to be continuous with party walls common to both adjoining houses." (2) "All disputes regarding the cost and maintenance of party walls to be decided by the Government surveyor, whose decision shall be binding on both parties." In pursuance of the said agreements the plaintiff and defendants respectively erected buildings on the said pieces of land. The plaintiff caused the northern wall of his building to be built as a party wall, and it was used by the defendants as the southern wall of the building erected by them. The defendants paid the builder who was employed by the plaintiff a sum of R700 on account of the cost of erecting the party wall, but the rest of the cost was defrayed by the plaintiff. The party wall was completed in November 1871, but, in consequence of disputes which arose between the plaintiff and the building contractor, the sum payable to the latter was not ascertained for some years. In March 1879 the plaintiff caused the party wall to be measured by a surveyor, and on the 7th June 1879 demanded from the defendants payment of half the cost. The defendants, however, failing to pay the sum demanded, the plaintiff, after notice to the defendants, caused the cost of the said party wall to be ascertained by the Government surveyor, who, by a certificate dated the 25th February 1882, certified that the share of the cost to be borne by the defendants for the said party wall was R3,226. The plaintiff in this action sought to recover this sum from the defendants *minus* the R700 which, as above stated, the defendants had already paid, and for which the plaintiff gave them credit. The defendants in their written statement alleged that the party wall had been partly built with materials supplied by them, and that in the year 1870 they had adjusted accounts with the plaintiff in respect of the said materials and the said party wall, and it was then agreed that the sum of R700 paid by the defendants should be treated as a final settlement. They also alleged that the plaintiff had settled disputes with the building contractors, and had only paid them three annas in the rupee on the amount of their claim in full satisfaction; the defendants pleaded that they ought not to be charged with more than their due proportion of such reduced amount. It was further contended for the defendants that their obligation to pay half the cost of the party wall existed independently of the arrangement between them and the plaintiff to refer the matter to the Government surveyor; that this latter covenant was only collateral, and did not interfere with the plaintiff's right to sue the defendants for their half share of the cost; that the plaintiff's cause of action in this respect arose on the 15th October 1878, when the contractor's claim was finally settled, and that this suit not having been brought for more than three years after that date it was barred by limitation. *Held*, that the suit was not barred. There was no right of action independently of the valuation and award of the Government surveyor. There was no separate covenant to pay

BUILDING LEASE—*continued.*

compensation to which the covenant for reference to the Government surveyor could be collateral. The rights of the parties were defined by the contracts, and, under these, each lessee might have the benefit of a party wall on such terms, and no others, as he on his part submitted to. Payment of a share of the cost was not one of those terms except in so far as each lessee, if a dispute arose, was bound by the decision of a Government surveyor. That decision was not ancillary, serving to give greater explicitness to a right already fully subsisting. It was essential to the right itself, and until it was made, no cause of action for the moiety of the cost arose. Where, in leases granted by one lessor to several lessees taking sites for buildings intended to be contiguous and to form one block or group in mutual relation, there is a common covenant which is an inducement to the lessee to take the lease, and which he must know is equally an inducement to his neighbour to take his lease, neither can be called a stranger to the consideration. Each may be regarded as an equitable assignee of the covenants which the lessor made for his benefit as lessee. Each, consequently, has an equitable right to enforce against the other the obligation stipulated for in his interest, and serving as a part of his inducement (as the other knew) to the contract. COOVERJI LUDDHA *v.* BHIMJI GIRDHAR

[I. L. R., 6 Bom., 528

See COVERJI LUDDHA *v.* MORAJI PUNJA.

[I. L. R., 9 Bom., 183

BUILDING ON LAND WITHOUT TITLE.

——— *Bonâ fide belief of title.—Right of person building to compensation.*—Where a man builds on land belonging to another, he will not, when ejected, be allowed any compensation for the buildings, unless the circumstances show that he built in good faith, believing the land to be his own. *Bani Madhub Das* v. *Ramjoy Rokh, 1 B. L. R., A. C., 213; Rama* v. *Jan Mahomed, 3 B. L. R., A. C., 18; Bromo Moye Debea* v. *Koomoodinee Kant Banerjee, 17 W. R., 467;* and *Banee Madhub Banerjee* v. *Jai Krishna Mookerjee, 7 B. L. R., 152: 12 W. R., 495.* FURZAND ALI KHAN *v* AKA ALI MAHOMED . . . . . 8 C. L. R., 194

See WAHADOOLLAH *v.* GOLAM AKBUR.

[25 W. R., 205

BUILDINGS ERECTED BY ADJOINING OWNERS.

——— *Liability of adjoining owners for costs of party wall.—Agreements for building. Decision of Government surveyor made final in case of dispute.—Right of suit.—Right of one owner over portion of party wall not used or built on by the other.*—Under separate agreements made by them respectively with Government, the plaintiff and defendant held adjoining plots of land for building. The agreements contained the same terms and stipulations, among which were the following: "(*a*) The buildings to be continuous, with party walls common to both adjoining houses. (*b*) All disputes regarding the cost and maintenance of party walls to be decided

BUILDINGS ERECTED BY ADJOINING OWNERS—*continued.*

by the Government surveyor, whose decision shall be binding on both parties." The plaintiff employed a contractor to erect a house upon his plot of land. The house was completed in 1870; the north wall of which was built as a party wall in pursuance of the condition contained in the agreement with Government. Disputes subsequently arose between the plaintiff and his contractor, which were not settled until the 26th August 1878, on which date the plaintiff paid the contractor a sum of R20,515-4-11, which included the cost of the party wall. After the plaintiff's house had been completed, the defendant built his house upon the adjoining land, and in so doing he used a large portion of the party wall as the southern wall of his house. He paid the plaintiff half the cost of the portion so used by him. The rear portion of the said wall was not used by the defendant, as his house did not extend so far to the rear as the house of the plaintiff. The plaintiff demanded payment of half the cost of that part of the wall not used by the defendants, but the defendants refused to pay. The plaintiff then claimed that part of the wall as his own property, and proceeded to open windows in it. The defendants objected. The plaintiff subsequently filed the present suit, claiming from the defendants payment of half the cost of the said portion of the wall not used by the defendants, and, in the event of such payment not being awarded, he prayed for a declaration that he was the sole owner of the said portion of the wall, and for an injunction restraining the defendants from disturbing him in the sole enjoyment thereof. The brother (Khatáv Luddha) of the first defendant was originally made the second defendant of the suit. He, however, disclaimed all interest in the premises; and it appeared that in 1876 the first defendant had sold the property to him (Khatáv Luddha), who in 1879 sold it to Kesserbái, the first defendant's wife. Kesserbái accordingly was made the second defendant in the place of Khatáv Luddha. Both the defendants pleaded limitation, and denied their liability to pay any part of the cost of that part of the wall which they did not use. The first defendant further alleged that he had paid the whole cost of the foundation and other parts of the said wall, and claimed to set off this payment against the claim of the plaintiff. At the original hearing, SCOTT, *J.*, held, (1) that the part of the wall in dispute, although not used by the defendants, was a party wall, having regard to the terms of the agreement under which the said wall was erected; (2) that Kesserbái was liable, equally with the first defendant, to pay for this part of the wall, having purchased the property subject to the terms of the original agreement of which she presumably had notice; (3) that the suit was not barred, but that there was no right of action for the cost of the party wall independently of the award of the Government surveyor, in whose decision lay all disputes as to such cost; and that, until his decision was given, there was no complete cause of action. SCOTT, *J.*, accordingly, on 11th December 1882, decreed that the defendants were severally liable to pay the half of whatever sum the Government surveyor might certify to be due for the cost of the disputed part of the said wall, and

BUILDINGS ERECTED BY ADJOINING OWNERS—*continued.*

that the defendants were entitled to set off, in the calculation of what was due from them, the cost of any work or materials which the Government surveyor might find had been contributed by the first defendant. The case was thereupon adjourned, in order that the certificate of the Government surveyor might be obtained. The Government surveyor subsequently gave his certificate as to the cost of the unused portion of the said wall, but stated that on the evidence before him he was unable to decide as to the ownership of the foundations, &c., of the wall. The case came on again before SCOTT, *J.*, who decided to take evidence on the points left undetermined by the Government surveyor. Witnesses were accordingly examined, and on 11th December 1883 the Court disallowed the defendant's claim of set-off, and gave judgment for the plaintiff for half the sum certified by the Government surveyor as the cost of the disputed part of the wall. The defendants appealed *Held* that, having regard to the terms of the agreements under which the plaintiff and defendants respectively held their property, the Court was not competent to determine the question of the defendant's set-off or the other points raised by the pleadings. These were matters to be decided by the Government surveyor, whose certificate was a condition precedent to the plaintiff's right to sue, and upon which the Court might give judgment. *Held*, also, that the plaintiff was not entitled to use the portion of the wall not occupied by the defendants in any way except as a party wall. It was erected under the agreement as a party wall, and that it should be used for a purpose inconsistent with the idea of its being a party wall would be opposed to the true intention of the parties to the agreement, whether Government or the lessees The plaintiff was not entitled to the full right of ownership over it, as if it had been built on his own ground: the declaration and injunction asked for, therefore, were refused COVERJI LUDDHA *v.* MORARJI PUNJA

[I. L. R., 9 Bom., 183

See COOVERJI LUDDHA *v.* BHIMJI GIRDHAR **I. L. R., 6 Bom., 528**

BUILDINGS, ERECTION OF—

See CASES UNDER ACQUIESCENCE. **[I. L. R., 1 Al., 82**

See IMPROVEMENTS . **25 W. R., 205**
[3 C. L. R., 194

See CASES UNDER LANDLORD AND TENANT —ALTERATION OF CONDITIONS OF TENANCY—ERECTION OF BUILDINGS.

See MISCHIEF . **I. L. R., 3 Calc., 573**

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—CASES WHICH MAGISTRATE CAN DECIDE ON POSSESSION.
[I. L. R., 3 Calc., 573
I. L. R., 7 Mad., 460

BUILDINGS, ERECTION OF, ON GOVERNMENT LAND WITHOUT COLLECTOR'S LEAVE.

See BOMBAY ACT I OF 1865, SS. 35, 48. [I. L. R., 1 Bom., 352

BUILDINGS, RIGHT OF TENANT TO REMOVE—

See CASES UNDER LANDLORD AND TENANT—BUILDINGS ON LAND, RIGHT TO REMOVE—

BULAHAR, OFFICE OF—

——— *Nature of office.—Power of zemindar to dismiss officer.*—The office of a bulahar is an office held only during the zemindar's pleasure, and the person holding such an office is removeable by the zemindar. SUNOO KHAN *v.* OODEA . 2 Agra, 140

BUNKUR, RIGHT OF—

——— *Proprietorship on the soil.*—The right of bunkur (a right of cutting wood) is a right indicative of a certain dominion over the soil. SEELANUND SINGH *v.* MOHESHUR SINGH [3 W. R., P. C., 19 : 10 Moore's I. A., 81

BURMA COURTS ACT, XVII OF 1875.

See APPEAL IN CRIMINAL CASES—ACTS—BURMA COURTS ACT. [I. L. R., 4 Calc., 667

See TRANSFER OF CRIMINAL CASE. [I. L. R., 10 Calc., 643

BURMA CIVIL COURTS ACT, XVII OF 1875, s. 4.

——— *Buddhist law of marriage in British Burma.—Wife's claim upon husband for maintenance.*—By the Buddhist law of marriage, as administered in the Courts of British Burma, it is the duty of the husband to provide subsistence for his wife and to furnish her with suitable clothes and ornaments. If he fails to do so, he is liable to pay debts contracted by her for necessaries; but it appears that this law would not be applicable where she has sufficient means of her own. No authority has been found for saying that, where the wife has maintained herself, she can sue her husband for maintenance for the period during which she has done so. A wife married according to Burmese rights and customs claimed from her husband, in a Court in British Burma, a certain sum for her expenses of necessaries and living for a past period during which she had maintained herself. *Held*, that this was a question "regarding marriage" within the meaning of the Burma Courts Act, XVII of 1875, section 4, and that, therefore, the Buddhist law formed the rule of decision. The law, as stated above, was accordingly applicable. *Semble*,—That if this had been a case in which, by the above Act, a Court would have had to act according to the rule of justice, equity, and good conscience, there would have been no ground for making the husband liable upon this claim, regard being had to the Burmese law as to the property of married persons. MOUNG HMOON HTAW *v.* MAH HPWAH . I. L. R., 10 Calc., 777 [L. R., 11 I. A., 109

BURMA CIVIL COURTS ACT, XVII OF 1875—*continued.*

——— s. 27.—*Limitation for second appeals.*—A second appeal under section 27 of the Burma Courts' Act is not subject to the limitation of time prescribed for an appeal to a High Court under the Limitation Act of 1877. MAHOMED HOSSEIN *v.* INODEEN . . . I. L. R., 10 Calc., 946

——— s. 49.—*Restitution of conjugal rights.—Appeal from decree of Recorder of Rangoon.—Civil Procedure Code (Act XIV of 1882), s. 540.*—The proviso in section 49 of the Burma Courts Act amounts to an express declaration that it is a condition precedent to the right of appeal from the Recorder's Courts that the suit shall be one which has an amount or value capable of being estimated in money, and that that amount or value must fall within certain specified limits. A suit for the restitution of conjugal rights is incapable of being valued, and no appeal, therefore, in such a suit will lie under the Burma Courts Act from a decision of the Recorder of Rangoon. GOLAM RAHMAN *v.* FATIMA BIBI [I. L. R., 13 Calc., 232

——— ss. 49, 97.—*Civil Procedure Code (Act XIV of 1882), ss. 3, 4, 540.—Limitation Act (XV of 1877), sch. II, art. 156.*—An appeal from the Court of the Recorder of Rangoon to the High Court is an appeal under the Civil Procedure Code, and must be made within the time prescribed by article 156, schedule II of the Limitation Act. AGA MAHOMED HAMADANI *v.* COHEN . I. L. R., 13 Calc., 221

BYE-LAWS.

See MADRAS TOWNS IMPROVEMENT ACT, s. 165 . . . 8 Mad., Ap., 3

See CALCUTTA MUNICIPAL ACT, 1863. [Bourke, O. C., 412

CALCUTTA MUNICIPAL ACTS (Bengal Act VI of 1863 and Bengal Act IV of 1876).

BENGAL ACT VI OF 1863.

1. ——— Obstruction.—*Bye-law 7.—Conviction of owner of bazar for permitting obstruction.*—It is necessary to show that the owner of a bazar in Calcutta actually permitted an obstruction in the paths of the bazar, in order that a conviction may be sustained against him under Bengal Act VI of 1863, Bye-law 7. IN THE MATTER OF THE JUSTICES OF THE PEACE FOR THE TOWN OF CALCUTTA *v.* HERALALL SEAL . . . Bourke, O. C., 412

2. ——— *Construction of Act.—Right of way.*—In cases of obstruction the Court will hold that the words "lanes, walks, gangways, or other thoroughfares," must be restricted to mean those spaces over which the public, by consent or dedication of the owner, enjoy the right of passing and repassing for market purposes. IN RE THE JUSTICES OF THE PEACE FOR THE TOWN OF CALCUTTA *v.* MAHARANEE OF BURDWAN [1 Ind. Jur., N. S., 102

CALCUTTA MUNICIPAL ACTS (Bengal Act VI of 1883 and Bengal Act IV of 1876)—*continued.*

BENGAL ACT VI OF 1863—*continued.*

——— **ss. 151, 226, 229, & 230.**—*Liability of Justices for compensation for damage in making sewers, &c.—Negligence.—Amount of damages.—Writ of mandamus.*—By section 151, Bengal Act VI of 1863, the Justices are empowered in making any main or sewers for the drainage of Calcutta, "to carry such sewers through, across, or under any street, or any place laid out as, or intended for, a street, or any cellar or vault which may be under any of the streets, and (after reasonable notice in writing in that behalf) into, through, or under any enclosed or other land whatsoever, making full compensation for any damage done thereby; and if any dispute shall arise touching the amount or apportionment of such compensation, the same shall be settled in the manner hereinafter provided for the settlement of disputes respecting damages and expenses." Section 229 provides that "in all cases where any damages, costs, or expenses are by this Act directed to be paid, the amount of the same, in case of dispute, shall be ascertained and determined by a Judge of the Calcutta Court of Small Causes." Section 226 provides that a month's notice shall be given before any action is brought under the Act against the Justices. By Act V of 1857 the Oriental Gas Company was empowered to lay down pipes and execute other necessary works for the supply of gas to Calcutta. In an application by the Company for a writ of mandamus to compel the Justices to join with the Company in referring to a Judge of the Small Cause Court to ascertain the amount payable to the Company as compensation for damage alleged to have been occasioned to their pipes, &c., by the drainage works of the Justices, an affidavit was filed, in which the Company's manager stated specifically the loss that had been occasioned, and that he had, on personal inspection, satisfied himself that the loss was occasioned by the negligent execution of the drainage works of the Justices. The affidavit on behalf of the Justices stated that, "in carrying out such drainage works, the Justices, or their contractors, agents, or servants, have not damaged the pipes, &c., of the Company, and that the Justices deny that they are in any manner liable for the damage in respect of which compensation is sought by the Company, or that they have done or caused any damage to the Company." *Held* (*per* PHEAR, *J.*), on the facts, that the Justices' works had caused damage to the Company's main and pipes. *Held*, also, that the compensation-clause of section 151, Bengal Act VI of 1863, makes the Justices liable to compensate owners of land, or of any interest in land through which the drainage works are authorized to be carried, for any damage caused by any proceedings in such works. It applies to cases where the works have been done with due care and skill, and where, but for the Act, there would have been a right of action against the Justices. *Held*, also, that the denial of liability by the Justices was simply a general denial that any damage had been done to the Company; the question, therefore, between the parties resolved itself into a dispute as to the amount of damage, which, by section 151, must be settled in the manner provided by section 229. Hence the Company was entitled to a writ of mandamus. *Held*, also, that section 226 applies to proceedings *dehors* the Act, and not to proceedings taken to enforce compliance with the provisions of the Act. JUSTICES OF THE PEACE FOR CALCUTTA *v.* THE ORIENTAL GAS COMPANY

[8 B. L. R., 433: 17 W. R., 364

——— **s. 180.**

See MANDAMUS.

[2 Ind. Jur., N. S., 182

——— **s. 200.**—*Warrant for search and seizure.—Jurisdiction of Chairman of Justices and of Justices.—Procedure.*—The Chairman of the Justices of Calcutta, on the complaint of the Health Officer, issued a warrant for the seizure of certain articles of food, and without notice to the owners, or reducing the proceedings to writing, condemned them as unfit for use. In support of a rule *nisi* for a *certiorari* for bringing up the order that it might be quashed, it was argued that the Chairman had not, as such, jurisdiction to make the order; and that it was invalid, as notice had not been given, and the proceedings had not been reduced to writing. Cause was shown that the description of the Chairman was immaterial, as he was also a Justice of the Peace, and that such summary proceedings were necessary for the public safety. *Held*, that the Act does not empower the Chairman of the Justices, as such, to issue a warrant under the 200th section; that such a warrant must show, on the face of it, that the Justice issuing it had jurisdiction; that the application under section 200 must be reduced to writing; that the evidence taken therefrom must be recorded; and that notice must be given to the party proceeded against. DAY AND CO. *v.* JUSTICES FOR THE TOWN OF CALCUTTA . . . . **Bourke, O. C., 232**

——— **s. 226.**—*Suit against Justices for damage in repairing drains.—Contractors.—Negligence.—Cause of action.—Notice of action.*—In a suit for alleged damage done to the plaintiff's premises by excavations for drainage purposes, which the Justices are authorised to make by Bengal Act VI of 1863, it being shown that the Justices had entrusted the execution of the work to skilled and competent contractors,—*Held*, the Justices were not liable. In such a suit no cause of action will be allowed to be raised, except that disclosed in the notice of action required to be given to the Justices by section 226 of the Act. ULLMAN *v.* THE JUSTICES OF THE PEACE FOR THE TOWN OF CALCUTTA . . . . . **8 B. L. R., 265**

BENGAL ACT IV OF 1876.

See RIGHT OF WAY.

[I. L. R., 13 Calc., 136

CALCUTTA MUNICIPAL ACTS (Bengal Act VI of 1883 and Bengal Act IV of 1876)—*continued.*

BENGAL ACT IV OF 1876—*continued.*

——— **ss. 75—79.**

See TRANSFER OF CRIMINAL CASE.

[I. L. R., 2 Calc., 290

——— **ss. 75, 77, 79.**—*Evidence, Refusal to hear.—Finality of assessment.—High Court's Criminal Procedure Act (X of 1875), s. 147.—A.*, alleged to have carried on business in Calcutta without having taken out a license under Bengal Act IV of 1876, was summoned at the instance of the Corporation by *B.*, a servant of the Corporation and also a Justice of the Peace. The case was subsequently heard by *B.*, and it was shown that notice of the assessment under class II, schedule 3, had been duly served on *A.*, and that, though he then denied his liability to take out any license, and stated that he carried on no business as alleged, he had not appealed against the assessment under section 79. It was further shown that the assessment had been confirmed by the Chairman of the Corporation, but that the amount had not been paid. *A.* thereupon tendered evidence to show that he was not liable to take out any license; but *B.* refused to hear such evidence, and, convicting *A.*, sentenced him to pay a fine. On an application, under the above circumstances, to the High Court under section 147, Act X of 1875,—*Held*, that the finality of the decision of the Chairman referred to in section 79 has only reference to the class under which a particular person, who is admittedly bound to take out a license under section 75, should be assessed, and not to the case where the liability to take out a license at all is denied, this being a question which can only be determined judicially after taking evidence by a competent Court in a prosecution under section 77, and that, therefore, the refusal of *B.* to hear the evidence tendered by *A.* on this point was illegal. WOOD *v.* CORPORATION OF THE TOWN OF CALCUTTA

[I. L. R., 7 Calc., 322: 9 C. L. R., 193

——— **s. 77.**—*License.—Assessment.—Fine.—Boarding-house keeper.*—In order to obtain a conviction under section 77, Bengal Act IV of 1876, for keeping a boarding-house without taking out a license, it must be shown that the accused held himself out to the public as one whose business or profession it is to receive boarders for profit. In order to pass a proper sentence of fine under section 77, Bengal Act IV of 1876, evidence should be given of the amount of assessment on the accused's house or place of business, and of the amount payable on account of the license which the accused should have taken out. IN THE MATTER OF THE HIGH COURT'S CRIMINAL PROCEDURE ACT (X OF 1875), AND IN THE MATTER OF THE PETITION OF WOOD. WOOD *v.* THE CORPORATION FOR THE TOWN OF CALCUTTA

[I. L. R., 8 Calc., 891: 11 C. L. R., 357

——— **s. 88.**—*Municipal Commissioners, Jurisdiction of.—Assessment.—House rate.—Annual value.—Per* WILSON, *J.*—The words "annual value" in section 88 of the Municipal Act must be taken to mean "annual letting value." NUNDO

CALCUTTA MUNICIPAL ACTS (Bengal Act VI of 1883 and Bengal Act IV of 1876)—*continued.*

BENGAL ACT IV OF 1876—*continued.*

LAL BOSE *v.* CORPORATION FOR THE TOWN OF CALCUTTA . . . . I. L. R., 11 Calc., 275

——— **s. 104 & s. 88.**—*Construction of s. 104.—Per* WILSON, *J.*—*Quære,*—Whether section 104 of the Act is in the nature of an interpretation clause, or merely directory as containing instructions to the Commissioners how to proceed when exercising the jurisdiction conferred by section 88. NUNDO LAL BOSE *v.* CORPORATION FOR THE TOWN OF CALCUTTA . . . . I. L. R., 11 Calc., 275

——— **s. 117.**

See CERTIORARI.

[I. L. R., 11 Calc., 275

——— **ss. 189, 191, 213, 252.**

See MUNICIPAL COMMISSIONERS.

[I. L. R., 10 Calc., 445

——— **s. 248.**—*Conviction for keeping animals without license.—Continuing offence between date of summons and date of conviction.—Second prosecution for same offence on different date before conviction.*—Under section 248 of Bengal Act IV of 1876, a milkman, who has been convicted and fined for keeping an animal without a license, cannot again be prosecuted for the continuance of the same offence before conviction, nor can he be separately prosecuted for the same offence for each day the offence is continued as a separate and distinct offence under that section before conviction. In a summons taken out on the 27th March against a milkman for an offence under section 248, Bengal Act IV of 1876, the offence was stated to have been committed on the 16th March; the case was fixed for the 8th April, when the defendant was convicted and fined by the Magistrate. Another summons had been taken out against him on the same day (27th March) for a similar offence stated to have been committed on the 25th March. *Held*, that he could not be convicted on the second charge. IN THE MATTER OF THE CORPORATION FOR THE TOWN OF CALCUTTA *v.* MATOO BEWAH

[I. L. R., 13 Calc., 108

CAMP-FOLLOWERS.

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—MILITARY MEN.

[2 B. L. R., S. N., 7

CANTONMENT.

1. ——— *Grant of land for building purposes.—Right of Government to eject grantee.—Regulations and Orders for the Bengal Army.—Alluvial land.—Assessment of rent.*—Certain ground situate within the limits of a cantonment was granted for building purposes by the military authorities in 1802. In June 1873 such cantonment was abandoned, and the ground comprised therein was made over to the Collector of the district in which it was situate. The Government subsequently sued *P.*, who had succeeded to such grant, claiming (1) a

CANTONMENT—*continued.*

declaration of its proprietary right to the ground comprised in such grant, and to the alluvial accretions to such ground; (*ii*) that *P.* should be directed to pay rent for such ground and such alluvial accretions; and (*iii*) that, should *P.* refuse to pay the rents fixed, she might be ejected and the Government put in possession. *Held* that, inasmuch as under the Military Regulations relating to such grants such a grant cannot be resumed by the Government without a month's notice and without payment of the value of any buildings which may have been authorised to be erected, and as the Civil Court had no jurisdiction in the matter of assessing rent on such alluvial accretions, which were outside the original grant, the Government was not entitled to the second and third reliefs it claimed, but was entitled only to a declaration of its proprietary title to such ground and to such alluvial accretions. PATTERSON *v.* SECRETARY OF STATE FOR INDIA

[I. L. R., 3 All., 669

2. ——— *Grant of land by military authorities for building purposes.—Resumption of land by civil authorities.—Assignment of profits of the land to Municipal Committee.—Liability of grantee to pay ground-rent.—Refusal of grantee to pay ground-rent to Municipality.—Suit by the Secretary of State for India for declaration of title and assessment of rent.—Cause of action.—Jurisdiction of Civil Court.—Right of grantee to compensation in case of ejectment.*—Certain land situate within the limits of a cantonment was granted free of rent for building purposes by the military authorities. Under the Military Regulations relating to such grants, such a grant could not be resumed by the Government without a month's notice, and without the payment of the value of such buildings which might have been authorised to be erected. The land was subsequently resumed by the civil authorities, and, the land being within municipal limits, the ground-rents on it were assigned to the Municipality. The Municipal Committee having demanded ground-rent in respect of the buildings erected on such land under such grant, from the representative in title of the original grantee, and the latter having refused to pay the same or to vacate the land, the Secretary of State for India in Council sued him in the Civil Court for a declaration of proprietary right to the land, for its assessment to ground-rent, and, in the event of the refusal of the defendant to pay such rent, when fixed, for his ejectment therefrom, and for mesne profits of the land for six years. The cause of action was stated in the plaint to be the refusal of the defendant to pay ground-rent or to accept a lease or to surrender the land, after a notice to that effect had been issued to him by the Municipal Committee as the plaintiff's agents. *Held*, that the Municipal Committee were the plaintiff's duly authorised agents to lease and obtain rent for the land occupied by the defendant's buildings with their compounds; that such notice was properly issued in that character on behalf of the plaintiff; and that the defendant's subsequent refusal to pay rent, or to accept a lease or evacuate the premises, amounted to a sufficient denial of the plaintiff's title to afford him a good cause of action; that, assuming that no agreement to pay rent existed, the plaintiff was entitled to demand and recover reasonable compensation for the use and occupation of the land by the defendant; that the suit was maintainable in the Civil Court, and it had power to grant the plaintiff the reliefs sought; that by the conditions of the grant by the military authorities the plaintiff was not disqualified from demanding ground-rent for the land before he had paid the defendant the value of the buildings, but that, looking to those conditions, it would not be fair or equitable to grant the plaintiff a decree, pure and simple, for the ejectment of the defendant, but he should be put under the condition that if, in case of the defendant's refusal to pay the rent fixed, he desired to eject him, the value of the buildings as cantonment residences must first be determined, and when determined must be tendered to the defendant, and if the latter refused to accept it, the plaintiff would then be entitled to eject him. SECRETARY OF STATE FOR INDIA *v.* JAGAN PRASAD

[I. L. R., 6 All., 148

3. ——— *Right of military authorities to quarter troops in houses belonging to private individuals in cantonments.—Military Regulations.*—The military authorities have no right to appropriate to their own uses houses the property of private individuals in cantonments, except subject to the conditions prescribed by the Military Regulations on the faith of which the houses were built or purchased. *Held*, by the Appellate Court, that when a person was in the occupation of a house in cantonments he could not be ejected without due notice. CAREY *v.* ROBINSON

[1 Ind. Jur., N. S., 88: Bourke, O. C., 399

S. C. in the Court below . . **Cor., 137**

CANTONMENT ACT, III OF 1880, s. 14.

——— *"Soldier."—Sub-Conductor.—Sale of spirituous liquor.*—A Sub-Conductor in the Commissariat Department is not a "soldier" within the meaning of section 14 of Act III of 1880; and consequently the sale of spirituous liquor to the wife of such a person without the license required by that section is not an offence against that section. EMPRESS OF INDIA *v.* DOSABHOY FRAMJI

[I. L. R., 3 All., 214

CANTONMENT ACT (BOMBAY III OF 1867).

See SANCTION TO PROSECUTION—NATURE, FORM, AND SUFFICIENCY OF SANCTION.

[7 Bom., Cr., 87

See SENTENCE — IMPRISONMENT — IMPRISONMENT AND FINE.

[7 Bom., Cr., 87

CANTONMENT ACT (MADRAS I OF 1866).

——— *Cantonment Rules, ch. IV, s. 16.—Failure to report small-pox.*—Failure by a householder to report a case of small-pox in his house, as directed by section 16 of chapter IV of the Canton-

CANTONMENT ACT (MADRAS I OF 1866) *-continued.*

ment Act Rules, is not punishable under Madras Act I of 1866. QUEEN EMPRESS *v.* LALLA [I. L. R., 8 Mad., 428

——— s. 30.—*Beer.*—"*Spirituous liquor.*"—Beer is not a "spirituous liquor" as the term is used in section 30, Madras Act I of 1866. ANONYMOUS . . . . . 7 Mad., Ap., 15

CANTONMENT MAGISTRATE.

1. ——— *Jurisdiction.—Act III of 1859, s. 1.—European British subject.*—A European British subject, not belonging to or connected with the army, who resides within a cantonment, was amenable to the jurisdiction of a Cantonment Joint Magistrate under section 1 of Act III of 1859. SHAPURJI JEHANGIR *v.* MORGAN [4 Bom., A. C., 187

2. ——— *Jurisdiction.—Small Cause Court Act, XI of 1865, ss. 12 and 8.—Act III of 1859.*—A plaintiff may sue in the Court of the Cantonment Magistrate, although he is not carrying on business or resident within the limits of the military cantonment. If a defendant is amenable to the articles of war contemplated by section 4 of Act III of 1859, he can only be sued in the Court of the Cantonment Magistrate; but in all other cases a defendant may also be sued in the Court of the Subordinate Judge, provided the cause of action arose within his jurisdiction. SUNDARDAS JAGJIVANDAS *v.* MOHANDAS TIOUMDAS . . . I. L. R., 9 Bom., 454

3. ——— *Madras Act I of 1866, s. 22.—General Clauses Act, 1868, s. 5.*—Section 5 of the General Clauses Act, 1868, does not authorise a Cantonment Magistrate to award rigorous imprisonment in default of payment of a fine imposed under Act I of 1866 (Madras). QUEEN-EMPRESS *v.* GOUNDADU [I. L. R., 8 Mad., 350

4. ——— *Summary conviction.—Police Act (V of 1861), s. 29.—Complaint.—Held,* that the summary conviction and punishment of two police officers, under section 29, Act V of 1861, by a Cantonment Magistrate, without formal trial, was irregular and illegal. *Held,* also, that a Cantonment Magistrate has power to try cases, under section 29 of the Police Act, without complaint. GOVERNMENT *v.* GIRDHAREE LALL . . 1 Agra, Cr., 24

CARRIERS.

See CASES UNDER BILL OF LADING.

See CONTRACT—BREACH OF CONTRACT. [8 B. L. R., 581

See NEGLIGENCE . I. L. R., 1 All., 60
9 W. R., 73

See CASES UNDER RAILWAY ACTS.

See CASES UNDER RAILWAY COMPANY. [4 B. L. R., O. C., 97

1. ——— **Misdescription.**—*Loss of goods.*—Misdescription of the nature of goods entrusted to a common carrier disentitles the sender to

CARRIERS.—Misdescription—*continued.*

recover for their loss, although the goods would not be subject to any extra rates had they been properly described. ROHEEMOOLLAH *v.* PALMER [Cor., 133

S. C. in Court below . . . Cor., 24

2. ——— **Time for delivery of goods.**—*Lien for carriage of goods.*—Although a carrier may not be bound to deliver goods on any specific day, or within any specific time, he is bound to deliver them within reasonable time, and what constitutes reasonable time must be determined upon the consideration of all the circumstances of the case. A carrier is entitled to his freight and charges, and he is entitled to retain the goods in satisfaction of his lien upon them. BULDEO DASS *v.* NATHOOMULL [2 Agra, 132

3. ——— **Delivery of goods to carrier at consignor's risk.**—*Delivery to consignee.*—So long as goods, though delivered to a common carrier appointed by the consignee, remain at the risk of the consignor, they are not delivered to the consignee. WINTER *v.* WAY . . 1 Mad., 200

4. ——— **Delivery of goods carried by sea.**—*Landing goods.—Custom of port of Bombay.—Possession of goods.*—A carrier by sea is obliged to make an actual delivery of goods carried by him to the consignee, but such *primâ facie* obligation may be affected by the custom of the port where the goods are to be delivered. Neither by the custom of the port of Bombay nor by the provisions of the Customs Act is the master of a ship bound to wait fifteen days before commencing to land his cargo; but within a reasonable time after the arrival of his ship—48 hours in the case of a sailing vessel, and somewhat less in the case of a steamer—he is at liberty to land goods if the consignee has not sent boats for them; and such landing is not unlawful, nor a breach of contract as carrier on the part of the master. The landing of the goods under the above circumstances and setting them apart for the consignee do not constitute a delivery of them to the consignee; but such goods after being so landed continue in the possession of the master as carrier. Course of legislation with reference to the landing of goods on the custom-house wharf reviewed. *Quære,*—Whether, under the special circumstances of this case, the goods when so landed remained in the custody of the master in his capacity of common carrier or as a warehouseman? HONGKONG AND SHANGHAI BANKING CORPORATION *v.* BAKER [6 Bom., O. C., 71: 7 Bom., O. C., 186

5. ——— **Dâk-carriage proprietor.**—*Bailee for hire.—Negligence.—Onus of proof.*—A person carrying on the ordinary business of a proprietor of dâk-carriages does not come within the term "common carrier" as that term is understood in the English law. Such a person is bound to exercise reasonable and ordinary care in respect of baggage entrusted to him, but is not responsible for any loss which may not arise from the negligence or default of himself or his servants, he not being a common carrier bound to ensure the safe conveyance of the

CARRIERS.—Dâk-carriage proprietor— *continued.*

baggage against all risk, save the act of God or the Queen's enemies. He is to be regarded as a bailee for hire, and the fact that he does not deliver the baggage at the end of the journey should be accepted as *primâ facie* proof that the loss has been occasioned by negligence for which he is responsible, and, consequently, the *onus* of proof lies on him that reasonable care was exercised by him. TODAL SINGH *v.* THOMPSON . . . . . **2 N. W., 237**

6. ——— Conveyance of goods by Government bullock train.—*Post Office Act, XIV of 1866.—Bailee for hire.—Negligence.—Condition.*—Goods conveyed by the Government bullock train are not entrusted to the Post Office for conveyance within the meaning of Act XIV of 1866. In respect of the Government bullock train, Government must be regarded as an ordinary bailee for hire, and not as a common carrier. As such bailee, apart from any special condition limiting its liability, it is bound to take ordinary care of goods entrusted to it for conveyance; and if goods are stolen through the negligence of its servants, it is liable to make good the loss to the consignor. But it may, as may any other bailee for hire, limit its liability by conditions, provided those conditions are not repugnant to public policy or positive law. A condition that it will not be responsible for loss occasioned by the negligence of its servants is certainly not repugnant to positive law, nor a condition repugnant to public policy. POSTMASTER OF BAREILLY *v.* EARLE **[3 N. W., 195**

7. ——— Suit for damages for negligence.—*Onus probandi.*—In an action to recover damages for injury caused to the goods by the negligence of the defendant as a common carrier, it is not necessary for the plaintiff to give evidence of such negligence unless the defendant has shown that the injury was occasioned by a cause which was within the exceptions. Then the plaintiff would be at liberty to show that there was negligence so as to deprive the defendant of the benefit of the exceptions. SHETLIFF *v.* SCOTT . . **22 W. R., 39**

8. ——— Passenger's luggage, Loss of. —*Negligence.—Conditions indorsed on ticket.—Foreign Steam-ship Company.—Contract Act, s. 151.* —In a suit for damages for loss of passenger's luggage by the wreck of a ship belonging to a foreign company, it appeared that the plaintiff had received a ticket in the French language, which on its face stated that it ought to be signed by the passenger, and that it was issued subject to certain conditions on the back. These conditions, among other things, stated that the company would not be responsible for loss or damage arising from accidents or risks of the sea; that the ticket was delivered subject to the conditions that certain articles of a specified nature should be made the subject of a special declaration, in default of which the company would not be liable; that the company would not be answerable for unregistered luggage; and that luggage might be insured at any of the company's offices. It was not stated where registration of luggage might be effected. The ticket was not signed by the plaintiff. The plaintiff

CARRIERS.—Passenger's luggage, Loss of— *continued.*

alleged that he did not understand the French language, and that the conditions had not been explained to him by any person. *Held*, that the company being a foreign company were not common carriers; that the plaintiff was bound by the clauses and conditions on the back of the passage-ticket; that none of the conditions had the effect of relieving the company from the consequences of their own negligence; that, in order to establish a defence upon the ground that the plaintiff's luggage was not registered, it was necessary for the defendants to prove, not only that the plaintiff was bound by the conditions, but also that they were ready and willing to register the plaintiff's luggage, and that the plaintiff did not in fact register it; that as the contract was made in Calcutta, the defendants were bound by the provisions of section 151 of the Indian Contract Act. MACKILLICAN *v.* COMPAGNIE DES MESSAGERIES MARITIMES DE FRANCE . **I. L. R., 6 Calc., 227 [7 C. L. R., 49**

9. ——— Special contract.—*Railway Act (IV of 1879), s. 10.—Contract Act (IX of 1872), ss. 151, 161.—Railway Company.*—The plaintiff despatched certain goods by the East Indian Railway Company for carriage to A., and signed a special contract, in conformity with the form approved by the Governor General in Council "under section 10 of Act IV of 1879, holding the Company harmless and free from all responsibility in regard to any loss, destruction, or deterioration of, or damage to, the said consignment from any cause whatever, before, during, and after transit over the said Railway or other Railway lines working in connection therewith." The goods were short delivered, and the plaintiff brought a suit to recover the value. *Held, per* GARTH, *C. J.*, PRINSEP, *J.*, and WILSON, *J.*, that the Railway Company could not be held liable to account to the consignee for any loss from any cause whatever during the whole time that the goods were under their charge, inasmuch as the plaintiff had entered into a special contract to hold them harmless in accordance with section 10 of Act IV of 1879. *Held, per* O'KINEALY, *J.*, that it was doubtful whether sections 151 and 161 of the Contract Act applied to carriers by rail; but even assuming that these sections did not apply, the Railway Company would be in the position of carriers before the passing of the Carriers Act, and were entitled to protect themselves from liability by special contract. MOHESWAR DAS *v.* CARTER **[I. L. R., 10 Calc., 210 12 C. L. R., 122**

10. ——— Common carriers.—*English law.—Contract Act (IX of 1872), ss. 151, 152.—Carriers Act (III of 1865).—Railways Act (IV of 1879), s. 10.—Statement of Objects and Reasons of the Contract Act.*—The common law of England regulating the responsibility of common carriers, was at the time of the passing of the Carriers Act, 1865, and is still in force in this country, and is unaffected by the provisions of the Indian Contract Act. *Kuverji Tulsidas* v. *G. I. P. Railway Co., I. L. R., 3 Bom., 109*, dissented from. The plaintiffs entrusted to the defendants, who were common carriers under

CARRIERS.—Common carriers—*continued.*

the Carriers Act, III of 1865, certain goods which were lost in the course of their carriage on one of the defendants' steamers. On the facts it was found that the defendants took as much care of the goods as a man of ordinary prudence would under similar circumstances take of his own goods of the same bulk, quality, and value as the goods bailed; and that the loss was not occasioned by the act of God or the Queen's enemies. There was no special contract of the nature provided for by section 6, Act III of 1865. *Held*, that sections 151, 152, of the Contract Act did not apply, and that the defendants were liable for the loss of the goods. MOOTHORA KANT SHAW *v.* INDIA GENERAL STEAM NAVIGATION COMPANY
[I. L. R., 10 Calc., 166: 13 C. L. R., 342

CARRIERS ACT, 1865.

See BILL OF LADING.
[I. L. R., 3 Mad., 107

CARRYING ARMS WITHOUT LICENSE.

See ARMS ACT, 1860, s. 32.
[9 B. L. R., Ap., 34
18 W. R., Cr., 26

CARRYING ON BUSINESS.

See CASES UNDER JURISDICTION—CAUSES OF JURISDICTION—CARRYING ON BUSINESS, &c.

CASTE, AUTHORITY OF, TO DECLARE MARRIAGE VOID.

See BIGAMY . I. L. R., 1 Bom., 347

CASTE, LOSS OF—

See HINDU LAW—GUARDIAN—RIGHT OF GUARDIANSHIP . I. L. R., 1 All., 549

See CASES UNDER HINDU LAW—INHERITANCE—DIVESTING OF, EXCLUSION FROM, &c.—OUTCASTS.

See HINDU LAW—MAINTENANCE—RIGHT TO MAINTENANCE—WIDOW.
[I. L. R., 1 Bom., 559

CASTE, QUESTION OF—

See CASES UNDER JURISDICTION OF CIVIL COURT—CASTE.

See HINDU LAW—MARRIAGE—DISSOLUTION OF MARRIAGE . 2 N. W., 300
[I. L. R., 8 Mad., 169

See RIGHT OF SUIT—CASTE QUESTIONS
[I. L. R., 2 Bom., 470
I. L. R., 10 Bom., 661

CATTLE TRESPASS.

See MISCHIEF . [6 B. L. R., Ap., 3
[10 W. R., Cr., 29
16 W. R., Cr., 72
6 Mad., Ap., 30, 37
4 Bom., Cr., 14
I. L. R., 7 Bom., 126
I. L. R., 9 Bom., 173

CATTLE TRESPASS—*continued.*

See NUISANCE, UNDER CRIMINAL PROCEDURE CODE . 2 B. L. R., A. Cr., 45
[9 B. L. R., Ap., 36

CATTLE TRESPASS ACTS (III of 1857 and I of 1871).

——— III of 1857, s. 6.

See FINE . . . 7 Bom., Cr., 55

——— s. 13.

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—CATTLE TRESPASS ACT.
[1 Bom., 100
4 Bom., Cr., 13
7 W. R., 155

See SENTENCE—GENERAL CASES.
[16 W. R., Cr., 12

See SENTENCE—IMPRISONMENT—IMPRISONMENT IN DEFAULT OF FINE.
[5 Mad., Ap., 21

See WITNESS—CRIMINAL CASES—SUMMONING WITNESSES . 10 W. R., Cr., 42

——— s. 14.

See COURT FEES ACT, 1870, SCH. II, ART 1
[8 Bom., Cr., 22

See DAMAGES — SUITS FOR DAMAGES TORTS . . . 15 W. R., 279

——— s. 17.

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See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—CATTLE TRESPASS ACT.
[5 Bom., Cr., 13

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See RIGHT OF SUIT—COMPENSATION.
[2 C. L. R., 344

See SENTENCE—GENERAL CASES.
[16 W. R., Cr., 12

See SENTENCE—IMPRISONMENT—IMPRISONMENT AND FINE . 2 C. L. R., 507

——— ss. 6 & 27.—*Pound-keeper.—Police patil.*—Where a Magistrate convicted, under section 27 of Act I of 1871, a person who was not himself a pound-keeper, but was merely entertained by the Police patil, who was *ex officio* pound-keeper under section 6 of the Act,—The High Court annulled the conviction and sentence passed upon the accused. REG. *v.* VAKTA VALAD LAKHU
[9 Bom., 164

——— s. 10.

See MISCHIEF . I. L. R., 7 Bom., 126
[I. L. R., 9 Bom., 173

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See CRIMINAL BREACH OF TRUST.
[8 B. L. R., Ap., 1

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[I. L. R., 10 Bom., 230
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[I. L. R., 7 Mad., 345

See FINE . . 7 Mad., Ap., 24

——— *Power of Magistrate.*

—*Seizure of cattle and dispute as to ownership of land.*—Where there was a dispute as to the ownership of land on which the complainant's cattle were found, the complainant stating the land belonged to *A.*, who gave him the right to graze his cattle there, and the party charged (who had seized and impounded the cattle) claiming the land as his own, it was held that the order of the Magistrate referring the parties to the Civil Court was illegal, and that he should have disposed of the case himself under the Cattle Trespass Act, I of 1871, section 22. TUNNOO *v.* KUREEM BUKSH . . . . . 23 W. R., Cr., 2

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CERTIFICATE OF ADMINISTRATION.

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CERTIFICATE OF ADMINISTRATION —*continued.*

1. CERTIFICATE UNDER BOMBAY REGULATION VIII OF 1827, AND ACT XX OF 1841.

1. ——— **Bom. Reg. VIII of 1827.**—*Certificate of heirship, Effect of grant of.*—A certificate of heirship granted under Regulation VIII of 1827 was not *primâ facie* evidence that the holder of it was the rightful heir of the deceased. The effect of such certificate was merely to give security to persons in possession of, or indebted to, the estate of the deceased in dealing with such holder as the legal representative of the deceased. RAMCHANDRA KULKARNI *v.* VITHOJI VALAD MALHARJI PATIL . . . . **4 Bom., A. C., 178**

2. ——— *Reversal of order.—Payments made before reversal.*—Where a widow obtained an order for a certificate of administration to the estate of her deceased husband, which order was, however, reversed on appeal before the certificate was granted, it was held that payments made to the widow before the order was reversed were unauthorised. DAMODHAR BAPUJI PACHAPARKAR *v.* ZINGA KOM KANDLIKA **[7 Bom., A. C., 31**

3. ——— *Payment of debts to supposed heir of deceased before grant of certificate of heirship.*—A defendant who is sued by the holder of a certificate of heirship to a deceased Hindu for a debt due from the defendant to the deceased is at liberty to show, notwithstanding the certificate of heirship, that he has paid the debt to the actual heir of the deceased before the grant of the certificate. It will not, however, be sufficient for such defendant to show that he has paid his debt to a person whom he *bonâ fide* believed to be such heir. PURSHOTAM MANSUKH *v.* RANCHHOD PURSHOTAM **[8 Bom., A. C., 152**

4. ——— **Act XX of 1841.**—*Order granting certificate, Effect of.*—The effect of an order granting a certificate under Act XX of 1841 was not to establish a will incontestably against the whole world, or to prevent a will from being impeached in a suit if set up to defeat the rights of parties claiming under the Law of Inheritance. MAHOMED AZEEMOOLLAH KHAN *v.* SUHOODRA BEBEE **[W. R., 1864, 227**

5. ——— *Nature of certificate.*—A certificate for collecting the debts due to the estate of a deceased person given under Act XX of 1841 gives a personal right, and is not transferable by sale. MEHDEE ALLY KHAN *v.* LUCHMEEPUT BABOO . . . . . **1 W. R., Mis., 28**

6. ——— *Cancelling of certificate.*—A Court cannot, solely on the petition of a party, cancel a certificate granted to him under Act XX of 1841, or declare that his trust and guardianship have ceased. If he gives up his duties of his own accord, he does so on his own responsibility, and the Court will not order him to act. SUMBHOO CHUNDER KHAN *v.* ISHAN CHUNDER BANERJEE **[W. R., 1864, Mis., 24**

CERTIFICATE OF ADMINISTRATION —*continued.*

1. CERTIFICATE UNDER BOMBAY REGULATION VIII OF 1827, AND ACT XX OF 1841—*continued.*

7. ——— **Act XIX of 1841.**—*Summary procedure.—Act XXVII of 1860 - A.* (a Hindu) died intestate in December 1865, leaving his widow in possession of his property, moveable and immoveable. The descent of *A.'s* property was admittedly governed by the law of the Mitakshara. On the 19th January 1866, *A.'s* nephew presented a petition to the Zillah Court, under Act XIX of 1841, denying the title of the widow. Upon this alone the Judge directed the widow to come in and show cause, which she did on the 2nd February following. A daughter of *A.* on the 19th March presented a petition in opposition to the nephew's claim for possession. The nephew filed a reply. In the meantime the widow applied for a certificate under Act XXVII of 1860, which was opposed by both nephew and daughter. The nephew also filed a cross-petition under Act XXVII of 1860. All these petitions came on by consent together for adjudication on a state of facts admitted by all parties through their pleaders, who also, by consent between themselves, submitted their view of the question of law to be decided on the Acts of 1841 and 1860. The questions so submitted were—(1) Did it appear on the evidence that there was a separation between *A.* and his nephew according to the Mitakshara doctrine? (2) If the evidence *per se* established a legal separation, was such separation negatived by certain admissions of *A.*? The Judge refused the application of the widow under Act XXVII of 1860, and granted possession to the nephew under Act XIX of 1841. The nephew was a man of substance, and able to bring a regular suit, and there was no evidence of possession by force or fraud on the part of the widow, the only question being her right according to the Mitakshara law. *Held*, that the Judge was in error in proceeding summarily under Act XIX of 1841 on the declaration of the applicant alone, and without other enquiry; but that this defect was cured by the widow's appearing. That the Judge ought not to have tried the cases under Act XIX of 1841 and Act XXVII of 1860 together and on the same issues; but the Judge having jurisdiction over the subject-matter, and to frame the issues, his order was not open to appeal or review. JUSODA KOONWUR *v.* GOWREE BYJNATH PERSHAD **[1 Ind. Jur., N S., 365 : 6 W. R., Mis., 53**

2. ACT XXVII OF 1860 (OBJECT OF ACT AND GRANT OF CERTIFICATE).

8. ——— **Object of Act.**—*Act XXVII of 1860.—Trustee.*—The object of Act XXVII of 1860 is not to enable parties to litigate questions of disputed title, but to enable debtors to pay the debts due by them with safety to the representatives of deceased Hindus and others; and to facilitate the collection of such debts by removing all doubts as to the legal title to demand and receive the same. In other words, the objects of the Act are to enable debtors to get sufficient acquittances when they pay money due to the estate of a deceased; and to preserve that

CERTIFICATE OF ADMINISTRATION —*continued.*

2. ACT XXVII OF 1860 (OBJECT OF ACT AND GRANT OF CERTIFICATE)—*continued.*

Object of Act—*continued.*

estate from loss by giving some one the right to collect the debts, lest they should be lost, *e.g.*, by the operation of the law of limitation. The holder of a certificate is a trustee liable to account for the moneys received by him to the legal heirs or representatives of the deceased. IN THE MATTER OF THE PETITION OF NOBODIP CHUNDER BISWAS. PRANKISTO BISWAS *v.* NOBODIP CHUNDER BISWAS [I. L. R., 8 Calc., 868

9. ——— **Application of Act.**—*Act XXVII of 1860, s. 2.—Presidency Town.—Natives.—Refusal to pay.—Want of fraudulent or vexatious motive in withholding debt.*—Act XXVII of 1860, which provides that no debtor of a deceased person shall be compelled to pay his debt to any person claiming to be entitled to the effects of such deceased person, without the production of a certificate to collect debts or probate or letters of administration, except under certain circumstances, is applicable to Hindus within the Presidency Towns. Where a debtor of a deceased Hindu who died intestate declined to pay the debt to his widow unless she produced letters of administration to the estate of the deceased, and the widow sued to recover the debt without taking out a certificate or letters of administration, and it was found that there was no reasonable doubt that the widow was entitled to the debt, but that the debtor refused to pay neither from any fraudulent nor vexatious motive, but to avoid the risk of having to pay the debt twice over,—*Held* that the suit must be dismissed. MUTTAMMAL *v.* BANK OF MADRAS . . . I. L. R., 7 Mad., 115

10. ——— *Act XXVII of 1860, s. 2.—Bond given to secure debt due to estate of deceased Hindu.—Suit by heir.—Waiver of right to protection implied.*—*R.* being a debtor to the estate of a deceased Hindu, executed a bond promising to pay the debt to *V.*, the divided brother of the deceased, as his heir. A suit having been filed against *V.* by the widow of the deceased, who claimed his estate, *R.* offered to pay the debt to *V.* on production of a certificate under Act XXVII of 1860, but not otherwise,—*Held* that, as *R.* had executed a bond promising to pay the debt to *V.*, he could not rely on the protection afforded by Act XXVII of 1860. KOTTAM ZAMINDAR *v.* PITTAPUR ZAMINDAR [I. L. R., 9 Mad., 171

11. ——— **Omission to pay debt—Withholding debt from vexatious motive.**—*Holder of certificate of administration.*—*A.* sued as only son and heir of *B. C.*, the widow of *B.*, had, with the concurrence of *A.*, taken out a certificate of administration to his estate. *Held*, that section 2 of Act XXVII of 1860 prohibited *A.* from suing alone, for although he was, no doubt, beneficially entitled to recover the debt, yet there was no vexatious or fraudulent withholding of the debt within the meaning of that section. *Per* GARTH, *C. J.*—A debt cannot be said to be "vexatiously withheld" within the meaning

CERTIFICATE OF ADMINISTRATION *continued.*

2. ACT XXVII OF 1860 (OBJECT OF ACT AND GRANT OF CERTIFICATE)—*continued.*

Omission to pay debt—Withholding debt from vexatious motive—*continued.*

of that section, simply because the debtor omits to pay it. CHUNDER COOMAR ROY *v.* GOCOOL CHUNDER BHUTTACHARJEE . . I. L. R., 6 Calc., 370

12. ——— **Necessity for certificate.**—Before the grant of a certificate under Act XXVII of 1860, some necessity for it must be shown, as that there are debts to be collected. RAJ CHUNDER BHUTTACHARJEE *v.* MEERTUNJOY SHEEROMONEY . . . . . 2 Hay, 299

13. ——— **Necessity for certificate.**—*Procedure on application under Act XXVII of 1860.*—When an application is made for a certificate under Act XXVII of 1860, the Judge, instead of considering the necessity or otherwise for a certificate, should ascertain whether the applicant or any one else is entitled to the certificate sought, and grant the same accordingly. IN RE MEAN JAN [5 W. R., Mis., 20

JAMSEDJI KAVASJI *v.* MOTIBAI [2 Bom., 397, 2nd Ed., 375

14. ——— *Existence of recoverable debts.—Act XXVII of 1860.*—Where an application is made for a certificate under Act XXVII of 1860, the Judge, instead of enquiring whether any debts are due, and whether or not those debts are barred by limitation, ought simply to determine the right to the certificate; and if there be such a right, to grant the certificate. IN THE MATTER OF THE PETITION OF KALEENATH DUTT . 8 W. R., 12

15. ——— *Existence of debts.*—Before granting a certificate under Act XXVII of 1860, a Judge is not required to ascertain whether there are any debts due to the estate of the deceased. SHURUT CHUNDER MOOKERJEE *v.* THAKOORMONEE DEBIA . . . 9 W. R., 240

16. ——— *Existence of debts.—Act XXVII of 1860, s. 2.—Debtor.*—Certificates under Act XXVII of 1860 should be granted in those cases only in which it is shown that the deceased person at the time of his death had certain debts owing to him, or, in other words, that there were persons who could be called debtors of the deceased. A person in whose hands are the surplus sale proceeds of a property belonging to the deceased, is a debtor within the meaning of section 2. BISHNOO DASS *v.* MUNGUL DASS [24 W. R., 203

17. ——— *Existence of debts*—A petitioner for a certificate under Act XXVII of 1860 need do nothing more than prove his title to collect the debts if there are any, not even give *primâ facie* evidence of the existence of debts. The title is the thing to be looked to, and that would be established (no other reason being shown to the contrary) by relationship to the deceased. BEEMUL DOSS *v.* SHIKHUR CHAND . . . 24 W. R., 211

CERTIFICATE OF ADMINISTRATION *continued.*

2. ACT XXVII OF 1860 (OBJECT OF ACT AND GRANT OF CERTIFICATE)—*continued.*

Necessity for certificate—*continued.*

18. ——— *Existence of debts.*—A certificate of administration ought not to be given without it being proved that there are debts, and that the grantee has the best right to collect them. UCHHUBA DOSSIA *v.* NITTYANUND SHAHA [24 W. R., 463

WOOMA TARA GOOPTA *v.* KALEE TARA GOOPTA [25 W. R., 93

19. ——— *Existence of debts.*—*Act XXVII of 1860.*—*Questions to be determined on application.*—The sole question in an application for a certificate under Act XXVII of 1860 is the title to collect the debts due to the estate of the deceased, and it is not a matter for the Judge's consideration whether there are any, and what, debts due to the estate. BHUGOBUTTY KOOER *v.* BHOLANATH THAKOOR . . . . . 8 W. R., 317

20. ——— *Existence of debts.*—To entitle an applicant to a certificate under Act XXVII of 1860, it is not necessary for him to show that debts are actually due; it is sufficient if circumstances render it possible that debts may be due, or may accrue within the jurisdiction of the Court. In the MATTER OF BAMAKALLEE DOSSEE . 10 W. R., 4

21. ——— *Existence of debts.*—Where application is made for a certificate under Act XXVII of 1860, on the allegation that there are debts due to the estate of the deceased, and the allegation is not denied, the Court is bound to hear the petition. FUZL MOULA *v.* GHOLAM SHURRUFF [12 W. R., 505

3. RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE.

22. ——— **Representative of deceased creditor, Suit by.**—*Act XXVII of 1860.*—*Court Fees Act, 1870, sch. 1, cl. 12.*—A certificate under Act XXVII of 1860 is not necessary to give to a person, claiming to be the representative of a deceased creditor, the right to institute a suit to recover a debt due to the estate of the deceased, or the right to present an application for execution of a decree obtained by the deceased. But such certificate, or a probate, or letters of administration, must be produced by the person proceeding as representative before a decree or order can be passed, or process of execution issued for payment of the debt due, unless the Court should think that payment is withheld from fraudulent or vexatious motives, and not from any reasonable doubt as to the party entitled. The effect of the provision in the note to article 12, schedule 1, of the Court Fees Act (No. VII of 1870), on the operation of a certificate duly granted, which has become liable to cancellation under that provision, but has not been cancelled, considered. Until cancellation the certificate remains in full force as proof of the representative right to sue or obtain execution, whatever be the amount of the debt. GOVINDAPPAH *v.* KINDAPPAH SASTRULU. GOVINDAPPA *v.* KYATADOO. MATTAPPA *v.* NAGANNAH . . 6 Mad., 131

CERTIFICATE OF ADMINISTRATION —*continued.*

3. RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE—*continued.*

Representative of deceased creditor, Suit by—*continued.*

23. ——— **Recovery of property of deceased from party wrongfully in possession, Suit for.**—*Act XXVII of 1860.*—A certificate under Act XXVII of 1860 authorises the holder of it to collect debts due to the deceased, but not to recover property which belonged to the deceased from a person wrongfully in possession. AWKINFEE *v.* MEE NAY . . . . . 8 W. R., 1

SEETARAM SAHOO *v.* SHEO GHOLAM SAHOO [18 W. R., Cr., 34

24. ——— **Hindu widow, Suit by.**—*Suit for recovery of immoveable property.*—*Hindu widow.*—A Hindu widow, as holder of a certificate under Act XXVII of 1860, is not necessarily the proper person to continue a suit for the recovery of immoveable property, though she is entitled to do so as heir of the deceased, if he died without issue, and was the sole owner of the property. SEVINTHIA PILLAY *v.* MOOTOOSAWMY . . . . 8 W. R., 2

25. ——— *Act XXVII of 1860, s. 2.*—*Power of Hindu widow to sue executors and trustees for share of estate without certificate.*—Section 2 of Act XXVII of 1860 applies to debts, and not to claims against executors and trustees. At all events it does not apply to claims for immoveable property, and therefore where a Hindu widow brought a suit for a share of the residuary immoveable property of a testator,—*Held*, that she was not disabled from suing by reason of her not having obtained a certificate of administration. TREEPOORASOONDARY DOSSEE *v.* DEBENDRONATH TAGORE [I. L. R., 2 Calc., 45

26. ——— **Devisee under a will, Suit by.**—*Suit for rent.*—*Possession.*—A devisee under a will need not take out a certificate, and can sue for rent without having obtained possession. BANEE MADHUB GHOSE *v.* THAKOOR DAS MUNDUL [B. L. R., Sup. Vol., 588 6 W. R., Act X, 71

27. ——— **Necessity to produce certificate.**—*Order directing certificate to issue.*—A plaintiff suing as the heir of a deceased person is (where a certificate of heirship is necessary to enable him to sue) bound to produce the certificate itself. It is not sufficient for the heir to show that the order has been made directing the issue of such certificate to him. MULCHAND *v.* MOTICHAND HARGOVANDAS [9 Bom., 37

28. ——— **Representatives of deceased decree-holder, Right of, to execute decree.**—Parties who are representatives of decree-holders on the record are *primâ facie* entitled to take proceedings in execution and draw the money standing to the

CERTIFICATE OF ADMINISTRATION —*continued.*

3. RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE—*continued.*

Representatives of deceased decree-holder, Right of, to execute decree— *continued.*

credit of the deceased under their decree, without the necessity of taking out a certificate under Act XXVII of 1860, when there are no debts to be collected as due to the estate of the deceased decree-holder. MANICK MOYEE CHOWDRAIN *v.* POORNO CHUNDER ROY . . . . . **17 W. R., 510**

29. ———— Application for execution of decree by heir of deceased decree-holder.—*Act XXVII of 1860.—Civil Procedure Code, 1859, s. 208.*—To enable the heir of a deceased person to apply under section 208 of Act VIII of 1859 for the execution of a decree held by such person, a certificate under Act XXVII of 1860 is not indispensable. KARAM ALI *v.* HALIMA **[I. L. R., 1 All., 686**

30. ———— Representative of assignee of debt by devise, Right of, to sue.—*Act XXVII of 1860.—Probate.*—The representative of an assignee by devise, of a debt, cannot sue to recover the debt without having either taken out probate of the will of the testator, or having obtained a certificate under Act XXVII of 1860 to realise the debts belonging to his estate. SHODONE MOHALDAR *v.* HALALKHORE MOHALDAR **[I. L. R., 4 Calc., 645: 3 C. L. R., 462**

31. ———— Debt due to estate of deceased person.—Suit by legal representative.—*Certificate for collection of debts.*—It is not an imperative condition precedent to the institution of a suit by the legal representative of a deceased person for a debt due to his estate that such legal representative should first obtain a certificate under Act XXVII of 1860. LACHMIN *v.* GANGA PRASAD **[I. L. R., 4 All., 485**

32. ———— Debt due to estate of deceased person, Execution of decree by representative for.—*Necessity for certificate.—Held,* following the principle enunciated in *Lachmin* v. *Ganga Prasad,* that the possession of a certificate under Act XXVII of 1860 was not "an imperative condition precedent to the institution" of execution-proceedings by the representative of a deceased decree-holder; but that, where the judgment-debtor objects to the title of the person claiming to execute the decree, the Court should consider whether the objection is vexatiously raised or is a *bonâ fide* one. HOTI LAL *v.* HARDEO . **I. L. R., 5 All., 212**

33. ———— Right of heir to sue.—*Act XXVII of 1860.*—A certificate under Act XXVII of 1860 is not indispensable in order to allow a party who is next heir to come in to represent a deceased party in a suit. OLONGO MOONJOREE DOSSEE *v.* GOBINDNATH SEN . **W. R., 1864, Mis., 13**

EKRAM HOSSEIN *v.* KIRTEE CHUNDER **[3 W. R., Mis., 9**

CERTIFICATE OF ADMINISTRATION —*continued.*

3. RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE—*continued.*

34. ———— Legal representative, Suit by, to recover debt due to the deceased.—*Act XXVII of 1860.*—The production of a certificate under Act XXVII of 1860 is not a condition precedent to the institution of a suit by a person claiming to be the legal representative of a deceased creditor. It is only where there is a reasonable doubt as to the person entitled to the property claimed in the suit that such a certificate can be required. IN RE THE PETITION OF RAMDAS BRIJ GOVANDAS . . **I. L. R., 10 Bom., 107**

35. ———— Right to recover debts of deceased person.—*Act XXVII of 1860.*—Where payment of a debt is not being withheld for fraudulent or vexatious motives, but from a reasonable doubt as to the party entitled to it, the person desirous of recovering the amount of the debt is bound to produce a certificate under Act XXVII of 1860 before he can obtain a decree, or execute a decree already obtained by the deceased; though he may institute his suit, or apply for execution without such certificate, provided a certificate is filed before decree or before execution issues. JANAKI BALLAV SEN *v.* HAFIZ MAHOMED ALI KHAN **[I. L. R., 13 Calc., 47**

4. ISSUE OF, AND RIGHT TO, CERTIFICATE.

36. ———— Issue of certificate.—*Time for issuing.*—A certificate under Act XXVII of 1860 should be issued directly it is granted, provided the proper stamp prescribed for such certificate be furnished. DHUNPUT SINGH DOOGUR *v.* GOVERNMENT . . . . . **17 W. R., 489**

37. ———— *Jurisdiction.—Person with no fixed residence.—Act XXVII of 1860, s. 3.*—Where a person had no fixed place of residence at the time of his death, the Judge of the district in which his debts are has authority to grant a certificate under Act XXVII of 1860. GHOLAM SOBHAN *alias* SABOO MEAH *v.* MAHOMED ROUF . . . . . **20 W. R., 286**

38. ———— *Order in recognition of two wills.—Act XXVII of 1860.*—Under Act XXVII of 1860, an order cannot be obtained from the Court in recognition of two wills. BEMOLA MOYEE DEBEA *v.* KISHTOMONEE DEBEA **[W. R., 1864, Mis., 10**

39. ———— *Certificate for collection of debts of endowment.—Act XXVII of 1860.*—A District Judge was held to have rightly refused a certificate under Act XXVII of 1860 for the collection of the debts of an endowment. IN THE MATTER OF THE PETITION OF BHYRUB BHARUTTEE . . . . . **21 W. R., 340**

40. ———— *Act XXVII of 1860.—Karnavan of tarwad property.—Debt due by karanavan.*—A certificate to collect debts under Act XXVII of 1860 may properly be refused to a

CERTIFICATE OF ADMINISTRATION —*continued.*

4. ISSUE OF, AND RIGHT TO, CERTIFICATE—*continued.*

Issue of certificate—*continued.*

karnavan of a Malabar tarwad, when the bulk of the debt to be collected is found to be due by the karnavan himself under a decree obtained against him by his predecessor. MADHAVA PANIKAR v. GOVINDA PANIKAR . . I. L. R., 5 Mad., 4

41. ——— **Right to certificate.**—*Heir.*—*Act XXVII of 1860.*—As a general rule, the heir is the person who should have a certificate to collect the debts and manage the estate of a deceased person under Act XXVII of 1860. If he, as heir, is entitled to the whole surplus of the estate, the fact of his having been hostile to the deceased is immaterial. When there are several heirs, and no disputes amongst them, he who is entitled to the largest share may, in the absence of other disqualifying circumstances, and in the discretion of the Court, be entrusted with the duty. ABDOOL ALI v. ABIDUNNISSA KHATOON [W. R., 1864, Mis., 41

42. ——— *Heir.*—The certificate to collect debts should ordinarily be granted to the person entitled to the inheritance. JOKNA v. BHUGWANEE . . . . . 3 N. W., 320

43. ——— *Heir.*—Where the will set up by objectors to an application by the natural heir for a certificate of administration is not sufficiently proved, a Court is justified in looking on the natural heir as the party entitled to the certificate. DINOBUNDHOO CHOWDRY v. RAJMOHINEE CHOWDRAIN . . . . . 15 W. R., 73

44. ——— *Persons primâ facie entitled.—Act XXVII of 1860.—Order in respect of property of deceased.*—When application is made for a certificate under Act XXVII of 1860, a Judge should determine who is entitled, and should grant the certificate accordingly. He has no power to make an order in respect of the property of the deceased. OHKED KHAN v. THE COLLECTOR OF SHAHABAD . . . . . 9 W. R., 502

45. ——— *Person primâ facie entitled.—Enquiry as to title.—Questions to be decided.*—In administering the provisions of Act XXVII of 1860, Courts are not bound to enter on the determination of intricate questions of law or fact, but are bound to grant a certificate to the person who has *primâ facie* the clearest title to the succession as the natural heir. SURFOJI v. KAMAKSHIAMBA [I. L. R., 7 Mad., 452

46. ——— *Selection where there are several claimants.—Act XXVII of 1860.*—If there are several applicants for a certificate under Act XXVII of 1860, the heir of the person or persons having the largest interest in the estate are entitled to the certificate, in preference to others whose interests are less considerable. If the Court thinks any small interest not sufficiently protected, it may call upon the party taking the certificate to give security to the extent requisite for the protection of such interest. AZEEM KHAN v. AMEERUN . 12 W. R., 38

CERTIFICATE OF ADMINISTRATION —*continued.*

4. ISSUE OF, AND RIGHT TO, CERTIFICATE—*continued.*

Right to certificate—*continued.*

47. ——— *Heiress.*—An heiress was held entitled to a certificate under Act XXVII of 1860, although the owner of the property had died nine years previously, and the property had been previously managed by a third party. PULASH MONEE DOSSEE v. ANUND MOYEE DOSSEE [8 W. R., 398

48. ——— *Daughter-in-law as heiress.—Ground for opposing certificate.*—An application by a daughter-in-law under Act XXVII of 1860 for a certificate as heiress, would be properly rejected upon the sole ground that the applicant was not the heiress. BANDAM SETTAH v. BANDAM MAHA LAKSHSMY . . . . . 4 Mad., 180

49. ——— *Trustee of Government securities.—Act XXVII of 1860.*—A trustee who had been appointed by will to act in respect of Government securities belonging to an estate having demised, and the minor heir having come of age, the parties entitled applied for a certificate under Act XXVII of 1860 to enable them to draw interest on the securities. Upon this, the Judge recorded an order that they might apply for a certificate in respect of the deceased trustee's estate. *Held*, that the applicants had nothing to do with the trustee's estate; and that it was the duty of the Judge to grant the application, if no person showed a better right. IN THE MATTER OF THE PETITION OF PEROONATH SIRCAR [13 W. R., 325

50. ——— *Executor.—Act XXVII of 1860.*—The executor under a will, if it be not contested, has an undoubted right to a certificate under Act XXVII of 1860, though he be not the legal heir. If the will be contested, the Judge should enquire into its validity, and, if he consider it proved, should give a certificate, leaving the parties dissatisfied to set it aside by a regular suit. BIDHOO BHOOSHUN MOOKERJEE v. ISSUR CHUNDER ROY CHOWDHRY . . . W. R., 1864: Mis., 4

51. ——— *Claimant under will.—Failure to prove will.*—In an application for a certificate under Act XXVII of 1860, where applicant's title was based upon a will to which the signatures of the witnesses were found to have been affixed previously to that of the testator, the Court held that the deed was inoperative as a will; but inasmuch as it expressed fully the testator's wishes regarding the management of his affairs, and was very distinct as to the confidence reposed in the applicant (the second wife), the Court decided that she was the proper person to have the certificate. KHUTTUN KOOER v. POONA KOOER . . 24 W. R., 322

52. ——— *Executor and legal representative.*—A person was trustee of "wuqf" or trust property. He had also some other property (how much was not clear) of his own. He made a will relating only to the trust property, and appointed an executor. *Held*, that the executor mentioned

CERTIFICATE OF ADMINISTRATION —*continued.*

4. ISSUE OF, AND RIGHT TO, CERTIFICATE—*continued.*

Right to certificate—*continued.*

in the will was entitled to a certificate under Act XXVII of 1860 with regard to the trust property; and the legal personal representative of the deceased was entitled to a certificate under the same Act with respect to any other property of which he died possessed. DAUD ALI *v.* NADIR HOSSEIN [3 B. L. R., A. C., 46: 11 W. R., 388

53. ——————— *Member of joint Hindu family.*—Certain membres (*N.* and *A.*) of a joint Hindu family, having commenced a suit to set aside an adoption by one of the family (*C.*), a compromise was effected by which the several parties took separate shares of the family property. *C.* having died, *N.* and *A.* applied for a certificate to collect the debts due to his estate, but were opposed in a joint petition made by the widow and adopted son. *Held*, that the applicants could not be entitled to the certificate, which might, however, be given to the son with the consent of the widow. MUNBASEE KOOER *v.* NOWRUNGEE LALL . . 15 W. R., 135

54. ——————— *Member of joint family.—Separate members.*—Where a certificate of administration was granted to certain applicants who asked it with reference to a particular debt, putting in a bond of the judgment-debtor, and showing that they were joint in estate with the deceased, the certificate was held to have been rightly granted, and to have been properly refused to another member of the family who had separated from the deceased. RAM GHOLAM SAHOO *v.* JANKEE PERSHAD SAHOO [25 W. R., 31

55. ——————— *Member of joint Hindu family.—Act XXVII of 1860, s. 2 and 3.*—A certificate under Act XXVII of 1860 cannot be refused merely because the deceased was a member of a joint Hindu family. Ordinarily the managing member would be the person best entitled to the certificate, but this would not be the case where the members had fallen out. CHOWDHRY KRIPPA SINDHOO DASS *v.* RADHA CHURN DASS [23 W. R., 234

56. ——————— *Minor, Rights of, in a family governed by the Mitakshara law.—Act XXVII of 1860.—Act XL of 1858.*—*K. B.*, a Hindu governed by the Mitakshara law, died, leaving two sons, *G. P.*, and *K. P.*, a minor, and a widow, *G. K.*, the mother of *K. P.*, *Held*, on applications by *G. P.* and *G. K.* respectively to obtain certificates under Act XXVII of 1860, to collect the debts due to the estate of *K. B.*, that *G. P.* alone was entitled to obtain such a certificate; and on the application of *G. K.* for a certificate to take charge of the estate of her minor son *K. P.* under Act XL of 1858, that as there was no evidence that *K. P.* was entitled to any *separate* estate, she was not entitled to such a certificate. *Held*, also, that if occasion should arise, a suit might be filed in the name of the minor by his mother as his next friend, without her having first obtained a certificate under Act XL of 1858, and

CERTIFICATE OF ADMINISTRATION —*continued.*

4. ISSUE OF, AND RIGHT TO, CERTIFICATE—*continued.*

Right to certificate—*continued.*

without her having previously obtained permission from any Court. GOURAH KOERI *v.* GAJADHUR PERSHAD [I. L. R., 5 Calc., 219: 4 C. L. R., 398

57. ——————— *Minor by next friend.—Semble,*—A certificate to collect debts under Act XXVII of 1860 may be granted to a minor by his next friend. KALI KOOMAR CHATTERJEE *v.* TARA PROSONO MOOKERJEE . 5 C. L. R., 517

58. ——————— *Sister's son.—Half brother.—Held*, that the certificate in this case was given to the party best entitled to it with reference to the object of Act XXVII of 1860,—*i.e.*, the deceased's full sister's son, who was the party in possession, in preference to the deceased's half brother. LALL MAHOMED *v.* BUZLOOL HOSSEIN [17 W. R., 562

59. ——————— *Father's brother's daughter's son.—Father's father's brother's son.—Spiritual benefit.—Act XXVII of 1860.*—The father's father's brother's son of a deceased person stands nearer to him in right of succession than his father's brother's daughter's son; the former is therefore preferentially entitled, on the death of the deceased person's widow, to a certificate under Act XXVII of 1860, enabling him to collect the debts due to the estate. GOPAL CHUNDER NATH COONDOO *v.* HARIDAS CHINI . I. L. R., 11 Calc., 343

60. ——————— *Father's brother's grandson.—Spiritual benefit.—Proximity of residence and of kinship.—Act XXVII of 1860.*—Proximity of residence and of kinship are not such considerations as should warrant a Judge in granting a certificate under Act XXVII of 1860 to any person in preference to another who has *primâ facie* the better title to the beneficial ownership of the debts. Adopting the principle laid down in the case of *Gobind Pershad Talookdar* v. *Mohesh Chunder Surmah Ghuttack, 15 B. L. R., 35*, a father's brother's grandson has a right to obtain a certificate under Act XXVII of 1860 in preference to a brother's daughter's son. IN THE MATTER OF THE PETITION OF OODOYCHURN MITTER . . I. L. R., 4, Calc., 411

61. ——————— *Nephew.—Spiritual benefit.*—A nephew is entitled to a certificate of administration in preference to a deceased son's daughter's son. ABEE MURDUN BHUGGUT *v.* JANNATH BHUGGUT . . . [15 W. R., 328

62. ——————— *Nephew.—Act XXVII of 1860.—Act XL of 1858.*—Where a will appointed the nephews of the testator to manage 4 annas of the property (the subject of the will) in their own right, and 12 annas as guardians of a minor son,—*Held*, that the nephews were entitled to one certificate under Act XXVII of 1860 to collect the debts of the whole estate, and to another certificate under Act

CERTIFICATE OF ADMINISTRATION —*continued.*

4. ISSUE OF, AND RIGHT TO, CERTIFICATE—*continued.*

Right to certificate—*continued.*

XL of 1858 to take charge of the minor's 12 annas. MAKHUN CHUNDER SHAHA *v.* CHAND MONEE DASSEE [8 W. R., 105

63. ——————— *Nephew.—Certificate of uncle's property.*—Whether a nephew takes his uncle's share by mere survivorship or by inheritance, if he takes on the ground of their having been joint in estate he "succeeds to," and "becomes entitled to the effects of," the deceased within the meaning of Act XXVII of 1860. JUSODA KOONWAR *v.* GOUREE BYJNATH SAHAE SINGH . 6 W. R., 139

64. ——————— *Disciple.—Certificate to estate of Hindu devotee.—Mental incapacity to succeed.*—The person entitled to a certificate enabling him to collect the debts due to the estate of a deceased ascetic or devotee must be the disciple, or spiritual brother, or preceptor of the deceased, and such person should not be deprived of his right, even though mentally incapable of succeeding to the office of the deceased. GUREEB DOSS *v.* MUNGUL DOSS [14 W. R., 383

65. ——————— *Spiritual son.—Personal estate of a deceased mohunt.—Spiritual brother.*—The person entitled to collect the outstanding debts due to the private estate of a deceased mohunt, is the spiritual son (the *chela*) and not the spiritual brother (*guru bhai*) of the deceased. DUKHARAM BHARTI *v.* LUCHMUN BHARTI [I. L. R., 4 Calc., 954: 4 C. L. R., 49

66. ——————— *Illegitimate sons.*—There being evidence in this case of the deceased having assigned his property to his illegitimate sons and acknowleged them as his sons, a certificate under Act XXVII of 1860 to administer to his estate was granted to them in preference to the childless widows of his brother and nephew. PRODHAN RAM *v.* JERIA KOOER . . . . . 17 W. R., 189

67. ——————— *Adopted son.—Act XXVII of 1860.—Title under adoption.*—An adoption *de facto* must be supposed valid until it is set aside, and a party so adopted is entitled to object to other parties receiving a certificate under Act XXVII of 1860 in respect of the property he takes under the adoption. In granting such a certificate, a Judge must look to fitness as well as to propinquity. NUNKOO SINGH *v.* PURM DHUN SINGH [12 W. R., 356

68. ——————— *Adopted son.—Right to certificate of a son adopted after the death of his adoptive father.*—A son adopted in pursuance of an *unoomoti puttro* (power to adopt), some time after the death of his adoptive father, does not require, and is not entitled to obtain, a certificate under Act XXVII of 1860, to enable him to collect debts in respect of the properties left by his adoptive father, which accrued due while they were under the management of his adoptive mother. The estate of the adoptive father, if the adoption is a good one, vests immediately on the adoption in the adopted son; and debts to it, if they accrued due after the death of the adoptive father, are debts recoverable by the adopted son in his own right and not as representative of his adoptive father. NARAIN MAL *v.* KOOER NARAIN MYTEE . I. L. R., 5 Calc., 251

69. ——————— *Grandmother.—Act XXVII of 1860.—Act XL of 1858.*—Where the grandmother of minors applied for certificates under Acts XL of 1858 and XXVII of 1860, the father consenting and approving, it was held that there was nothing in the law to prevent the certificates being granted if the applicant was competent and willing to take them. OOMRAO DOOLHAEN *v.* AGA MEER . . . . 12 W. R., 119

——————— *Mother-in-law.—Act XXVII of 1860.*—The circumstance of a deceased party having on the day of his death informed his debtor that he had given the whole of the moneys due to him to his mother-in-law, was held to be a sufficient indication (whether the gift was valid or not) that she was the proper person to receive the money due to the deceased and the certificate under Act XXVII of 1860. In cases under Act XXVII of 1860, Judges should always certify whether the certificate has been actually granted. ZEEMUTOONISSA KHANUM *v.* KHUTOO BEGUM [12 W. R., 239

71. ——————— *Mother.—Husband.*—A mother is not entitled to a certificate under Act XXVII of 1860 to collect debts due to her deceased daughter, in preference to the husband of the deceased. Such certificate, however, will not authorize the husband's interference with the mother's possession of the landed property which she claims as her own. MOHUN SOONDUR KOONWAR *v.* RAMANOOGRO NARAIN . . 3 W. R., Mis., 3

72. ——————— *Mother of adopted son.*—The mother of a deceased adopted minor son is his legal representative, and entitled to a certificate under Act XXVII of 1860 as his legal heir. DEENO MOYEE DOSSEE *v.* DOORGA PERSHAD MITTER . . . . . 3 W. R., Mis., 6

DEENO MOYEE DOSSEE *v.* TARACHURN COONDOO CHOWDHRY.
[3 W. R., Mis., 7 note: Bourke, A. O. C., 48

73. ——————— *Widow.—Disputed adoption.*—When the title of a person claiming as adopted son of the deceased is disputed, the certificate may properly be granted to the widow of the deceased. DIRG PAUL SINGH *v.* GAINDA KOONWAR . . . . . 1 Agra, Mis., 13

74. ——————— *Widow.—Act XXVII of 1860, s. 3.—Act XL of 1858, s. 3.*—*A.*, as widow of *B.*, and guardian under a will of his minor son, obtained a certificate under section 3 of

CERTIFICATE OF ADMINISTRATION —*continued.*

4. ISSUE OF, AND RIGHT TO, CERTIFICATE—*continued.*

Right to certificate—*continued.*

Act XL of 1858. *C.*, another widow of *B.*, subsequently applied for a certificate under section 3 of Act XXVII of 1860. The Judge summarily rejected *C.'s* application, on the ground that the grant of a certificate to her would lead to confusion. *Held*, on appeal, that the Judge ought to have issued notices and proceeded under section 3 of Act XXVII of 1860. IN THE MATTER OF RAISUNNISSA BEGUM [2 B. L. R., A. C., 129: 10 W. R., 62

75. ——————— *Widow.—Certificate as guardian after grant of certificate of administration.*—Two certificates of administration cannot run together. So, a widow who fails to appear and contest the grant of a certificate to another party, made prior to her own application, cannot claim one for herself afterwards, but she may be allowed a certificate to act as guardian of her minor (adopted) son. SHAM MANNA *v.* RAMDYAL GOOHOO [1 W. R., Mis., 3

76. ——————— *Widow.—Widow as guardian of son.*—A certificate may be granted to a widow, as guardian of her minor son, to collect the debts due to her deceased husband, notwithstanding that the adoption of the husband may have been set aside. NITTO KALLEE DEBEE *v.* OBHOY GOBIND CHOWDHRY . . . 5 W. R., Mis., 10

77. ——————— *Widow.—Cousin and partner.*—A widow is entitled (in preference to a cousin who also claimed as surviving partner) to a certificate to collect the debts, joint as well as separate, of her late husband. SHIB GOLAM SAHOO *v.* GUNGA KOONWAREE . . 1 W. R., Mis., 32

78. ——————— *Widow.—Claims of objectors on application for certificate.*—The allegation of objectors who claim the property of a deceased person under a tukseemnamah transferring the property from the widow to them, should be enquired into; and if it is proved to be genuine, the objectors are entitled to a certificate, instead of the widow, as legal heir of the deceased. DEB PERSHAD *v.* MONGA KOONWAR . . . 4 W. R., Mis., 19

79. ——————— *Widow,—Certificate of husband's property.*—The petitioner, a Hindu widow, applied for a certificate under Act XXVII of 1860 of her deceased husband's estate, and stated in her petition that her husband possessed, at the time of his death, self-acquired property, besides the property he had inherited from his brother. The opposing parties set up a will of the deceased's father under which a certain share of the testator's estate was given to the petitioner's husband, and in the event of his death without children to his mother, and after her death to his brother. *Held*, that it was not necessary for the purpose of the application to decide on the validity or otherwise of the will, as the widow was entitled to a certificate in respect of her husband's property; and further that the will, which purported, in certain events, to give to the testator's widow that share of the property which he bequeathed to his son (the petitioner's husband), could not affect her claim to the certificate in respect of her husband's self-acquired property. KHOODOOMONEY DABEE *v.* GOLUCKMONEY DABEE [1 Ind. Jur., O. S., 36

80. ——————— *Widow.—Failure of objector to prove title.*—Where a Judge, holding that the special title put forward by an objector had not been proved, decided that the widow of the deceased was best entitled to a certificate under Act XXVII of 1860, the decision was held to be correct, inasmuch as the Judge was not deciding upon the general right and title of the parties to the property, but under a special law for the collection of debts and for the protection of debtors. PROTAP NARAIN DOSS *v.* POORNO MASHEE DAYE . . . . . 14 W. R., 415

81. ——————— *Widow.—Application for certificate to enable widow to receive sale proceeds of estate sold after death of husband.*—Where the widow of a deceased applied for a certificate, without which she was refused some sale proceeds of an estate of the deceased sold after his death for arrears of revenue, and the Judge rejected her application on the ground that the case did not come within the scope of the Act, as "the sum in deposit was not in any sense a debt due to the deceased at the time of his death,"—*Held*, that as the sale proceeds were payable to the estate of the deceased, there was nothing in the law to prevent the Judge from entertaining the application. IN THE MATTER OF THE PETITION OF TRIPOORA SOONDUREE [22 W. R., 45

5. NATURE AND FORM OF CERTIFICATE.

82. ——— **Certificate for portion of property.**—The Act does not authorize the grant of a certificate for a portion of the property or debts, whether such portion be separate and defined or not. BEYCHAN SAHOO *v.* GANESH SAHOO [2 N. W., 439

83. ——— **Limited certificate.**—A certificate under Act XXVII of 1860 cannot be limited to particular debts. IN THE MATTER OF THE PETITION OF PRAN KHAN . . . 17 W. R., 238

84. ——— **Certificate to collect fractional share of debts.**—Certificates to collect fractional parts of debts due to a deceased cannot be granted to different heirs according to their respective shares in the inheritance, but one certificate to collect debts should be granted to all or such of the heirs as would consent to act in concert. AMIRUNISSA BARKAT *v.* AFFIATTUNISSA [3 B. L. R., A. C., 404: 12 W. R., 307

CERTIFICATE OF ADMINISTRATION —*continued.*

5. NATURE AND FORM OF CERTIFICATE —*continued.*

Certificate to collect fractional share of debts—*continued.*

85. ——— The appellant was the son by the first wife of the deceased: the respondent, the second wife of the deceased, applied for a certificate for herself and on behalf of her minor sons; the Judge gave her a certificate for a 12-anna share. *Held*, on appeal, that the certificate should be granted jointly to the appellant and respondent. The granting of a certificate does not determine any question of title, or decide what property does or does not belong to the estate of the deceased. It merely enables the person to whom it is granted to collect the assets of the deceased, and is conclusive of her representative title against all debtors to the deceased. A certificate cannot be granted for the collection of fractions of the debts of the deceased. WASELUN HAK *v.* GOWHURUNNISSA BIBI **[1 B. L. R., S. N., 7 : 10 W. R., 105**

86. ——— Act XXVII of 1860 does not contemplate a division of the certificate, or a power to collect fractional shares of debt. BHOODUN *v.* JAN KHAN . . . **13 W. R., 265**

87. ——— **Joint certificate.**—*Ground for appeal against order.*—It is no ground for appeal against an order granting a certificate that the Judge joined with the appellant another person who had an interest in the debts to be collected. IN THE MATTER OF THE PETITION OF PRAN KHAN . **17 W. R., 238**

88. ——— *Rival claimants.—Discretion of Judge.*—Where there are rival claimants for a certificate to collect the debts of a deceased person, the Judge has, under section 3, Act XXVII of 1860, a discretion to present it to such person as, under the circumstances of the case, shall appear best entitled to it. *Quære,*—Has he power, under the Act, to grant them a joint or separate certificate? RAISUNNISSA BEGUM *v.* KHUJJUNISSA **[4 B. L. R., A. C., 149 : 13 W. R., 143**

89. ——— *Power of Judge.*—Act XXVII of 1860 gives a Judge no power to grant a joint certificate to two persons, his duty being to determine which of the applicants has the better right to a certificate. IN THE GOODS OF SEETARAM GOWRA *v.* KEKREE SINGH . **4 N. W., 60**

But *see* EAD ALI KHAN *v.* WAHAD ALI KHAN **[23 W. R., 25**

90. ——— *Grant to several persons jointly.—Act XXVII of 1860.*—A certificate under Act XXVII of 1860 should not be granted to several persons jointly, but, where there are several claimants to the certificate, the District Court should determine which of such persons has the best title to the certificate, and grant the same accordingly. MADAN MOHAN *v.* RAMDIAL **[I. L. R., 5 All., 195**

ROOKMINEE *v.* CHOONEE LAL . **1 Agra, Mis., 6**

CERTIFICATE OF ADMINISTRATION —*continued.*

5. NATURE AND FORM OF CERTIFICATE —*continued.*

Joint certificate—*continued.*

91. ——— *Widows of deceased.*—Where the widows of an intestate applied for administration to the estate of the deceased,—*Held*, that the District Judge before whom the application was made was right in following the usual practice (which was declared to be a reasonable practice) of his Court in refusing to grant such administration to the widows jointly. NITTYE KALI DEBIA *v.* KADER NATH CHATTERJEE . **5 C. L. R., 368**

6. PROCEDURE.

92. ——— **Evidence improperly taken.**—In an application for a certificate of administration, the District Judge having delegated the examination of the witnesses in the case to the Nazir of the Court and having on the evidence so taken made an order granting the certificate,—*Held*, that the procedure was illegal, and that the order so passed must be annulled; and further proceedings for the investigation of the title directed in which the witnesses should be examined by the Judge himself. LUKSHMIBAI RAM SANSHEDAPPA *v.* RUDRAPPA BIN GANGOPPA **[2 Bom., 2nd Ed., 382**

93. ——— **Enquiry as to right.**—*Evidence of right.*—Although no question of title is judicially determined as the result of an enquiry under Act XXVII of 1860, yet the Court is bound under the Act to give the certificate to the person who makes out a title, and for that purpose, when parties are not agreed as to the facts, to try the issues in the ordinary way by the aid of evidence. ANUNDEE KOOER *v.* BAOHOO SINGH . . . . . **20 W. R., 476**

94. ——— *Ground for refusal.*—A Hindu woman applied for a certificate of administration under Act XXVII of 1860 to the estate of her brother, who had died seven years before, and whose property had since been in the possession of his so-called heir-at-law. The applicant alleged that, at the time of her brother's death, she was pregnant, and subsequently gave birth to a son, who died in infancy. As representative of that son, who was deceased's legal heir, she asked for the certificate. The lower Court summarily rejected her application on the ground of lapse of time. *Held*, that this was not a sufficient reason for rejecting the application, and that the Judge must proceed to an enquiry under the Act. DURGADASI DABI *v.* JUDUNAUTH MOOKERJEE . . . **2 B. L. R., Ap., 26**

95. ——— *Question of legitimacy.*—On an application for a certificate of administration under Act XXVII of 1860, where the applicant claimed as heir of the deceased and impugned his marriage,—*Held*, that the Judge was bound to enquire summarily into the question of the marriage of the deceased and the consequent legitimacy of his children. TAYLOR *v.* NUNDU JAN **[W. R., 1864, Mis., 25**

CERTIFICATE OF ADMINISTRATION —*continued.*

6. PROCEDURE—*continued.*

Enquiry as to right—*continued.*

96. ——————— *Question of validity of will.*—An application having been made by the widow of a deceased proprietor for a certificate under Act XXVII of 1860, on the ground that she was entitled in right of inheritance (her husband having separated himself from his brother, the objector), and a will also having been set up which gave her extensive rights over the estate, the Judge granted the application without going into the validity of the will. *Held* that, for the purposes of the Act, it was quite sufficient to decide the case upon the question whether the estates of the two brothers were joint or separate at the time of the death of the applicant's husband. SOOKRAJ BAHADOOR *v.* JUREENA BIBEE . . . **11 W. R., 341**

97. ——————— *Claim under will.*—When a party claims a certificate under Act XXVII of 1860 by reason of a will said to have been executed by the deceased, the Judge should decide upon the issue raised by him and say whether under the will he has a preferable right, instead of granting a certificate to the widow of the deceased upon her giving security to satisfy any claims which may be brought, should the will be proved to be a genuine document in a Civil Court. JUGGUT CHUNDER ROY *v.* CHUNDER MONEE SHAHA . . **17 W. R., 277**

98. ——————— *Question of validity of alleged adoption.—Question of title.*—*A.*, alleging himself to be an adopted son, opposed the application for the grant of a certificate under Act XXVII of 1860 to *B.*, who, irrespective of the alleged adoption, would be the legal lineal heir of the deceased. The Court before whom the application was made refused the grant of the certificate, on the ground that sufficient *primâ facie* evidence existed establishing the validity of the adoption. On appeal, —*Held* that the Appellate Court, concurring with the opinion expressed by the Court of first instance in respect of the *factum* of the adoption, would not be justified in setting aside the decision, on the ground that such Court was wrong in entering into and deciding the question as to the validity of the adoption. On an application for the grant of a certificate under Act XXVII of 1860, which is opposed by a party who alleges he has a preferable title to it, the Court should adjudicate the question of title, with a view to determine which party has the preferential right to the certificate. IN THE MATTER OF THE PETITION OF SHEETANATH MOOKERJEE *v.* PROMOTHONATH MOOKERJEE

[I. L. R., 6 Calc., 303 : 7 C. L. R., 475

99. ——————— *Act XXVII of 1860.—Question of title.*—The Court will refuse to grant an application for a certificate to collect the debts of an intestate who has been dead forty years at the time of making the application, the presumption being that, owing to the operation of the law of limitation, there could be now no debts due to him which could be recovered. A question of title cannot be judicially determined between parties in an application under Act XXVII of 1860; therefore, where the object of such an application was to obtain a judicial determination as to the validity of an alleged adoption, —*Held*, that such a question could only be decided in a Civil Court. KOONJ BEHARY CHOWDHRY *v.* GOCOOL CHUNDER CHOWDHRY

[I. L. R., 3 Calc., 616

100. ——————— **Order as to security for certificate.**—*Act XXVII of 1860, s. 5.—Discretion of Court.—Security.*—Under Act XXVII of 1860, section 5, the Court granting a certificate has a discretion to determine whether or not it will require security to be given by the person to whom it grants it. The High Court will not on appeal or review interfere with the exercise of such discretion by the lower Courts. MHALSABAI *v.* VITHOBA KHANDAPPA GULVE . . . . **7 Bom., Ap., 26**

101. ——————— *Power of Judge where order for security is made by High Court. Return of security.*—Where security has been taken by an order of the High Court from the holder of a certificate under Act XXVII of 1860, a Zillah Judge is not competent of his own motion to release the money and give it back. If he thinks the time for doing so has arrived, it is for him to report the circumstances to the High Court for orders. Security taken from the holder of a certificate of administration should not be returned till the time allowed for an opposing claimant has expired. GOUR SOONDUR PARAY *v.* KRISTO KANT MAHATON

[15 W. R., 108

7. EFFECT OF CERTIFICATE.

102. ——————— **Indemnity to debtors paying debts.**—The effect of a certificate under Act XXVII of 1860 is that it is conclusive of the representative title against all debtors to the deceased, and affords full indemnity to all debtors paying their debts to the persons to whom the certificate has been granted. BHUGOBUTTY KOOER *v.* BHOLANATH THAKOOR . . . . **8 W. R., 317**

103. ——————— *Certificate for collection of debts.—Effect of certificate against debtors.—Cause of action.—Act XXVII of 1860, s. 4.*—A judgment-debtor sued for a declaration that the son of the deceased decree-holder, to whom a certificate had been granted under Act XXVII of 1860 in respect of the debts due to his father's estate, was not competent to apply for execution of the decree, as, being illegitimate, he was not the legal representative of the deceased decree-holder. *Held*, that the suit was not maintainable, the certificate under Act XXVII of 1860 being, under section 4 of the Act, conclusive of the defendant's representative character, and a full indemnity to all persons paying their debts to him. GAURA *v.* GAYADIN . . **I. L. R., 4 All., 355**

104. ——————— **Right of co-heir against holder of certificate.**—*Misappropriation of property of deceased.*—A co-heir is entitled to follow

CERTIFICATE OF ADMINISTRATION —*continued.*

7. EFFECT OF CERTIFICATE—*continued.*

Right of co-heir against holder of certificate—*continued.*

property of the deceased into the hands of any person who has misappropriated it, and such right is not taken away by the certificate of administration granted under Act XXVII of 1860. NGA THA YA *v.* MI KHAN MHAW . **5 B. L. R., 371: 13 W. R., 443**

105. ——— Adjudication of title.— *Protection of debtors.—Act XXVII of 1860.*—The certificate under Act XXVII of 1860 does not determine any question of heirship, but merely protects debtors of a deceased person from liability for payments made to a certificate-holder. If it be found that such certificate-holder was not the rightful heir, the question of heirship may be tried in a regular suit, notwithstanding the grant of a certificate. JOKNA *v.* BHUGWANEE . . . **3 N. W., 320**

106. ——— *Possession.—* The grant of a certificate of administration under Act XXVII of 1860 does not decide any question of title to possession of land. DHUNRAJ GIRI GOSWAMI *v.* SRIPATI GIRI GOSWAMI . **2 B. L. R., A. Cr., 27**

QUEEN *v.* SREEPUTT GIRI GOSSAIN **[11 W. R., Cr., 23**

IN THE MATTER OF THE PETITION OF OBILASHERY DEBIA . . . . **9 W. R., Cr., 18**

107. ——— *Protection of debtors.*—Act XXVII of 1860 does not provide for an adjudication of the rights of parties to succeed to property, or their actual title to it, its whole object being the security of debtors paying debts due to the estates of deceased persons. MAHOMAD EUNOOS *v.* LALLA JAMARAD LALL . . **13 W. R., 356**

JHANJOO KOOER *v.* DAMEENAH KOOER **[17 W. R., 343**

CHUNDRO MONEE DEBIA *v.* RASH BEHARY CHOWDHRY . . . . **21 W. R., 24**

HURRO KISTO DOSS *v.* RAMANUNDO DOSS **[22 W. R., 274**

RAMPROTAB MISSER *v.* ABHILAK MISSER **[3 C. L. R., 170**

108. ——— Under Act XXVII of 1860, no question of title to any specific property can properly be tried. A party seeking to raise such a point should be referred to a regular suit. IMAMUN *v.* NUNNOO . . **17 W. R., 193**

109. ——— *Act XX of 1841* —*Held*, that a certificate granted under Act XX of 1841 did not establish the right of inheritance of the party to whom it was granted, but simply empowered him to collect debts due to the estate of the deceased. The title of plaintiff or her father could not, under the circumstances, be questioned by a co-sharer after its public acknowledgment and practical effect given to that acknowledgment during a long period of years. SKINNER *v.* SKINNER . . . **2 Agra, 128**

CERTIFICATE OF ADMINISTRATION —*continued.*

7. EFFECT OF CERTIFICATE—*continued.*

Adjudication of title—*continued.*

110. ——— *Right to receive certificate.—Act XXVII of 1860.*—In a proceeding to obtain a certificate under Act XXVII of 1860, for the collection of debts payable to the representatives of deceased persons, the Court determines merely that the applicant is entitled to receive a certificate, and not his title as heir or legal representative of the deceased. The rights as between each other of several persons claiming to be interested in the property of the deceased, are not for consideration and determination in such a proceeding. BEYCHAN SAHOO *v.* GANESH SAHOO . . . . **2 N. W., 439**

111. ——— *Act XXVII of 1860.—Right of succession.*—A certificate under Act XXVII of 1860 gives no title to the property in succession to the deceased, neither does it authorize the holder to sue for and collect debts which have accrued due at the death of the deceased to persons who have subsequently become owners of his property. GOUREE BYJNATH PERSHAD *v.* LOCHUN KOOER **[22 W. R., 102**

112. ——— *Act XXVII of 1860.*—Certificates under Act XXVII of 1860 can only be granted to persons claiming to be representatives of deceased persons to enable them to recover debts and receive interest or dividends; but such certificates include only the debtors of the estate, and the procedure given by the Act was not intended to apply to the decision of any right to succeed to the estate of a deceased person. EX PARTE RAU NARASINGA . . . . . **2 Mad., 164**

113. ——— Effect of certificate in subsequent suit.—A certificate under Act XXVII of 1860, obtained on the allegation of being heir of the deceased, does not preclude a suitor from showing that the relationship certified to did not exist. BUNDHOO BHUGUT *v.* MAHOMED HOSSEIN **[2 W. R., 70**

114. ——— Decision as to validity of will.—*Suit to contest will.*—A decision as to the validity of a will under the provisions of Act XXVII of 1860 will not bar a regular suit under Act VIII of 1859, between the same parties, to contest the validity of the same will. ANUND CHUNDER MITTER *v.* BANEY MADHUB MITTER . . **11 W. R., 127**

KALEE CHUNDER SURMA *v.* GOBIND PERSHAD SURMA . . . . **12 W. R., 454**

115. ——— *Act XXVII of 1860, Effect of decision under.*—A decision under Act XXVII of 1860 does not in any way preclude the unsuccessful party from contesting the validity of the will in a regular suit. AUNUND MOHUN MULLICK *v.* INDRO MONEE CHOWDRAIN **[16 W. R., 214**

SOOKHO SOONDUREE DABIA *v.* WOOMA SOONDUREE DABIA . . . **18 W. R., 255**

CERTIFICATE OF ADMINISTRATION —*continued.*

7. EFFECT OF CERTIFICATE—*continued.*

116. ——— Decision under Act XXVII of 1860, Effect of.—*Subsequent regular suit.*—When the question of granting a certificate under Act XXVII of 1860 is dealt with by the Court with all the available evidence before it just as in a regular suit, and the matter of the certificate is decided upon after full deliberation, the position of the parties becomes very different from what it is at the conclusion of a really summary proceeding. Technically, there may still be the right to bring a regular suit, but the regular suit in such a case is a re-hearing, and the Court is bound to pay due respect to the judgment already arrived at. GREEDHAREE SINGH *v.* FOOLJHUREE KOER . . **24 W. R., 173**

117. ——— Power to negotiate Government securities.—*Act XXVII of 1860, ss. 8 and 21.*—A Judge can, under sections 8 and 21 of Act XXVII of 1860, empower the holders of a certificate under that Act to negotiate a Government security mentioned in the will. IN THE MATTER OF BHUGGOBUTTY DEBIA . . . **3 W. R., Mis., 18**

118. ——— Effect of certificate on title effected by will.—*Succession Act, s. 187.*—The grant of a certificate under Act XXVII of 1860 on the title afforded by a will, which gives the grantee the estate in respect of which the debts accrued, does not establish a right as executor or legatee within the meaning of the words of section 187 of the Succession Act. KRISTO CHUNDER MOOKERJEE *v.* CHUNDEE PERSHAD BANERJEE **[23 W. R., 252**

8. CANCELMENT OR RECALL OF CERTIFICATE.

119. ——— Application for cancelment.—*Act XXVII of 1860, s. 6.—Cancelling certificate.*—Section 6 of Act XXVII of 1860 contemplates the application for cancellation being made to the High Court. SUSMAN GOSSAIN *v.* RAM CHURN BHUKUT . **5 W. R., Mis., 48**

120. ——— Refusal to recal certificate.—*Act XXVII of 1860.—Held,* that the lower Appellate Court properly exercised its discretion in refusing to recal a certificate under Act XXVII of 1860, because there was an heir in a nearer degree to the deceased than the person to whom the certificate was granted; the object of that Act being to give facilities to debtors and not to assist parties in establishing a disputed right or title. KUBEER CHUNDER BUNDO *v.* RAMKANYE DOSS BISWAS **[17 W. R., 174**

121. ——— Jurisdiction to recall.—*Judge sitting on Original Side, Power of.*—NORMAN, *J.*, ruled that, sitting on the Original Side of the Court, he could not grant a certificate of administration in supersession of one which had been granted by the Judge of the 24-Pergunnahs under Act XXVII of 1860. IN THE GOODS OF SHAMLAL DASS . . . . **5 B. L. R., Ap., 21**

CERTIFICATE OF ADMINISTRATION —*continued.*

8. CANCELMENT OR RECALL OF CERTIFICATE—*continued.*

122. ——— Recall of certificate granted without jurisdiction.—The High Court on appeal remanded a case for enquiry as to an allegation that a certificate granted under Act XXVII of 1860 had been granted without jurisdiction, and ordered that, if found to have been granted without jurisdiction, it should be recalled. IN RE JAGESWAR DAS . **6 B. L. R., Ap., 128**

S. C. JUGGESSUR DHUR *v.* BHUGOBUTTY DASSEE . . . **[14 W. R., 464**

123. ——— Recall of certificate of administration fraudulently obtained.—A certificate of administration granted under Act XXVII of 1860 may be recalled, if it has been obtained by a false and fraudulent statement. IN THE MATTER OF THE PETITION OF BHABADA DASI . . . . **[8 B. L. R., Ap., 13**

124. ——— Where, after a certificate has been granted under Act XXVII of 1860, an application is made by a party claiming to be the rightful heir, with a distinct allegation of fraud having been committed in obtaining the certificate, it is the duty of the Judge to call upon the opposite party to substantiate their allegation that the claimant is disqualified from inheriting. KHETTER MONEE DABEE *v.* MADHUB CHUNDER ROY **[13 W. R., 160**

125. ——— *Power of Judge to recall.—Enquiry, Extension of.*—Whether or not a Judge has power to recal a certificate granted under Act XXVII of 1860, he has power, where there are charges made that a certificate has been obtained by fraud, to institute an enquiry, and, if necessary, to refuse an extension of the certificate, or to refuse to grant a fresh one according to the form of the application. BHIKUN *v.* ELAHI KHANUM **[8 B. L. R., Ap., 14: note, 11 W. R., 153**

126. ——— Power to recall certificate obtained by fraud and misrepresentation.—In a case in which a Judge refused, on the ground of want of competency, to entertain a petition which asked him to recall a certificate granted by him under Act XXVII of 1860, as having been obtained by fraud, it was held that it is a power inherent in every Court of Justice, on finding that an order has been obtained from it by fraud and misrepresentation, and that if the real facts had been known to the Court it would not have acted in the matter, to recall the order made in ignorance of the true circumstances by reason of the misrepresentation alleged. HAMEEDA BIBEE *v.* NOOR BIBEE . **9 W. R., 394**

SHEO PURSHUN CHOBEY *v.* COLLECTOR OF SARUN . . . . **13 W. R., 256**

127. ——— District Court, Power of, to cancel certificate granted.—*Act XXVII of 1860.*—Under Act XXVII of 1860 a District Judge has no power to cancel a certificate granted to collect the debts of a deceased person. VENKATAMMA *v.* CHENGALRAYAPPA . . **I. L. R., 7 Mad., 555**

CERTIFICATE OF ADMINISTRATION —*continued.*

8. CANCELMENT OR RECALL OF CERTIFICATE—*continued.*

128. ——— Suspension or recall of certificate.—*Act XXVII of 1860, s. 6.—Omission to file schedule of debts.*—The High Court, under section 6, Act XXVII of 1860, suspended a certificate which had been wrongly granted in a case where there was no list of debts due to the estate of the deceased. FAYZ ALI *v.* TALEB ALI **18 W. R., 330**

129. ——— Recall of certificate granted without list of debts being filed.—It is not necessary, as a general rule, that a list of debts should be filed before a certificate can be granted under the provisions of Act XXVII of 1860 RADHIKA CHURN SEN *v.* JUDOONATH GOSSAMEE **[20 W. R., 412**

130. ——— *Recalling or cancelling certificate, Ground for.—Non-appearance to object to grant.*—A certificate under Act XXVII of 1860 having been granted to the widow of a deceased party, his sister's son subsequently represented that he was entitled to the estate under a will, and prayed that the certificate might be cancelled. *Held* that, as notice had been issued and the petitioner did not appear and object to the widow obtaining the certificate, the Judge was right in refusing to cancel the certificate and in referring him to a regular suit. MANICK CHUNDER *alias* PROTAP CHUNDER ROY *v.* RAJ LACKHEE DOSSEE . . **19 W. R., 252**

131. ——— Cancelling grant empowering person to deal with securities claimed by another.—If a Civil Court is proceeding under section 8 of Act XXVII of 1860 to grant or has granted a certificate authorising a person to deal with Government securities which are claimed by a third person as his property, that is a ground on which such third person may come into court to oppose the grant of a certificate or to seek for its cancelment. BANDAM SETTAH *v.* BANDAM MAHA LAKSHMY . . . **4 Mad., 180**

9. CASES UNDER BOMBAY MINORS' ACT.

132. ——— Mother of minor.—*Bombay Minors' Act XX of 1864.—Unwillingness to act as guardian.—Default in appearance to order for issue of certificate.*—An order for the issue of a certificate of administration to a particular individual ought not to be made until it is ascertained whether that individual is willing to take it. A certificate of administration ought not to be forced upon the mother of a minor unwilling to take it. Where an order for the issue of such a certificate to the mother of an infant was made, on the default of the mother to appear and show cause why it should not be issued to her,—*Held*, that such default in appearance ought not to have been accepted as her assent to the issuing of the certificate to her. Course pointed out where no relative or friend of a minor can be found willing to take such a certificate. BABAJI BIN KUSAJI *v.* MARUTI . . . . **11 Bom., 182**

CERTIFICATE OF ADMINISTRATION —*continued.*

9. CASES UNDER BOMBAY MINORS' ACT—*continued.*

133. ——— Joint Hindu family.—*Minors' Act XX of 1864.*—Where a member of a Hindu family dies, leaving to his children only his undivided share in the joint family property, administration cannot be granted under Act XX of 1864; nor, under such circumstances, can a guardian of the persons of the minor children be appointed; but if the deceased has left any separate property, administration of such property may be granted, and a guardian may be properly appointed at the same time. GURACHARYA *v.* SVAMIRAYACHARYA . **I. L. R., 3 Bom., 431**

134 ——— *Minor.—Act XX of 1864.—Property.—Ascertainment of share.*—A certificate of administration may be granted, under Act XX of 1864, for the share of a minor who is a member of an undivided Hindu family. When a certificate is given in such a case, the District Court has no jurisdiction to attach the undivided property in which the minor has a share, with a view to ascertain and divide off the minor's share. Such ascertainment and division can only be effected by a regular suit. BABAJI *v.* SHESHGIRI **[I. L. R., 6 Bom., 593**

135. ——— Certificate granted to Collector.—*Form of certificate.—Act XX of 1864, s 11.—Effect of certificate.—Moveable property.*—Where the Court, under section 11 of Act XX of 1864, directs a certificate of administration to the estate of a minor to be granted to the Collector of a district, such certificate should extend to the moveable as well as the immoveable estate of the minor. LAKSHMIBAI *v.* GANESH ANTAJI . . **4 Bom., A. C., 129**

136. ——— Effect of certificate on adoption.—*Act XX of 1864.—Effect of such certificate.—Adoption.*—By a deed of adoption a Hindu widow adopted a minor son, the deed stipulating that until such minor attained majority the widow was to manage the property. It subsequently appeared that she was incompetent to manage the property; and the natural father of the minor having applied for a certificate of administration, the lower Court granted one to him. On appeal by the widow to the High Court against the decision of the lower Court,—*Held*, that the order of the District Judge granting the certificate should be confirmed. The certificate did not alter the rights and interests of the minor or of the widow in the property. Any right of property or possession that could properly be asserted against the minor before the certificate was granted, could be asserted equally after it was granted. GURUPADAVA *v.* PUTAPA . . **I. L. R., 8 Bom, 599**

CERTIFICATE OF GUARDIANSHIP.

See CASES UNDER ACT XL OF 1858.

See HINDU LAW—GUARDIAN—RIGHT OF GUARDIANSHIP.

[I. L. R., 5 Calc., 43

CERTIFICATE OF SALE.

See LIMITATION ACT, 1877, ART. 178.
[I. L. R., 5 Bom., 202, 206
I. L. R., 3 Bom., 433
I. L. R., 6 Bom., 586
I. L. R., 4 Mad., 172
I. L. R., 8 Bom., 207

See POSSESSION—NATURE OF POSSESSION.
[I. L. R., 5 Bom., 206
I. L. R., 3 Bom., 433

See PRACTICE—CIVIL CASES—CERTIFICATE OF SALE.
[I. L. R., 9 Bom., 472, 526

See REGISTRATION ACT, 1877, s. 17 (1871, s. 17; 1866, s. 17).
[I. L. R., 3 Mad., 37
7 Bom., A. C., 136
I. L. R., 5 All., 84, 568
10 Bom., 435
6 Mad., Ap., 40
3 Bom., A. C., 167
I. L. R., 4 Bom., 155
I. L. R., 9 Calc., 82: 12 C. L. R., 1
12 Bom., 247
I. L. R., 5 Calc., 226
7 C. L. R., 115
21 W. R., 349
11 Bom., 218
I. L. R., 2 All., 392
I. L. R., 8 Bom., 377

See REGISTRATION ACT, 1877, s. 49 (1871, s. 49) . . I. L. R., 4 Bom., 155
[7 C. L. R., 115
21 W. R., 349

See CASES UNDER SALE IN EXECUTION OF DECREE—PURCHASERS, TITLE OF—CERTIFICATES OF SALE.

See STAMP ACT, 1879, s. 24.
[I. L. R., 5 Bom., 470
I. L. R., 5 Mad., 18
I. L. R., 10 Calc., 92
I. L. R., 10 Bom., 47

See VENDOR AND PURCHASER—PURCHASE OF MORTGAGED PROPERTY.
[I. L. R., 6 Bom., 139

1. ——— **Construction.**—*Misdescription.—Intention of parties.*—Mere inaccuracy of language or misdescription will not vitiate a sale certificate. The intention of the parties must be looked to. MOULA BUKSH *v.* KURUCK LALL
[7 W. R., 245

MANSON *v.* GOLAM KEBRIA MOONSHEE
[15 W. R., 490

TARANATH CHUCKERBUTTY *v.* JOY SOONDUREE DABEE . . . . . 21 W. R., 93

2. ——— *Misdescription of land.*—Where a sale certificate declares the sale of the rights of a particular party in land of which the identity is not in dispute, the mere fact that the right thus transferred is called by mistake jote dakhali instead of some other term nearly importing the same thing, does not constitute a difficulty in the

CERTIFICATE OF SALE.—Construction—*continued.*

way of giving the purchaser possession. KULEEMOODDEEN DAROGAH *v.* ASHRUF ALI KHAN
[19 W. R., 276

3. ——— *Power to go behind certificate.*—The Court in construing a sale certificate refused to go into facts lying behind it for the purpose of contradicting its terms. LALLA BISSESSUR DYAL *v.* DOOLAR CHAND SAHOO
[22 W. R., 181

See PEAREE MOHUN MOOKERJEE *v.* GOSTO BEHARY DEY . . 26 W. R., 104

4. ——— **Power of Court to amend certificate.**—*Civil Procedure Code, 1859, s. 259.*—A Court is not legally competent to make an *ex parte* order amending a sale certificate granted under Act VIII of 1859, section 259. RUGHOO NUNDUN SINGH *v.* WILSON . . . . . 23 W. R., 301

5. ——— **Inaccuracy in sale certificate.**—*Extraneous evidence.*—Where a sale certificate, though containing errors, was accurate as to any part of the description of the subject of sale, and could be used to identify it, with the assistance of extraneous evidence, such evidence could be received to show what was intended to be dealt with. MALEKBUN *v.* RASEEDA . . . 25 W. R., 401

CERTIORARI, WRIT OF—

1. ——— *High Court's Criminal Procedure Act X of 1875.*—The power of the High Court to issue a writ of *certiorari* was not taken away by section 147 of the High Court's Criminal Procedure Act, X of 1875. REG. *v.* RAMDAS SAMALDAS
[12 Bom., 217

2. ——— **Removal of case from Small Cause Court.**—*Letters Patent, cl. 13.—Inability of Small Cause Court to issue commission.*—The Bombay Court of Small Causes is subject to the superintendence of the High Court within the meaning of clause 13 of the Letters Patent of the High Court, and the latter has, therefore, power, for purposes of justice, to remove a case from the Small Cause Court and itself to try and determine such case. The inability of the Small Cause Court to issue a commission to examine for the defence witnesses residing outside its jurisdiction, though not in general, may under peculiar, circumstances, be a good ground for granting an order to remove a case from the Small Cause Court into the High Court. Terms upon which such order will be granted. PIRBHAI KHIMJI *v.* BOMBAY, BARODA, AND CENTRAL INDIA RAILWAY COMPANY
[8 Bom., O. C., 59

3. ——— *Act IX of 1850, s. 54.*—A writ of *certiorari* lay as of course, to remove, before judgment, all cases commenced in the Calcutta Court of Small Causes, subject to the limitation imposed by section 54 of Act IX of 1850, unless such cases fell within the usual exceptions recognised in English practice, so far as such exceptions may be applicable to the High Court. PILLANS *v.* PENINSULAR AND ORIENTAL STEAM-SHIP COMPANY . . . . . 1 Ind. Jur., O. S., 68

CERTIORARI, WRIT OF—Removal of case from Small Cause Court—*continued.*

4. ——————— *Act XXVI of 1864, s. 7.*—It is no ground for removal of a cause by *certiorari* from the Court of Small Causes that a difficult point of law is likely to be involved in it. The proper course is to apply to the lower Court under section 7 of Act XXVI of 1864. MADHUB KISSEN SETT *v.* GOUR SOONDER SETT . . **Cor., 90**

5. ——— **Police Act XIII of 1856, s. 111.**—*Conviction on merits.—Error in decision on merits.—Affidavits, Use of.*—Section 111 of the Police Act (XIII of 1856) did not give jurisdiction to the High Court, when a case was brought before it on *certiorari*, to enquire whether the Magistrate had come to a correct conclusion as to the guilt or innocence of the prisoner. The object of that section was to limit the objections to a conviction to some substantial meritorious ground, such as want of jurisdiction or the like, and to prevent a conviction from being quashed on a mere error of form or of procedure. But the section did not give the High Court any right to interfere on the ground that the Magistrate had come to a wrong conclusion on the question of the guilt or innocence of the accused person. Though affidavits may be used to show a want of jurisdiction in a Magistrate, even though such affidavits contradict for this purpose the finding of the Magistrate, they cannot be used as affording materials for reviewing the Magistrate's decision on the merits. REG. *v.* NATHOLAL PITAMBAR . **10 Bom., 102**

REG. *v.* SAKHARAM ANATOBA **[10 Bom., 109, note**

6. ——— **Rule nisi to quash conviction.**—*Practice.*—Where a writ of *certiorari* is granted to bring up a conviction of Justices, in order to quash it, and a rule *nisi* to quash the conviction moved for, the *certiorari* should be returned into Court before the motion for the rule *nisi* is made. REG. *v.* THE JUSTICES OF THE PEACE **[1 Ind. Jur., N. S., 293**

7. ——— **Power of High Court to quash conviction.**—*Bengal Act IV of 1876, ss. 88, 104, and 117.—Municipal Commissioners; their jurisdiction.—Power of the High Court.*—The power of the High Court to quash proceedings on *certiorari* is not affected by the provisions of section 117 of the Municipal Act, and if it should appear either on the face of the proceedings or upon affidavits that the Commissioners have acted without or in excess of jurisdiction, the Court will interfere. NUNDO LAL BOSE *v.* CORPORATION FOR THE TOWN OF CALCUTTA . . **I. L. R., 11 Calc., 275**

CESS.

See CASES UNDER CONTRACT ACT, S. 23—ILLEGAL CONTRACTS—ILLEGAL CESSES.

See CUSTOM . . **I. L. R., 2 All., 49**
[1 Agra, 134, 135

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, N.-W. P.
[I. L. R., 2 All., 49

See CASES UNDER SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—CESS.

CESS.

———**Declaration of right to—**

See CUSTOM . **I. L. R., 1 All., 440**

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, N.-W. P.
[I. L. R., 1 All., 373.

——— **Suit for zemindari—**

See SMALL CAUSE COURT, MOFUSSIL.
[I. L. R., 1 All., 444

1. ——— **Liability to pay cess.**—*Holders under biswadar.—Contract to pay.—Held,* that if the biswadars were not liable to cesses claimed, those holding under them could not be liable to plaintiff's claim; and that the liability of the defendants, whether they be lessees or mortgagees under the biswadars, must depend, firstly, on the liability of the biswadars themselves; and, secondly, on the terms of the lease or mortgage under which they are found to be in possession. DHUNEE RAM *v.* MOORLEE DHUR . . . . **2 Agra, 325**

2. ——————— *Contract to pay.*—Where the talookdar has engaged to pay certain cesses for roads, schools, &c., he cannot recover them from the biswadars, unless they are bound to pay them by some positive law, or have engaged or have consented to do so; nor is any individual biswadar bound to pay merely because his co-partners have agreed to pay or have paid them. DHUNEE RAM *v.* MOORLEE DHUR . . . . **2 Agra, 326**

3. ——— **Cess not sanctioned or taken into account in fixing Government revenue.**—*Right of suit.*—A suit cannot be maintained for a cess which was not avowed nor sanctioned nor taken into account in fixing the Government revenue at the settlement. BISHARUT ALLY *v* SEETUL MISSER . . . . **1 N. W., 40**

4. ——— **Alteration of rent by paying in different coinage.**—*Extra or illegal cess.*—Rent is not altered by being paid in a different coin,—*viz.*, in kuldar, instead of sicca, rupees; and the apparent addition of one anna per rupee (the difference in value between the two kinds of rupees) is not a real addition to the rent, nor is it an extra cess of an arbitrary nature or an illegal character. ROOCHA RAM MISSER *v.* NAGA DOSS **[2 N. W., 92**

5. ——— **Right to levy cess.**—*Absence of any contract to pay.*—A Government lessee is not entitled to sue for a declaration of his right to levy a cess upon a jotedar who grazes his cattle on his own jote within the precincts of the lessee's mehal, there being no contract between them whereby defendant is bound to pay such a cess. BHUGEERUTH SHIKDAR *v.* RAMNARAIN MUNDUR **[9 W. R., 299**

6. ——————— *Consent of ryot to pay abwab or cess.*—If a zemindar demands a cess over and above the original rent, and the ryot consents and contracts to pay it, this demand and the old rent form a new rent lawfully claimable under the contract. JEEATOOLLAH PARAMANICK *v.* JUGODINDRO NARAIN ROY . . **22 W. R., 12**

CESS—*continued.*

7. ——— **Cesses on debutter lands.**—*"Owner and holder."—Beng. Act IX of 1880, s. 56.*—Bengal Act IX of 1880 contemplates the payment of the cesses by persons beneficially interested in the land in respect of which the cesses are levied. The words "owner and holder" in section 56 of that Act are not limited to any one person, nor for the purposes of that section must the owner be in actual possession. The plaintiff, who was a putnidar of the defendants, having paid certain cesses in respect of what he described in his plaint to be "debutter lakhiraj lands" lying within the ambit of his putni, sued the defendant to recover the amount of such cesses. The defendant admitted that he was proprietor of the estate in which the lands were situated, but denied his liability for the cesses. *Held,* that the defendant was not liable to pay the amount of the cesses, but that the person liable was the idol through its shebait, or some person in receipt of the rents and profits of the land, or some person in actual possession of the land in occupation of it. GOPAL CHUNDER SIRCAR *v.* ADHIRAJ AFTAB CHAND MAHTAB . . . . **I. L. R., 10 Calc., 743**

8. ——— **Abwabs paid before Permanent Settlement.**—*Beng. Reg. VIII of 1793, s. 54.—Beng. Reg. IV of 1794.—Beng. Reg. V of 1812, s. 3.—Beng. Act VIII of 1869, s. 11.—Act X of 1859, s. 10.—Contract Act (IX of 1872), s. 23.*—Where it is not actually proved that abwabs have been paid or have been payable before the time of the Permanent Settlement, a landlord is not legally entitled to recover them as against his ryots, even assuming that by the custom of the estate the ryots, and their ancestors before them, have for a great number of years paid such abwabs. *Semble,*—That a claim for the recovery of abwabs existing before the time of the Permanent Settlement would not be enforceable. CHULTAN MAHTON *v.* TILUKDARI SINGH **[I. L. R., 11 Calc., 175**

CESSER, PROVISO FOR—

See WILL—CONSTRUCTION.

[12 B. L. R., 1

CESSION OF BRITISH TERRITORY IN INDIA.

1. ——— *Evidence of cession.—Transfer or re-arrangement of jurisdiction in British territory.—Statutes 3 and 4 Will. IV., c. 85, s. 43.—Statutes 24 and 25 Vict., c. 67, s. 22.—Statutes 24 and 25 Vict. c. 104, s. 9.—Evidence Act, s. 113.—Effect of cession of territorial jurisdiction.*—The power to cede territory was not one of the powers to which the Secretary of State for India in Council succeeded under 21 and 22 Victoria, Cap. 106, when the Government of India was by that statute transferred to Her Majesty, inasmuch as such a power was not possessed by the East India Company. DAMODAR GORDHAN *v.* GANESH DEORAM . . **10 Bom., 37** in the High Court.

Held, on appeal to the Privy Council, as follows.—*Semble,*—That the general and abstract doctrine laid down by the High Court at Bombay, that it is beyond the power of the British Crown, without the consent of the Imperial Parliament, to make a cession of

CESSION OF BRITISH TERRITORY IN INDIA—*continued.*

territory within the jurisdiction of any of the British Courts in India, in time of peace, to a foreign power, is erroneous. Where an objection is taken to the territorial jurisdiction of a British Court, on the ground that the territory over which the jurisdiction of the Court extended has been ceded to a foreign power, such a cession must be regularly proved, and cannot be established by uncertain inferences from equivocal acts. An agreement on the part of the Government of India purporting to transfer certain villages, forming part of a Regulation province within the Bombay Presidency, and subject to ordinary British jurisdiction, to the extraordinary jurisdiction of the Political Agency of a Native State, does not constitute a cession of territory. A re-arrangement of jurisdiction within British territory in India, by the exclusion of a certain district from the Regulations and Codes there in force, and from the jurisdiction of all the High Courts, with a view to the establishment therein of a Native jurisdiction under British supervision and control, cannot be carried out except by legislation, under the provisions of the Imperial Statutes 3 and 4, William IV., Cap. 85, section 43; 24 and 25 Victoria, Cap. 67, section 22; and 24 and 25 Victoria, Cap. 104, section 9. The Governor General in Council being precluded by the Act 24 and 25 Victoria, Cap. 67, section 22, from legislating directly as to the sovereignty or dominion of the Crown over any part of its territory in India, or as to the allegiance of British subjects, cannot by any legislative Act (*e.g.*, by "The Evidence Act of 1872," section 113) purporting to make a notification in the Government Gazette conclusive evidence of a cession of territory, exclude judicial enquiry as to the nature and lawfulness of that cession. Where the foundation of the jurisdiction of a British Court over the subject-matter of a suit and the parties thereto is territorial, and the territory by a valid cession ceases to be British, the jurisdiction of the Court can no longer be exercised, whatever be the stage or condition of the litigation at the time of such cession. DAMODHAR GORDHAN *v.* DEVRAM KANJI . **I. L. R., 1 Bom., 367**

[25 W. R., 261: L. R., 3 I. A., 102

2. ——— **Power of Crown to cede.**—*Held,* that the British Crown has the power, without the intervention of the Imperial Parliament, to make a cession of territory within British India to a foreign prince or feudatory. The opinion expressed by the Privy Council in *Damodar Gordhan* v. *Deoram Kanji* followed. Question as to what amounts to a cession in sovereignty discussed. LACHMI NARAIN *v.* PARTAB SINGH . . **I. L. R., 2 All., 1**

CHAMPERTY.

See CONTRACT ACT, s. 23—ILLEGAL CONTRACTS—GENERALLY.

[I. L. R., 5 Calc., 4

1. ——— **Maintenance.**—*Void agreement.—Alienation by Hindu widow.—Waste.*—A Hindu widow, as the heiress of her husband, sued his four surviving brothers, who retained the enjoyment of the whole joint estate, for the recovery of her share

CHAMPERTY.—Maintenance—*continued.*

While the suit was pending, on the 24th April 1859 she entered into an agreement with the defendant *G.*, by which, after reciting the nature of her claim, and stating that she was too poor to prosecute it, she assigned to him all she might be entitled to receive from the joint estate in right of her deceased husband, together with all interest and accumulations thereon, and all advantage to be derived from the suit about to be instituted by the defendant *G.*, and she appointed him her attorney to institute and carry on any suit in her name for recovering her right and share in the property; it being agreed that he should retain one moiety of what might be recovered absolutely for his own benefit as remuneration, and out of the other moiety should repay himself such sums as he might from time to time have advanced or paid for her maintenance, with interest at 12 per cent. per annum, and also all such sums and costs as he might from time to time have advanced or been put to in carrying on the suits, with interest at 12 per cent. per annum, and should pay over the residue to the widow herself. Subsequently that suit was withdrawn. In May 1859, the widow, by *G.*, filed a fresh bill against her husband's surviving brothers for recovery of her husband's share in the estate together with accumulations; and in August 1861 obtained a decree for a large sum of money out of the joint estate—"the whole to be enjoyed by her as a Hindu widow in the manner prescribed by Hindu law." By a deed dated November 14th, 1860, *G.* assigned his interest under the assignment of April 1859 to *H. S.*, the defendant. In a suit brought on the 22nd February 1866 by the reversionary heirs of the husband, in the Court of the Principal Sudder Ameen of Hooghly, against the widow, *G.*, and *H. S.*, the last one of whom alone resided in Calcutta, which suit was on the 23rd of April 1866 removed into the High Court on the application of *G.* and *H. S.*, it was prayed that the agreement of April 1859 and all sub-assignments that might have been made be set aside as void, and that the money should be paid into Court and kept there during the life of the widow defendant, for the benefit of the reversionary heirs, and in order to prevent waste. *Held* by PHEAR, *J.*, the suit being one to prevent contemplated waste, was not barred by lapse of time. The agreement of 4th April 1859 was void as being without definite consideration, and being in the nature of a gambling transaction, not valid against heirs under Hindu law; and it was also void being of a champertous nature, and contrary to public policy. The law which forbids and avoids all acts contrary to public policy, and subversive of the general interests of society, is in force in this country. Independent of the Charter, there is a power inherent in any Court of Justice which receives its authority from the State to make the interests of private persons subordinate to those of the public, and to take care that where they are in conflict, the latter should prevail. *Held*, on appeal, by PEACOCK, *C. J.*, and MACPHERSON, *J.*, that the suit could be maintained for the relief sought, and for the protection of the property; that the deed of the 4th April 1859, so far as it related to the moiety of the property assigned to the defendant *G.*, absolutely, was not binding on the plaintiffs or on the persons who upon the death of the widow might succeed to the property of her deceased husband. Though not void on the ground of champerty, it was an unconscionable bargain, and a speculative, if not a gambling contract, and there was no necessity for such an alienation by the widow. But so far as regards the assignment of the moiety as security for the advances and expenses which *G.* or his assigns might reasonably and properly make or incur for the maintenance of the widow, for carrying on the necessary proceedings to enforce her rights, with 12 per cent. interest on such advances, it was not void, but created a charge upon that moiety, which was binding upon the reversionary heirs of the husband to the extent of such advances and expenses. There was legal necessity for such charge, and it affected the moiety both of principal and accumulations. *Held*, by MACPHERSON, *J.*, the agreement of April 1859 was void by English law as being a mere gambling transaction and contrary to public policy and illegal. GROSE *v.* AMIRTAMAYI DASSEE

[4 B. L. R., O. C., 1: 12 W. R., O. C., 13

2. ——— Assginment of debutter land in consideration of defendant ejecting by suit, at his own cost, the Brahmins, &c.—A Hindu widow, together with the next heir, joined in assigning to the defendant a debutter estate, in consideration of the defendant conducting, at his own cost, proceedings for the ejection of Brahmins and Banians then in occupation as poojaries to conduct the worship of the idols; and upon the condition that he should thereafter conduct such worship, and out of the proceeds and offerings retain three fourths for his own purposes and for hospitality, and pay the remaining fourth for the maintenance of the widow and the heir. *Held* that the assignment was valid, the purpose for which the lands were dedicated being provided for; and that although the transaction amounted to champerty, that was no ground for treating it as invalid. An assignment between Hindus of property the subject-matter of litigation, on conditions which constitute champerty, is not on that ground invalid. JADUBINDU ODHIKAREE *v.* LOKENAUTH GEREE

[Marsh., 303: 2 Hay, 160

3. ——— Bond given to secure money for litigation.—A suit will lie on a bond given for the purpose of securing money to be expended in carrying on law proceedings. NOBEEN CHUNDER GHOSE *v.* RAMGOGERNATH GOPE

[W. R., 1864, 63

4. ——— Transfer of property for purpose of litigation.—The Courts will not interfere when a transfer is completed at once,—*e.g.*, when a party buys a certain share of a litigant's risk and stands or falls by his purchase, having only the right to recover his share from the party suing if the latter wins his case, and having no claim at all if the Courts decide against him. *Quære*,—Whether, in the present state of the law in India (1864), champerty can be pleaded at all. PUNCHANUN MUZOOMDAR *v.* DOORGA NATH ROY . . **W. R., 1864, 300**

5. ——— Law in Bengal.—*Held* by GLOVER, *J.* (MACPHERSON, *J.*, dissenting), that there

CHAMPERTY.—Law in Bengal—*continued.*

is no law against champerty or maintenance in Bengal. PANCH COWREE MAHTOON *v.* KALEE CHURN [9 W. R., 490

6. ——— **Assignment of interest for purpose of litigation.**—*Quære,*—Whether champerty or maintenance, according to English law, is forbidden by the law of India. Where *A.* sues in respect of his own interest for the violation of a contract made for him by *B.* as agent only, the assignment of *B.'s* interest in the agreement, in order to enable *A.* to bring his suit, is not champerty or maintenance. FISCHER *v.* KAMALA NAICKER [3 W. R., P. C., 33 : 8 Moore's I. A., 170

JUGMOHUN LAL *v.* BUDDUN KOER [9 W. R., 243

7. ——— **Agreement against public policy.**—*Void agreement.*—*R.* entered into an agreement with *G.* that if a suit which was then about to be brought by *G.* for the recovery of certain lands should be decided in favour of *G.*, *R.* was to pay *G.* R85, and *G.* was to make over to *R.* half the land recovered. *R.* was to pay R50 in certain proportions, which *R.* was to lose if the suit was not decided in favour of *G. G.* recovered the land, and *R.* then sued him upon the above agreement. *Semble,*—That the agreement was not void on the ground of champerty: at any rate, that it was capable of explanation by a consideration of the surrounding circumstances, which the plaintiff should have had an opportunity of giving in evidence. RAMRAV KHUNDERAV *v.* GOVIND PANDSHET . . . . 6 Bom., A. C., 63

8. ——— **Maintenance.**—*Application of law of champerty.—Duty of Court.—Specific performance of lease savouring of champerty.*—The law of England as to the offences of maintenance and champerty does not apply to natives of India. In dealing with objections to their contracts, on the ground of maintenance and champerty, the Court must look to the general principles regarding public policy and the administration of justice upon which that law at present rests. To constitute "maintenance," improper litigation must have been stirred up with a bad motive for purposes contrary to public policy and justice. "Champerty" is a species of "maintenance" and of the same character, but with the additional feature of a condition or bargain providing for a participation in the subject-matter of the litigation. Specific performance decreed of a lease, though the lease formed part of an arrangement whereby, as a consideration for the lease, the plaintiff was to lend the defendant money to enable him (*inter alia*) to commence proceedings against the then tenant of the subject-matter of the intended lease. PITCHAKUTTI CHETTI *v.* KAMALA NAYAKKAN . 1 Mad., 153

9. ——— **Agreement to carry on law suit.**—*Public policy.*—One *M. H.*, being apprehensive that (in consequence of an action of trespass in the Supreme Court which *M. R.* and *A. R.* had brought against *P. P.*) he was in danger of being deprived of a piece of land of which he was then possessed, entered into an agreement with *K. N.* that he, *K. N.*, should conduct the pending case at his own costs and necessary expenses, and that after *M. H.*

CHAMPERTY.—Agreement to carry on law suit—*continued.*

should have proved that the piece of land was his sole property, *K. N.* and *M. H.* should erect a building on it at their joint expense, and that the rents and profits of such building should be enjoyed by *K. N.* and *M. H.* jointly during the lifetime of *M. H.*, after whose death the property, with the building, was to be the sole and absolute property of *K. N.* *Held,* that the above agreement (when considered in connection with its surrounding circumstances) did not savour of maintenance or champerty, nor was it void as being against public policy. The question as to how far the English law relating to maintenance and champerty is applicable to Hindus in the presidency towns considered. *Quære,*—Whether that law was ever applicable to cases where pecuniary assistance is afforded to defendants. DAMODHAR MADHAVJI *v.* KAHANDAS NARANDA [8 Bom., O. C., 1

10. ——— **Invalidity of contract on ground of maintenance.**—*Agreement against public policy.*—A commissariat officer named *M.* had a butler named *L.*, who was employed to put forward with the money of *M.*, or his own, various large contracts. Two accounts were opened in several houses of agency in the names of *M.* and *L.* To secure himself, *M.* caused *L.* to execute a will leaving his whole estate to *M.* Testator and legatee perished together in the *Persia* steam-ship in 1864. The Administrator General of Madras administered to *L.'s* estate, but the personal representatives of *M.* contested the right of the Administrator General to pay over the fund to those of *L.* The result was that *L.'s* representatives were recommended by their attorney, *C.*, to apply to one *J.* (the present plaintiff), who was also a client of *C.'s*, for the necessary funds. *J.* consented to advance money for the purpose of the suit, and on the 28th July 1869 a so-called deed of mortgage, drawn up by *C.*, was executed between the present defendants as mortgagors and the plaintiff, *J.*, as mortgagee, whereby, in consideration of an advance of the sum of R5,000 (the receipt of R1,800 of which was by the instrument acknowledged) to be made by *J.* to such attorney as he should select, before the 31st of December 1869, the defendants mortgaged everything which they might be entitled to recover by suit, the mortgage to be defeasible on payment of 50 per cent. of what they might recover by suit, and a further 50 per cent. upon all to which they might be entitled as the persons entitled to *L.'s* estate. They also covenanted to repay the money lent with interest. The present defendants succeeded in their suit against the Administrator General, and this suit was brought by *J.* to recover a commission of 50 per cent. on the sum recovered, and the sums advanced, with interest. Defendants denied that plaintiff had fulfilled his part of the agreement, and alleged that in consequence of his neglecting to supply funds they had been compelled to borrow of a third party. They also pleaded that the agreement was void for champerty and maintenance. *Held,* that by the law of England, which prevailed in the present suit, this contract was clearly void, being contrary to the plain provision of the common and statute law against

CHAMPERTY.—Invalidity of contract on ground of maintenance—*continued.*

maintenance, and that it was also void as being contrary to public policy. The Court further found that the plaintiff had failed to fulfil his part of the contract, but allowed him to recover the sum really advanced by him, *viz.*, R2,200, with interest. MULLA JAFFARJI TYEB ALI *v.* YACALI KADAR BI [7 Mad., 128

11. ——— Contract with a litigant to supply funds on security of property in dispute.—*Maintenance.*—A contract made in good faith by a person with a litigant to supply him with funds to carry on the suit on the security of the property in dispute will be enforced. Such a contract is distinguishable from an officious intermeddling in the suits of other persons, or acts tending to prevent unnecessary litigation. *Quære,*—Whether contracts involving maintenance and champerty, as those offences are defined by English law, will be enforced . NUTHOO LALL *v.* BUDREE PERSHAD [1 N. W., 1

12. ——— Purchaser joining in suit to recover property.—Where the purchaser of a share of land joins his vendor in a suit to recover his own property, his action cannot be termed "champerty." . MUNIRAKHUN SINGH *v.* BHODOY SINGH [12 W. R., 133

13. ——— Speculative purchase of right of appeal.—*Quære,*—Ought the speculative purchase of a right of appeal to be recognised by a Court of Justice? TROYLUCKONATH BANERJEE *v.* BRINDABUN CHUNDER SIRKAR CHOWDHRY [18 W. R., 438

14. ——— Suit by assignee against assignor.—*Maintenance.*—An assignee of property is not entitled to recover against his assignor on the footing of a champertous contract. An assignee of property whose assignor was not in possession when the assignment was made, can only recover, even from the hands of third persons, upon showing that he would have had a right to enforce specific performance of his contract against his assignor if the property were come back to the hands of the assignor . BOODHUN SINGH *v.* LUTEEFUN [22 W. R., 535

15. ——— Alienation by Hindu widow.—*K. D.*, a Hindu widow, having applied to *H. S.* to aid her in leaving the family dwelling-house of her late husband, *G. C. C.*, where she alleged she was improperly treated and placed under restraint by the plaintiff, her husband's sole surviving brother, *H. S.*, at his own cost, enabled her to do so. She then applied to *H. S.* to advance funds for the payment of certain debts incurred by her in consequence of the plaintiff's refusal to pay her any portion of the family estate, to allow her a monthly sum for maintenance, and to manage and conduct for her a suit which she proposed to institute to establish her right to a portion of the joint estate; and *H. S.* consented to do so upon certain terms, which were embodied in a deed by which *K. D.* assigned to *H. S.* all her right, share, and interest as widow of *G. C. C.* in the joint estate

CHAMPERTY.—Alienation by Hindu widow—*continued.*

and in the accumulations thereof, and in the separate estate of *G. C. C.*, and all benefit to be derived from the intended suit; on trust, first, to repay all the costs of the suit; secondly, to retain, by way of remuneration for managing the suit, one half of what might be recovered therein; and, thirdly, to hold the residue as security for repayment, with interest at 12 per cent., of the sums advanced by *H. S.*; the surplus, after satisfying all such sums, to be paid to *K. D.* Then *K. D.*, with the aid and under the management of *H. S.*, brought a suit against the plaintiff and other members of the joint family of *G. C. C.* for a declaration of her rights under the will of his father, *R. C.*, and for the administration of *G. C. C.'s* share of the joint estate. The result of this suit was that *K. D.* was (among other things) declared entitled as a Hindu widow to R1,01,302-14-10 in respect of the accumulations of the joint property, between the dates of *R. C.'s* and *G C. C.'s* deaths. The plaintiff paid the R1,01,302-14-10 into Court, under an order made in the suit. *K. D.* subsequently obtained an order, under which she took this sum out of Court, notwithstanding that the plaintiff applied for an injunction to restrain her taking it out. Upon her obtaining that order, the plaintiff, as immediate reversionary heir of *G. C. C.*, instituted the present suit against *K. D.* and *H. S.*, to restrain *K. D.* from taking the R1,01,302-14-10 out of Court, and to compel her to bring back any portion thereof which she might have already received; and for a declaration that the assignment to *H. S.* created no valid charge thereon *Held* (following the decision in the case of *Grose* v. *Amritamayi Dasi, 4 B. L. R., O.C., 1*), that the assignment to *H. S.* was not binding on the reversionary heirs of *G. C. C.*, except as regards the charge on one moiety for expenses incurred and advances made by *H. S.*, whether by way of maintenance or otherwise, with interest thereon at 12 per cent. BISWANATH CHUNDER *v.* KHANTAMANI DASI . . . 9 B. L. R., 76

16. ——— Operation of conveyance pendente lite.—*Conditional transfer.—Maintenance.—N.*, claiming to be entitled to certain real and personal property as heir of one *J.*, brought a suit under Act XIX of 1841 to obtain possession thereof; and, in order to provide funds to carry on the litigation, executed an ikrarnama, whereby he purported to relinquish and convey to one *K.* a moiety of his right, title, and interest in the property, in consideration of the sum of R50, *K.* agreeing to take all proper steps and to defray all expenses necessary for the recovery of the property, which was valued in the ikrarnama at R75,000. *K.* accordingly carried on the suit and incurred costs to the extent of R1,700, but the suit was ultimately dismissed. The property was afterwards taken possession of by the Court of Wards on behalf of one *S.*, who claimed under an alleged adoption by one *A.*, the person last in possession. Thereafter *K.* sold his interest under the ikrarnama, which he valued at R2,18,000, to the plaintiff, for the sum of R1,700. In a suit brought against the Court of Wards as representing *S.* for the recovery of a moiety of the property or its value, in which *N.* refused to join as plaintiff and was made a defend-

CHAMPERTY.—Operation of conveyance pendente lite—*continued.*

ant,—*Held*, that the suit was not maintainable; the conveyance by *N.* to *K.* did not operate as a present transfer of the property, but only as an agreement to transfer it on conditions which were never fulfilled; the plaintiff was not entitled to recover as against *S.*, who was no party to the deed. *Held*, also, that the transaction was void as being contrary to public policy, and one to which effect ought not to be given by the Court. TARA SOONDAREE CHOWDHRAIN *v.* THE COLLECTOR OF MYMENSINGH

[13 B. L. R., 495: 20 W. R., 446

See BROBOSOONDREE DASSEAH *v.* ISSUR CHUNDER DUTT.

[11 B. L. R., 36: 18 W. R., 140

17. ——— Suit against public policy. —*Malicious suit by assignee of right to sue.—Maintenance.*—In the case of a person who, having been defeated in a former suit, seeks out from vindictive feelings others who he thinks can establish a claim to the property in dispute, and prevails upon them to assign to him their supposed rights, it would be contrary to public policy to allow such a suit to be maintained. BISHONATH DEY ROY *v.* CHUNDER MOHUN DUTT BISWAS . . **23 W. R., 165**

18. ——— Bond executed by Hindu widows.—*Maintenance.—Fraud.—Undue influence and threats.*—The three childless widows of a zemindar instituted a suit against the rightful heir to their husband's estate, in which they unsuccessfully disputed his legitimacy. Previously thereto they had obtained advances of money from the present plaintiff, and executed in his favour an agreement and a bond, whereby they secured to him the payment of large sums in case they recovered their husband's estate, and virtually gave to him the entire control of their suit. Subsequently they agreed with the rightful heir to compromise the suit, which compromise, however, was never acted upon, partly owing, it was alleged, to the subsequent conduct of the heir. At the date of the compromise, the heir, who had just attained his majority, and was without proper counsel or assistance, and acted under threats from the plaintiff, a powerful and wealthy banker, that he would carry on the litigation against him *per fas aut nefas*, was induced, contrary to his own judgment and sense of right, and without any evidence that the sum claimed was really due to the plaintiff, to execute a bond in his favour, whereby he bound himself to pay a large sum of money claimed by the plaintiff as being due from the widows; the plaintiff on his part agreeing that he would treat such payment as a satisfaction of his claim against the widows, but meanwhile that he would retain the securities which he held from them. In a suit brought by the plaintiff against the heir to enforce the last-mentioned bond,—*Held*, that the bond was wholly invalid and fraudulent as against the defendant, and that as there was no privity of contract between the plaintiff and defendant independently of the bond, it could not stand as a security for anything which might be justly due from the widows. *Quære*,—Whether the plaintiff could have recovered from the widows, if they had been successful against the heir, the large

CHAMPERTY.—Bond executed by Hindu widows—*continued.*

sums of money secured by their bond and agreement. The law of champerty and maintenance is not the same in India as in England. The English statute with regard to champerty is not applicable in the mofussil in India. The Indian Courts in every transaction must decide upon the fact whether it is merely the acquisition of an interest in the subject of litigation *bonâ fide* entered into, or whether it is an unfair or illegitimate transaction got up for the purpose merely of spoil, or of litigation, disturbing the peace of families, and carried on from a corrupt or other improper motive. CHEDAMBARA CHETTY *v.* RENJA KRISHNA MUTHU VIRA PUCHANJA NAIKER

[13 B. L. R., P. C., 509: L. R., 1 I. A., 241 22 W. R., 148

Affirming the decision in the High Court.

[S. C. 7 Mad., 85

19. ——— Agreement against public policy.—*Maintenance.—Malicious procedure.—Reasonable and probable cause.—Practice.—Security for costs by a person not a party to the suit.*—In a deed, dated 17th July 1867, it was recited that *A.* was entitled to certain property then in possession of *D.* and *E.*, and that *A.*, and *B.* her husband, "having no funds to adopt or to commence legal proceedings" for the recovery of the property, had applied to *C.* to assist them in commencing and conducting the necessary suits and to make all the requisite disbursements connected therewith until their final termination, and that *C.* had agreed to do so; and also, as *A.* and *B.* had "no means whatever," to pay to them or the survivor R150 a month until the final termination of the litigation. Then followed the appointment by *A.* and *B.* of *C.* to be their attorney to institute and prosecute all necessary suits, to sign all papers and documents, to receive all moneys and take possession of all lands, &c., to which *A.* and *B.* might become entitled under any decree or order that might be made, and to appoint attorneys and vakeels. *C.* then covenanted to institute and prosecute the necessary suits, and to make the necessary advances and payments and to pay R150 a month to *A.* and *B.* Then it was agreed that out of the moneys or proceeds of lands, &c., recovered, *C.* should, in the first place, retain and reimburse himself all advances and payments made by him with interest thereon at 12 per cent.; in the second place, retain to himself, by way of remuneration for his trouble and risk, one third of the nett proceeds of the litigation; and, in the third place, make over the remaining two thirds to *A.* and *B.* *A.* and *B.* covenanted not to intermeddle with *C.* in prosecuting the litigation, that they would render him all possible assistance, and that the power of attorney given by them to *C.* should be irrevocable so long as he prosecuted the litigation and paid the monthly allowance of R150. It was provided, however, that if *B.* wished to devote all his time thereto, he might have the management of the litigation, but under the control of *C.*; and that *A.* and *B.* might revoke the power of attorney on repayment to *C.* of all money advanced by him with interest at 12 per cent.; and the sum of R2,000 by way of liquidated damages.

CHAMPERTY.—Agreement against public policy—*continued.*

A power was also reserved to *A.* and *B.* to compromise, but only with the consent of *C.*, unless the sum to be received on the compromise should exceed the total amount of *C.'s* advances with interest at 12 per cent. In pursuance of this agreement a suit was instituted in the names of *A.* and *B.* against *D.* and *E.* to recover possession of the property. This suit was by the High Court decreed in the plaintiff's favour, but was, on appeal, dismissed by the Privy Council with costs. While the suit was in the Court of first instance, *D.* and *E.* applied to have *C.* added as a party. This application was refused, and *D.* and *E.* did not appeal from that refusal. Pending the litigation, *A.* and *B.* brought a suit against *D.* and *E.* for wasilat, and obtained a decree. On the 21st September *A.* and *B.* executed a memorandum of agreement, whereby *C.* purchased all their rights in the two suits brought by them against *D.* and *E.* *D.* and *E.* now brought a suit against *C.*, alleging that they had suffered loss and damage by the litigation instituted by *A.* and *B.*; that *C.* was guilty of champerty and maintenance; that the litigation was commenced and continued maliciously by *C.* in the names of persons who had no legal or equitable right, and without reasonable or probable cause; that the agreement of 17th July 1867 was illegal and contrary to public policy; that the litigation was carried on by *C.* at his own expense and for his own benefit; and that *C.* was the real mover in the proceedings, and illegally used the procedure of the Court to the damage and injury of the plaintiffs. *Held*, in the Court below and on appeal, that there was reasonable and probable cause for the institution of the wasilat suit brought by *A.* and *B.* against *D.* and *E.* *Held*, by MACPHERSON, *J.*, that the agreement of July 1867 was illegal and against public policy, as also were the subsequent institution and maintaining of the suit against *D.* and *E.* by *C.*; and that the plaintiffs were entitled to recover from *C.* the loss they had sustained by reason of the suits which he (substantially only for his own benefit) had maintained against them. *Held*, on appeal (reversing the decision of the Court below), that the suit was not maintainable. The English statutes with regard to champerty and maintenance do not apply to India. In England, champerty and maintenance were offences punishable by the Common Law; and the ground on which an action is allowed in England,—*viz.*, that *C.* had been guilty of an offence by which the plaintiff had suffered damage,—does not exist in India. The only ground on which agreements which savour of champerty or maintenance are held to be void in this country is, that they are contrary to public policy. Assuming that the agreement of July 1867 was a valid one, and that *C.* did thereby acquire an interest in the subject-matter of the suit, and supplied the means of carrying it on, such acts did not entitle the plaintiffs to maintain the present suit, or to recover against *C.* the costs of the former suit. *C.* ought to have been made a co-plaintiff with *A.* and *B.* in the former suit, or he ought to have been called upon to give security for the costs of that suit. CHUNDERKANT MOOKERJEE *v.* RAMCOOMAR KOONDOO

[13 B. L. R., 530 : 22 W. R., 138

CHAMPERTY.—Agreement against public policy—*continued.*

In the same case,—*Held* on appeal to the Privy Council, the English laws of maintenance and champerty are not of force as specific laws in India, either in the mofussil or in the presidency towns. The ground on which contracts of the nature of champerty and maintenance should be held by the Indian Courts to be invalid is that they are contrary to public policy. An agreement to supply funds to carry on a suit in consideration of having a share in the property if recovered is not necessarily opposed to public policy, since cases may easily be supposed in which it would be in furtherance of right and justice that a suitor who had a just title to property, and no means to support it, should be assisted in this way. But agreements purporting to be made to meet such cases, when found to be extortionate and unconscionable, so as to be inequitable, or to be entered into for improper objects, as for the purpose of gambling in litigation or of injuring others by encouraging unrighteous suits, are contrary to public policy, and ought not to have effect given to them. Since by the law of India a champertous agreement does not constitute a punishable offence, an action in that country, founded on alleged champerty, to recover losses and costs incurred in litigation, cannot be sustained on the ground that a remedy by action accrues where an indictable offence has been committed. No action will lie for improperly putting the law in motion in the name of a third party, unless it is alleged and proved that it has been done maliciously and without reasonable or probable cause. In the absence of such proof, an action for losses and costs incurred in defending a suit will not lie as against a person who is alleged to have been a mover in that suit, and to have had an interest in it, but who had not been made a party to the record, since such a state of things creates no legal privity from which a promise can be implied on which an action on contract can be founded, nor does it, *ex hypothesi*, constitute a legal wrong. RAMCOOMER COONDOO *v.* CHUNDER KANTO MOOKERJEE **. I. L. R., 2 Calc., 233 : L. R., 4 I. A., 23**

20. ——— Suit for specific performance.—*Purchase by Mahomedan Mooktear from Hindu family.—Onus probandi.*—Where a mooktear of the Court, a Mahomedan, brought a suit for specific performance of an agreement alleged to have been made by him with the members of a Hindu family, which agreement savoured of champerty, it was held that the plaintiff must show that the claim was certain, fair, and just in every way. The Courts will not countenance suits of such a description. ABED HOSSEIN *v.* LALLA RAMSARAN

[13 B. L. R., 516, note : 13 W. R., 426

21. ——— Assignment of a right to sue.—*Maintenance.*—In 1869, *P.*, the liquidator of the *N. F. Co.*, compromised for R15,000 the claims of the company against the fourth defendant, *M. K.*, which amounted to R1,61,500. *P.* was induced to agree to this compromise in consequence of representations made to him by the friends of *M. K.* to the effect that *M. K.* had no available assets and could not meet his liabilities. In 1878 the first plaintiff, *G. J.*, alleging that the said compromise had been

CHAMPERTY.—Assignment of a right to sue—*continued.*

fraudulently effected, and that the defendant, *M. K.*, at the time of the compromise had been and was still possessed of ample property to pay off his liabilities, induced the liquidator of the company to assign to him the company's claim against *M. K.*, and brought this suit, praying that the compromise with *P.* might be declared not binding, and that *M. K.* might be ordered to pay the plaintiff, as assignee of the *N. F. Co.*, the sum of R1,61,500 with interest. *Held*, that the assignment to the plaintiff, *G. J.*, of the claims of the *N. F. Co.* against *M. K.* was effected with a view to litigation, and that, under the circumstances, the suit was not maintainable. GOCULDAS JAGMOHANDAS *v.* LAKHMIDAS KHIMJI

[I. L. R., 3 Bom., 402

22. ——— Party having a speculative interest in suit.—The plaintiffs sued for possession of certain immoveable property, "by avoidance of a spurious deed of gift" executed by one *N.*, deceased, in favour of the defendant. *H.*, one of the plaintiffs, joined in the suit under an agreement with the other plaintiffs that he should defray the costs of the suit from the Court of first instance up to the Privy Council, and that he should then become proprietor of one half of the property in suit and be entitled to half the costs. *Held*, by the Court, that *H.* had no right to join in the suit. HAZARI LAL *v.* JADAUN SINGH

[I. L. R., 5 All., 76

23. ——— Sale dependent on success in suit.—*Absolute sale.*—*A.* sued *V.* and *S.* to establish his right to attach a certain house in execution of a decree obtained by him in a previous suit. In their written statement the defendants alleged that *A.* had obtained the decree in question by fraud. Shortly before the present suit *V.* had mortgaged the house to *H.* for R33,000. About three weeks after the suit had been filed, *H.* advanced a further sum of R5,000 to *V.* on the same security, and on the same day, 12th December 1881, entered into an agreement with *V.* by which *H.* agreed to buy the house for R45,000, the sale to be completed immediately after the decision of the present suit. The agreement provided that *V.* should defend the suit, but if the result of the suit should be to establish the plaintiff's right to seize the house in execution, then that *H.* should be at liberty to cancel the contract of sale. *Held*, that the agreement of 12th December amounted to an absolute sale, by *V.* to *H.*, of the equity of redemption of the house in question, and that it was not champertous. AHMEDBHOY HUBIBHOY *v.* VULLEEBHOY CASSUMBHOY . **I. L. R., 8 Bom., 323**

CHARGE.

Col.
1. FORM OF CHARGE— 706
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CHARGE—*continued.*

——— Caption of—

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[1 B. L. R., O. Cr., 1, 15

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See TRANSFER OF CRIMINAL CASE.

[I. L. R., 1 Calc., 356

1. FORM OF CHARGE.

(*a*) GENERAL CASES.

1. ——— Act XIII of 1865, s. 3.—*Duty of committing Magistrate or Justice of the Peace.*—A Justice of the Peace or Magistrate committing a prisoner for trial before the High Court was bound, under section 3 of Act XIII of 1865, to frame and send up with the depositions a specific charge against the prisoner. REG. *v.* JEETARAM SHAW

[1 Ind. Jur., N. S., 404

2. ——— Discretion of Magistrate.—*Charge under ch. XIV, Criminal Procedure Code, 1861.*—The course taken by a Magistrate before preparing a charge under Chapter XIV of the Code of Criminal Procedure, must depend upon the circumstances of each case, and the Magistrate should exercise his discretion in the matter. ANONYMOUS CASE

[3 Mad., Ap., 2

3. ——— Reference to section of Code under which charge is made.—*Criminal Procedure Code, 1861, ss. 234, 237.*—A charge should be so framed as to refer to the section of the Penal Code under which the offence charged is punishable, as required by sections 234 and 237 of the Code of Criminal Procedure. QUEEN *v.* DURZOOLLA

[9 W. R., Cr., 33

4. ——— Sufficiency of charge.—One count charging each specific offence, and describing it with a reasonable degree of certainty, is sufficient. QUEEN *v.* BABOOLUN HIJRAH . **5 W. R., Cr., 7**

5. ——— Several offences under same section.—*Amendment of charge.*—Where several offences are charged under the same section, the committing Magistrate should frame the charge so as to contain a separate head for each offence. QUEEN *v.* KALARAM SINGH . . **7 W. R., Cr., 8**

6. ——— Indictment.—*Penal Code, s. 161.*—An indictment will not be invalidated in consequence of the charge not notifying the specific section. Under section 161, it is necessary to show that the offence, the instigation of which is the subject of the charge, has been committed. QUEEN *v.* NOTABUR NUNDY . . **1 Ind. Jur., N. S., 43**

7. ——— Specific allegation in charge of absence of exceptions in Penal Code.—*Criminal Procedure Code, 1872, s. 439.*—MARKBY, *J.*—Although sections 235 and 237 of Act XXV of 1861 have been repealed, it may still be inferred from illustration (*a*), section 439 of the present Criminal Procedure Code, that it is unnecessary specifically to allege in a charge the absence of all general and some at least

CHARGE—*continued.*

1. FORM OF CHARGE—*continued.*

(*a*) GENERAL CASES—*continued.*

Specific allegation in charge of absence of exceptions in Penal Code—*continued.*

of the other exceptions mentioned in the Penal Code. The operation of the illustration, however, is strictly confined to the statement of the offence in the charge. IN THE MATTER OF THE PETITION OF SHIBO PROSAD PANDAH . **I. L. R., 4 Calc., 124 : 3 C. L. R., 122**

8. ——— **Unnecessary allegations in charge.**—Unnecessary allegations in a charge may be rejected as surplusage. REG. *v.* CASSIDY **[4 Bom., Cr., 17**

9. ——— **Want of care in framing charge.**—Observations by STUART, *C. J.*, on the careless manner in which the charge in this case was framed. EMPRESS OF INDIA *v.* BALDEO **[I. L. R., 3 All., 322**

10. ——— **Omission to prepare charge.**—*Held*, that the omission to prepare a charge did not vitiate the proceedings; and conviction upheld. REG. *v.* KABHAI RAVA BHAI . **5 Bom., Cr., 40**

11. ——— **Charge prepared after defence.**—It is an irregularity to prepare the charge against a prisoner after his defence has been recorded. QUEEN *v.* CHOTEY LAL . . **3 N. W., 271**

12. ——— **Penal Code, s. 75.**—*Trial of prisoner of offence under ch. XII or XVII after previous conviction.*—If a prisoner is to be tried for an offence punishable under section 75 of the Indian Penal Code, a separate charge under that section must be framed and recorded. QUEEN-EMPRESS *v.* DORASAMI . . . . . **I. L. R., 9 Mad., 284**

13. ——— **Form as to time and place of offence.**—In a case in which the charge did not contain such particulars as to time and place as were reasonably sufficient to give notice to the accused of the matter with which he was charged, the accused was acquitted by the High Court. QUEEN *v.* UDIT SINGH . . . . . **25 W. R., Cr., 46**

14. ——— **Defect in charge.**—*Omission of word "dishonestly" in charge and record of conviction.*—The omission of the word "dishonestly," both in the charge and in the record of the conviction, is not a ground for reversal of conviction and sentence where an accused person has fully understood the nature of the offence with which he is charged, and had not been prejudiced by the omission. Conviction and sentence recorded by a Magistrate, and reversed by the Sessions Judge upon this ground, restored by the High Court, on appeal directed by Government under section 272, Criminal Procedure Code. QUEEN *v.* RAKHMA . . . . **10 Bom., 373**

15. ——— **Charge alleging previous conviction.**—*Former sentence.*—A charge alleging a previous conviction need not show the extent of the former punishment. Revised form of charge stated. ANONYMOUS. . . **4 Mad., Ap., 11**

CHARGE—*continued.*

1. FORM OF CHARGE—*continued.*

(*a*) GENERAL CASES—*continued.*

Charge alleging previous conviction—*continued.*

16. ——— *Criminal Procedure Code, 1872, s. 439.*—Under section 439 of the Criminal Procedure Code, 1872, if it is intended to prove a previous conviction against an accused person for the purpose of enhancing the punishment, it is necessary to state the fact of that previous punishment in the charge. If it is omitted, it may be added to the charge at any time previous to the sentence being passed, but not after. QUEEN *v.* RAJCOOMAR BOSE . . . . . **19 W. R., Cr., 41**

17. ——— *Civil Procedure Code, 1872, s. 439.*—The fact of previous convictions should, under Act X of 1872, section 439, be stated in the charge when it is intended to prove them for the purpose of enhancing punishment. QUEEN *v.* ESAN CHUNDER DEY . . . **21 W. R., Cr., 40**

18. ——— *Criminal Procedure Code, 1872, s. 439.*—Under section 439, Criminal Procedure Code, 1872, a charge of having committed the offence after a previous conviction therefor, should contain an allegation that the offence has been committed after a previous conviction. A statement in a Court that at the time when the prisoner committed the offence (no offence being specifically mentioned in the Court) he had been previously convicted of offences punishable under chapter XVII of the Penal Code is not a sufficient compliance with the provisions of section 439. QUEEN *v.* JAKIR **[22 W. R., Cr., 39**

(*b*) SPECIAL CASES.

19. ——— **Cheating.**—*Form of indictment.*—In an indictment for cheating under the Penal Code, it is necessary to state that the property was the property of the party defrauded. QUEEN *v.* WILLANS . **1 Mad., 31 : 1 Ind. Jur., O. S., 94**

20. ——— *Act XVIII of 1862, s. 41.—Defect in charge.*—An indictment defective in not stating that the property obtained was the property of the person defrauded, is defective for uncertainty, and must be objected to, if at all, before the jury is sworn. QUEEN *v.* WILLANS **[1 Mad., 31 : 1 Ind. Jur., O. S., 94**

21. ——— **Criminal breach of trust.**—*Criminal Procedure Code, 1869, s. 242.—Offence under Bom. Reg. XVII of 1827, s. 16.*—In order to make an alternative charge of two or more offences regular under section 242 of the Criminal Procedure Code, the offences specified in such alternative charge must all be offences against the Penal Code. Therefore, a charge against a prisoner either of "criminal breach of trust" under section 409 of the Penal Code, or of "undue exaction of money" under section 16 of Regulation XVII of 1827, is irregular. REG. *v.* AGAM DULLA **[8 Bom., Cr., 115**

CHARGE—*continued.*

1. FORM OF CHARGE—*continued.*

(*b*) SPECIAL CASES—*continued.*

22. ——— **Defamation.**—*Penal Code, s. 499.*—In framing a charge of defamation under Act XXV of 1861, it is not necessary to negative the exceptions contained in section 499 of the Penal Code. REG. *v.* KIKABHAI PARBADAS . **9 Bom., 451**

23. ——— **False evidence.**—*Form of charge.*—In cases of giving false evidence, a separate charge against each prisoner must be framed, and separate trial held of each charge. ANONYMOUS **[3 Mad., Ap., 32**

QUEEN *v.* BHAIRO MISSER . **7 W. R., Cr., 51**

QUEEN *v.* KUREEM . . **11 W. R., Cr., 16**

24. ——— *Trial on charge of perjury.*—A person accused of perjury is entitled to have the specific charge made against him tried quite independently of a like charge against another person. REG. *v.* BHAVANISKAR HARIBHAI **[5 Bom., Cr., 55**

QUEEN *v.* KHOOB LALL . **9 W. R., Cr., 66**

QUEEN *v.* RUTTEE RAM . . **2 N. W., 21**

25. ——— *Several charges.*—The Court of Sessions must find judicially whether all, or if not all, which, of the particular charges of perjury, where there is more than one charge, is made out against each prisoner. QUEEN *v.* KHOOB LALL . . . . . **9 W. R., Cr., 66**

26. ——— *Penal Code, s. 193.*—Six persons were charged in the same charge as follows: "That you, on or about the——day of June——, at Tajpur, committed the offence of voluntarily giving false evidence in the stage of a judicial proceeding, and that you have thereby committed an offence under section 193 of the Penal Code." *Held,* the charge was bad and defective: first, as it charged a number of persons jointly with giving false evidence; second, as it did not show what statement the accused persons made; third, as it did not mention the day and year when the offence was committed; fourth, as it did not indicate the Court or officer before whom the false evidence was given. QUEEN *v.* MAHARAJ MISSER **[7 B. L. R., Ap., 66**
S. C. 16 W. R., Cr., 47

27. ——— *Penal Code, s. 193.*—A charge under section 193, Penal Code, should specify not only the judicial proceeding in the course of which the prisoner is accused of having made the false statement, but the particular stage of the proceeding in which the statement is made. QUEEN *v.* FATIK BISWAS . . . **1 B. L. R., A. Cr., 13**

S. C. QUEEN *v.* FUTTEALI BISWAS **[10 W. R., Cr., 37**

28. ——— *Contradictory statements.*—*Criminal Procedure Code, 1861, s. 242.*—Section 242, Act XXV of 1861, pointed out how the charge is to be drawn up in a case in which it is doubtful which of two statements made by the accused is false. QUEEN *v.* KALA KHAN **[12 W. R., Cr., 23**

CHARGE—*continued.*

1. FORM OF CHARGE—*continued.*

(*b*) SPECIAL CASES—*continued.*

False evidence—*continued.*

29. ——— *Penal Code, s. 193.*—In prosecutions for giving false evidence under section 193 of the Penal Code, the case of each person accused should be separately enquired into, and, if committed for trial, separately tried. It is wholly erroneous to include them in one joint charge. EMPRESS OF INDIA *v.* NIAZ ALI **[I. L. R., 5 All., 17**

30. ——— *Several false statements.*—*Aggregate charge.*—The making of any number of false statements in the same deposition is one aggregate case of giving false evidence. Charges of false evidence cannot be multiplied according to the number of false statements contained in the depositions. ANONYMOUS . . **6 Mad., Ap., 27**

31. ——— *Precise words of statement.*—Charges of perjury ought to be based strictly upon the exact words which are used by the person who is charged, and no evidence which does not profess to give the exact words can alone be a safe foundation for a conviction. QUEEN *v.* MUNGUL DOSS . . . . . **23 W. R., Cr., 28**

32. ——— *False verification of plaint.*—*Separate charges.*—A person who is called upon to answer to a charge of giving false evidence should know exactly what is the false evidence imputed to him. A charge "that he on or about the 15th April 1871 gave false evidence," is not sufficiently specific. Although the verification of plaints containing false statements is punishable according to the provisions of the law for the time being in force for the punishment of giving or fabricating false evidence, still it is not quite the same thing as giving false evidence. Three separate offences should not be lumped together in a single charge, but each offence should form a separate head of charge, with reference to which there should be a distinct finding and a distinct sentence. QUEEN *v.* SHBO CHURUN **[3 N. W., 314**

33. ——— *Substance of evidence.*—*Penal Code, s. 193.*—The alleged false evidence and not its assumed substance and import should be set forth in a charge under section 193 of the Penal Code. QUEEN *v.* JAMURHA . . **7 N. W., 137**

34. ——— *Penal Code, s. 193.*—In charges of false evidence under section 193, Penal Code, the charge should specifically state what words or expressions the accused is charged with having uttered, and in what respect they are supposed to be false. QUEEN *v.* DOWLUT **[8 W. R., Cr., 95**

35. ——— *Penal Code, s. 193.*—*Preciseness of charge.*—In framing a charge for giving false evidence under section 193 of the Penal Code, the charge should be precise; and where the accused is charged with giving false evidence on three different occasions, each occasion should

CHARGE—*continued.*

1. FORM OF CHARGE—*continued.*

(*b*) SPECIAL CASES—*continued.*

False evidence—*continued.*

form the subject of a distinct head in the charge. QUEEN *v.* FEOJDAR ROY . . **9 W. R., Cr., 14**

QUEEN *v.* ADHYA THAKOOR . **17 W. R., Cr., 33**

QUEEN *v.* BOODHUN AHIR . **17 W. R., Cr., 32**

QUEEN *v.* SOONDER MOHOOREE **[9 W. R., Cr., 25**

36. ——— *Several charges.—Separate assertion of falseness.*—Charges of perjury should contain a distinct assertion with regard to each statement intended to be characterised as perjury: that it was made; that it is untrue in fact; that the accused knew it to be so when he made it; and the investigation of the Court should be directed to each of those points singly. QUEEN *v.* KALICHURN LAHOREE . . **9 W. R., Cr., 54**

37. ——— **Forgery.**—*Using false document.—Abetment of forgery.*—When a Civil Court sends a prisoner before a Magistrate on a charge of forgery, it is competent to the Magistrate to commit the prisoner for trial on a charge either of forgery or of using as genuine a false document or of abetting forgery. QUEEN *v.* MOHESH CHUNDER ACHARJEE **[6 W. R., Cr., 20**

38. ——— *Omission to specify precise offence.— Penal Code, s. 467.*—The prisoner was charged, under section 471 of the Penal Code, with fraudulently using as genuine a forged document, and, having been tried before a Sessions Judge and Jury, was convicted of that offence. The Sessions Judge, considering the forged document to be of the nature of those specified in section 467, sentenced the prisoner to ten years' transportation. On appeal, the High Court held that the charge should have distinctly set forth the offence as that of using a forged document of the nature of those specified in section 467, and that that not having been done, the trial by jury was illegal. The conviction and sentence were therefore annulled, and it was directed that the prisoner should be retried. REG. *v.* GANGARAM MALJI **[6 Bom., Cr., 43**

39. ——— **House-trespass.**—*Penal Code, s. 451.*—A charge under section 451 must charge the accused with committing house-trespass with intent to commit some specific offence punishable with imprisonment. QUEEN *v.* MEHAR DOWALIA **[16 W. R., Cr., 63**

40. ——— **Hurt.**—*Causing hurt.— Penal Code, s. 324.*—The charge and finding in a case of causing hurt, under section 324 of the Penal Code, need not contain a negation that the hurt was caused on grave and sudden provocation. ANONYMOUS. **[4 Mad., Ap., 5**

41. ——— **Illegal gratification.**—*Vagueness of charge.*—A charge of attempting to obtain a gratification as a reward for influencing a public servant in exercise of his public functions is illegal

CHARGE—*continued.*

1. FORM OF CHARGE—*continued.*

(*b*) SPECIAL CASES—*continued.*

Illegal gratification—*continued.*

as disclosing no legal offence, when it omits to state the person or persons for whom the gratification was obtained, or the public servant to be influenced in the exercise of his public functions. QUEEN *v.* SETULCHUNDER BAGCHEE . . **3 W. R., Cr., 69**

42. ——— **Information of offence, Omission to give.**—A charge should distinctly set forth the particular offence in respect of which the accused either omitted to give information or gave information which he knew to be false; and it should appear precisely what his duty was in the matter. QUEEN *v.* MOOSUBROO . . **8 W. R., Cr., 37**

43. ——— **Master and servant.**—*Liability of servant for leaving employer's service without warning.*—Where a legislative enactment renders a servant punishable who leaves his employer's service without due warning, a charge under such an enactment will not be sustainable, unless it aver not only that the accused left his employer's service without giving the required warning, but also without lawful excuse. VITHOBA MALHARI *v.* CORFIELD **[3 Bom., Ap., 1**

44. ——— **Mischief.**—*Mischief by setting fire to house.*—In a case of mischief by fire with intent to cause the destruction of a dwelling-house, the charge should lay the intent as an intent to cause the destruction, not of a house simply, but of a house used as a human dwelling. QUEEN *v.* DURBAREO POLIE . . . . . **8 W. R., 30**

45. ——— **Murder.**—*Penal Code, s. 302.—Objections to charge.*—A charge under section 302 of the Penal Code need not set out at length all the facts necessary to constitute the offence of murder, and negative all the exceptions contained in section 300, which defines the crime of murder. Technical objections to criminal charges, particularly on the ground of the want of a sufficient specification of details, should be taken before the conclusion of the trial, when the Judge may, if necessary, amend the charge, and not afterwards, unless it appear that some failure of justice has been caused by the irregularity complained of. GOVERNMENT *v.* RAMASAWMY **[5 W. R., Rec. Ref., 1**

46. ——— *Penal Code, s. 300.*—A prisoner was charged with "causing the death, of *A.* by inflicting a wound on him with a 'chheni' with the intention of causing bodily injury, such as was sufficient, in the course of nature, to cause death, or which he knew to be likely to cause death." *Held,* that the charge was defective and inexact as regarded the second and third clauses of the definition of murder in section 300 of the Penal Code. With reference to the second clause, it should have run "likely to cause the death of *A.*, the person to whom the harm was caused." With reference to the third clause, it should have said "ordinary course of nature." THE EMPRESS *v.* SAMIRUDDIN **[I. L. R., 8 Calc., 211 : 10 C. L. R., 11**

CHARGE—*continued.*

1. FORM OF CHARGE—*continued.*

(*b*) SPECIAL CASES—*continued.*

47. ——— Public safety, Offence affecting.—*Plying unsafe vessel.—Penal Code, ss. 282, 336.*—Boatmen who ply an unseaworthy vessel whereby the lives of passengers for hire are endangered should be charged under section 282 and not under section 336 of the Penal Code. REG. *v.* KHODA JAGTA . . . . . **1 Bom., 137**

48. ——— Rioting. — *Separate charges against members of rival parties.*—Where there is riot and fight between two factions, the members of each party should be committed for trial separately, and not all together. QUEEN *v.* DURZOOLLA **[9 W. R., Cr., 33**

QUEEN *v.* BAZU. **[B. L. R., Sup. Vol., 750: 8 W. R., Cr., 47**

49. ——— Stolen property, Receiving.—*Penal Code, s. 411.*—A charge, under section 411 of the Penal Code, of dishonestly receiving stolen property, should state that the articles found in possession of the accused were the property of *A. B.*, the owner thereof. REG. *v.* SIDDU BIN BALNATH **[1 Bom., 95**

50. ——— Whipping Act.—When an accused person is liable to be punished under the Whipping Act, 1864, the charge must state the liability, and the judgment should set out the grounds thereof when that punishment is imposed. BADYA *v.* QUEEN . . . **I. L. R., 5 Mad., 158**

2. ALTERATION OR AMENDMENT OF CHARGE.

51. ——— Power to alter charge.—*Alteration after verdict.*—On a trial by jury, the Sessions Judge has no power to alter the charge after the delivery of the verdict. REG. *v.* ALI VALAD FAKER MUHAMMAD . . . **5 Bom., Cr., 9**

52. ——— Altering charge after plea of guilty.—When an accused pleads guilty to a charge already framed, the Sessions Judge has no power to alter the charge upon the evidence on the record. Upon a charge of murder the accused pleaded "guilty;" the Sessions Judge, taking into consideration the circumstances of the case, reduced the charge to homicide not amounting to murder. *Held* that the proceeding was illegal. QUEEN *v.* GOBARDHAN BHUYAN **[4 B. L. R., Ap., 101: S. C. 13 W. R., Cr., 55**

53. ——— Indictment, Amendment of.—The indictment may be amended at any stage of the trial. QUEEN *v.* WILLANS **[1 Ind. Jur., O. S., 94: 1 Mad., 31**

54. ——— Form of amendments made in charge.—Amendments in a charge ought to be made formally, and should appear on the face of the record. QUEEN *v.* FEOJDAR ROY **[9 W. R., Cr., 14**

55. ——— Formal defects.—*Act XVIII of 1862, s. 41.—Semble,*—The latter part of section

CHARGE—*continued.*

2. ALTERATION OR AMENDMENT OF CHARGE—*continued.*

Formal defects—*continued.*

41 of Act XVIII of 1862 only gave power to amend where the defect was formal. QUEEN *v.* WILLANS **[1 Mad., 31: 1 Ind. Jur., O. S., 94**

56. ——— Amendment which may prejudice accused.—*Amendment of charge.—Receiving stolen goods.—Act XVIII of 1862, s. 1.*—The Court, under section 1 of the Criminal Law Amendment Act (XVIII of 1862), had power to order the amendment of a charge involving a charge in the ownership of stolen property, provided such amendment did not prejudice the accused in his defence upon the merits. Where it is doubtful whether an amendment of a charge will or will not prejudice the accused in his defence upon the merits, the amendment ought not to be made. Where the accused was charged with receiving stolen goods from the wife of the prosecutor, the property in the goods being laid in the prosecutor, and the charges were amended by laying the property in the prosecutor jointly with his mother, it was held that such amendment ought not to have been made. REG. *v.* GOVINDAS HARIDAS **[6 Bom., Cr., 76**

57. ——— Omission of count in charge.—*Defect in charge.—Power of Appellate Court.*—The omission of a count in the charge is simply a defect in the charge, and the Appellate Court may confirm a conviction under a different section of the Penal Code from that upon which the prisoner was tried and convicted, provided the prisoner has not been prejudiced or injured by the substitution of one section for another. ANONYMOUS **[1 Ind. Jur., N. S., 46**

58. ——— Omission to prove separate charge for separate offence.—The omission of the Magistrate to frame the charge so as to contain a separate head for each offence may be remedied by the Sessions Judge exercising the powers of amendment contained in section 244 of the Code of Criminal Procedure, 1861. QUEEN *v.* KALARAM SINGH **[7 W. R., Cr., 8**

59. ——— Evidence not supporting charge.—*Alteration of charge.—Order to Magistrate to re-commit.*—When the Judge finds that the facts proved do not support the charge as laid, he should alter the charge, and not order the Magistrate to re-commit the accused. REG. *v.* BAPU PARBAT **[7 Bom., Cr., 81**

60. ——— Alteration of proceedings.—*Prejudice to accused.—Necessity to try de novo.*—When a Magistrate under section 256 of the Criminal Procedure Code, 1861, stopped proceedings under chapter XIV and proceeded under Chapter XII of the Code, it was not necessary for him to make an enquiry *de novo* under Chapter XII, the amended charges on which the commitment was made not being so materially different from those on which proceedings were commenced as to prejudice the accused. QUEEN *v.* AMEEROODEEN **[1 N. W., Ed. 1873, 307**

CHARGE—*continued.*

2. ALTERATION OR AMENDMENT OF CHARGE—*continued.*

61. ——— Alteration of charge to another cognizable offence.—*Alteration of charge from culpable homicide to s. 154, Penal Code.*—The prisoner, who was charged with culpable homicide not amounting to murder, was tried for that offence, and there being no sufficient proof to convict on that charge, was tried by the Sessions Judge for not having used lawful means in preventing the riot (section 154), and was punished for that offence. *Held*, that the Sessions Judge was competent to alter the charge, and to try the prisoner for any offence coming under any one of the sections of the Code. GOVERNMENT *v.* THACOOR DOSS . **1 Agra, Cr., 13**

62. ——— Adding new charges.—*Power to alter and amend charge.*—Although a Sessions Judge has power to alter or amend a charge, he cannot add an entirely new charge, which is not even cognate to the charge on which an accused person has been committed for trial. QUEEN *v.* WARIS ALI **[3 N. W., 337**

63. ——— ——— *Omission to give notice of charge.*—Where a person is arrested, and certain charges are entered against him in the police book, he should not, on the day of trial, be called upon to meet other charges without previous intimation being given to him of the additional charges. IN THE MATTER OF THE PETITION OF RADOINATH SHAHA. THE EMPRESS *v.* RADOINATH SHAHA **[I. L. R., 8 Calc., 195**

64. ——— ——— *Conviction on different charge from that of which notice was given to accused.*—Where a police officer who had been called on to answer to a charge of bribery which was not sustained by the evidence, was found guilty of violation of duty under section 29, Act V of 1861, of which offence the officer trying the case found sufficient evidence in the course of the trial. *Held*, that an accused person called on to answer to a specific charge cannot be convicted on an entirely different charge without previous notice of the offence imputed to him and opportunity being afforded him of meeting the accusation. IN THE MATTER OF THE PETITION OF GIRISH CHUNDER NUNDER **[26 W. R., Cr., 8**

65. ——— Amendment of charge by Sessions Judge after commitment by Magistrate.—*Reasons of Magistrate for committing case in certain way.*—Where a Magistrate gives reasons for committing a case for trial in a certain way, the Sessions Judge must either accept the charges as framed or frame others himself: he is not authorised by the Criminal Procedure Code to insist on a re-drawing of the charge by the Magistrate, unless he specifies the charge which he wishes to be sent up. IN THE MATTER OF THE PETITION OF RAMDHONE ACHARJEE . . . . **25 W. R., Cr., 17**

66. ——— Power of Sessions Judge.—*Criminal Procedure Code, 1872, s. 446.*—Where an accused person is committed to take his trial on specific charges before the Sessions Court, the Judge

CHARGE—*continued.*

2. ALTERATION OR AMENDMENT OF CHARGE—*continued.*

Power of Sessions Judge—*continued.*

has no power under section 446 of Act X of 1872 to expunge a charge before calling upon the accused to plead to it. EMPRESS *v.* POREESHOLLAH SHEIKH **[7 C. L. R., 143**

67. ——— ——— *Charge, Alteration of.*—On the 8th August 1884 a Magistrate of the second class began an enquiry in a case in which several persons were accused of rioting and of voluntarily causing grievous hurt. On the 6th September the powers of a Magistrate of the first class were conferred on the Magistrate by an order of Government, which was communicated to him on the 8th September. On the 9th September, the case for the prosecution having closed, the Magistrate framed charges against each of the accused under sections 323 and 325 of the Penal Code, recorded the statements of the accused and the evidence for the defence, and on the 10th September convicted the accused on all the charges, passing upon each of them, in respect of each charge, sentences which he could pass as a Magistrate of the first class, but could not have passed as a Magistrate of the second class. On appeal, the Sessions Judge, on the ground that the prisoners had committed the offence described in section 148 of the Penal Code, held that the sentences passed by the Magistrate were illegal, as being inconsistent with the provisions of section 71, paragraphs 2 and 4; and he accordingly reduced the sentences of imprisonment which the Magistrate had passed to the maximum of imprisonment which the Magistrate could have inflicted under section 148. *Held* by the Full Bench (PETHERAM, *C. J.*, and BRODHURST, *J.*, dissenting), that the sentences passed by the Magistrate were legal. *Per* PETHERAM, *C. J.*, that the Judge in this case had no power to alter the charge or to frame a new charge in any way. *Per* BRODHURST, *J.*, that the sentences passed by the Magistrate were as a whole illegal, and that a Court of Appeal is not competent to alter the finding of a Magistrate so as to convict an accused person of an offence which the Court of which the order is on appeal was not competent to try. QUEEN-EMPRESS *v.* PERSHAD . . . **I. L. R., 7 All., 414**

68. ——— ——— *Addition of charge at trial.—Meaning of the word "charge" in Criminal Procedure Code (X of 1882).—Altering charge.—Substitution of charge.—Omission to read and explain charge to prisoner.—Person committed "without a charge" under s. 226 of Criminal Procedure Code.—Meaning of the word "alter" in s. 227.—Meaning of the words "return of verdict" in s. 227.—Criminal Procedure Code (Act X of 1882), ss. 226, 227, 228-230, 236, 237, 537.—Practice.—Procedure.—Right to begin.*—*A.* was tried on a charge (1) of murder, (2) of abetting *B.* to commit the said murder. The jury having considered their verdict, were asked by the Clerk of the Crown if they were agreed. The foreman replied that they were, and that their verdict was guilty, and when further asked he said "guilty of abetment—of

CHARGE—*continued.*

2. ALTERATION OR AMENDMENT OF CHARGE—*continued.*

Power of Sessions Judge—*continued.*

abetment generally." On the application of counsel for the prosecution, a charge was then added of "abetment of murder committed by some person or persons unknown." The additional charge was read aloud to the jury, but was not specially explained to the prisoner, nor was he called upon to plead to it. Counsel for the prisoner was asked by the Judge if he desired to have a new trial on the charge as amended, but he declined. The three charges (*i.e.*, the two original charges and the additional charge) were then read to the jury, who after deliberation returned a verdict of "not guilty" on charges Nos. 1 and 2, and of "guilty" on charge No. 3, *viz.*, of abetment of murder by a certain person or persons unknown. On the application of counsel for the prisoner the following points were reserved: (1) whether, under the circumstances the Court had power to add a new charge; (2) whether the verdict returned on the new charge was valid, the prisoner not having been called on to plead to it. *Held* (SCOTT, *J.*, *dissentiente*), that the Judge was wrong in framing a new charge in addition to the original charges. The error, however, was one of form and not of substance, and under section 537 of the Criminal Procedure Code (Act X of 1882) the Court declined to interfere with the conviction. *Held* also that, having regard to sections 228, 229, and 230 of the Criminal Procedure Code, the charge of abetment of murder by *B.* might have been changed into one of abetment generally. *Held* also that, in any case, the conviction was good under sections 236 and 237 of the Criminal Procedure Code. It was doubtful whether the evidence would establish the offence of murder, abetment of murder by *B.*, or abetment of murder by some one unknown. Even if there had been no charge properly framed, the Judge might, under section 237, have accepted the verdict returned by the jury and entered it on the record. The fact that the Judge framed a charge which, *ex hypothesi*, was beyond his authority, and accepted a verdict on that charge, did not affect the legality of the conviction. *Held*, that the omission to read and explain the charge to the prisoner did not, under the circumstances, prejudice the prisoner, and was, therefore, immaterial. In the Criminal Procedure Code generally the word "charge" is used as the statement of a specific offence, and not as indicating the entire series of offences of which a prisoner is accused. There is nothing in the Code to indicate that the word is to have a different construction in sections 226 and 227 from what it has in other sections. The words "without a charge" in section 226 of the Criminal Procedure Code (Act X of 1882) will properly apply, not only to a case in which there is no charge at all, but also to a case in which there is no charge of such an offence as the Sessions Judge or Clerk of the Crown may think the prisoner ought to be tried for. If the word "alter" in section 227 is to be taken to include "addition," as it does in section 226, the addition permitted must be an addition to some specific charge in the nature of an alteration, and not the addition of a new charge. The words "return of the verdict" in section 227 mean the return of the final verdict which

CHARGE—*continued.*

2. ALTERATION OR AMENDMENT OF CHARGE—*continued.*

Power of Sessions Judge—*continued.*

the Judge is bound to record. *Per* SCOTT, *J.*—The test of the admissibility of proposed amendments to a charge is whether such amendment will prejudice the prisoner. The word "charge" is used in the Code both as indicating the whole series of counts or heads of charge, and also as indicating a charge of one specific offence. In section 227 it is used in the former sense. The word "alter" in section 227 must be taken to be equivalent to the words "add to or otherwise alter" which are used in section 226, and, consequently, the addition of a new "head of charge" is an alteration within the meaning of section 227. QUEEN-EMPRESS *v.* APPA SUBHANA MENDRE . . . . **I. L. R., 8 Bom., 200**

69. ——— Addition of charge triable by any Magistrate.—*Power of Sessions Judge to add charge and try it.—Criminal Procedure Code, ss. 226, 236, 237, 537.*—Three persons were jointly committed for trial before the Court of Session, two of them being charged with culpable homicide not amounting to murder of *J.*, and the third with abetment of the offence. At the trial, the Sessions Judge added a charge against all the accused of causing hurt to *C.*, and convicted them upon both the original charges and the added charge. The assault upon *C.* took place either at the same time as or immediately after the attack which resulted in the death of *J.* *Held*, that the case did not come within the terms of section 226 of the Criminal Procedure Code, and the adding of the charge was an irregularity which was not covered by sections 236 and 237, those sections having no application to such a state of things; but that inasmuch as the Sessions Judge was addressed by the pleader who appeared for the accused, and heard all the objections raised and witnesses might have been called for the defence upon the added charge, the provisions of section 537 were applicable to the case. QUEEN-EMPRESS *v.* KHARGA **[I. L. R., 8 All., 665**

70. ——— Vagueness of charge.—*Penal Code, s. 217.*—The accused was charged under section 217 of the Penal Code; but the charge did not distinctly state what the direction of the law was which he disobeyed, and how he disobeyed it. *Held* that, when the accused has been convicted on a charge expressed in vague terms, the prosecution on appeal should be limited to the particular sense in which the charge has been understood at the trial. EMPRESS *v.* BABAN KHAN **[I. L. R., 2 Bom., 142**

3. EXPLANATION OF CHARGE TO ACCUSED.

71. ——— Precise nature of charge.—When arraigning an accused, and before receiving his plea, the Court should be careful to ensure the explanation of the charge in a manner sufficiently explicit to enable the accused to understand thoroughly the nature of the charge to which he is called upon to plead. EMPRESS *v.* VAIMBILFF VAIMBILEE *v.* EMPRESS . **I. L. R., 5 Calc., 826**

CHARGE—*continued.*

3. EXPLANATION OF CHARGE TO ACCUSED—*continued.*

72. ——— Exact nature of offence charged.—*Contents of charge.—Criminal Procedure Code (Act X of 1882), s. 221.*—An accused is entitled to know with certainty and accuracy the exact nature of the charge brought against him, and unless he has this knowledge he must be seriously prejudiced in his defence. This is true in all cases, but it is more especially true in cases where it is sought to implicate him for acts not committed by himself, but by others with whom he was in company. BEHARI MAHTON *v.* QUEEN-EMPRESS **[I. L. R., 11 Calc., 106**

73. ——— Omission to explain charge.—*Criminal Procedure Code, s. 271.—Murder.*—At a trial before a Sessions Court a charge was read out to the prisoners to the effect that they at a certain place on a certain date committed murder by causing the death of *M.*, and that they had thereby committed an offence punishable under section 302 of the Penal Code and within the cognizance of the Court of Sessions. The prisoners pleaded guilty and were convicted on their plea. The charge was not explained to the prisoners. In answer to questions put by the Court, prisoners stated that they had killed *M.*, and that they made the admissions of their own accord and not on the persuasion of any one. *Held*, that the conviction must be quashed and a new trial ordered. AIYAVU *v.* QUEEN-EMPRESS **[I. L. R., 9 Mad., 61**

74. ——— Omission to explain charge when amended.—*Criminal Procedure Code, 1872, s. 445.*—A prisoner charged with dacoity and riot and acquitted cannot be convicted of house-trespass, under section 452, of the Penal Code, unless the charge was amended by the addition of the charge under section 452 and was read out or explained to him and he was called on to plead to it under section 445 of the Criminal Procedure Code. QUEEN *v.* SALAMUT ALI . . . **23 W. R., Cr., 59**

CHARGE TO JURY.

Col.

1. SUMMING UP IN GENERAL CASES . 719
2. MISDIRECTION 722
3. SUMMING UP IN SPECIAL CASES . 724

See JUDGMENT—CRIMINAL CASES. **[23 W. R., Cr., 32**

1. SUMMING UP IN GENERAL CASES.

1. ——— Mode of summing up evidence.—*Duty of Judge.*—In charging a jury, a Judge is not bound to do more than lay carefully and plainly before them the evidence as recorded by him, noting discrepancies and inconsistencies, and pointing out generally the way in which it is favourable or unfavourable to accused. QUEEN *v.* CHUNDER KUMAR MUZOOMDAR . . **25 W. R., Cr., 54**

2. ——— ——— *Omission to point out legal bearings.—Reading evidence to jury in important cases.*—On a trial by jury a Sessions

CHARGE TO JURY—*continued.*

1. SUMMING UP IN GENERAL CASES—*continued.*

Mode of summing up evidence—*continued.*

Judge in summing up should give a full and detailed statement of the evidence on both sides; he should point out the legal bearing of it, and what weight the jury ought to attach to its several parts. His omission to do so, if the accused is thereby prejudiced, amounts to such an error in law as would justify a Court of Appeal in setting aside the verdict. No general rule can be laid down as to when a prisoner is prejudiced by a defective summing up, but in general, if the finding of the jury in such a case is one that an Appeal Court would set aside if the trial had taken place with the aid of assessors, the Court will interfere and set the verdict aside. In capital cases and all cases of a serious or complicated nature, the Judge ought to read over the evidence *in extenso* to the jury. REG. *v.* FATTECHAND VASTACHAND **[5 Bom., Cr., 85**

3. ——— ——— *Criminal Procedure Code (Act XX of 1861), s. 255.*—In this case the Court were of opinion that the Judge's charge to the jury was not a summing up for the prosecution and defence such as is prescribed by section 255, Act XXV of 1861. Principles for guidance of a Judge in charging a jury laid down. QUEEN *v.* RAJCOOMAR BOSE . . . . . **10 B. L. R., Ap., 36; [S. C., 19 W. R., Cr., 71**

4. ——— ——— *Law bearing on case.—Presumption of innocence.*—A Judge's charge to the jury should consist only of a summing up of all the evidence, and a showing how the law applies to it. Where facts are as consistent with a prisoner's innocence as with his guilt, innocence must be presumed; and criminal intent or knowledge is not necessarily imputable to every man who acts contrary to the provisions of the law. QUEEN *v.* NOBOKRISTO GHOSE . . . . . **8 W. R., Cr., 87**

5. ——— ——— *Charge when there is no evidence.*—Where there is no evidence against a prisoner, the Judge ought to charge the jury for an acquittal, and not leave the jury to say whether the prisoner is guilty or not. QUEEN *v.* GREEDHARY MANJEE . . . . . **7 W. R., Cr., 39**

6. ——— ——— Where a summing up of a Judge to a jury points out to the jury the principal features of the evidence as regards both the case of the Crown and the defence of the prisoners, it complies with the requisition of the Code of Criminal Procedure. QUEEN *v.* SHEPPARD **[13 W. R., Cr., 23**

7. ——— Omission to sum up evidence.—*Criminal Procedure Code, 1861, s. 379.*—Where the provisions of section 379 of the Code of Criminal Procedure, 1861, were neglected, and the Judge did not sum up the evidence at all, a new trial was ordered. *Queen* v. *Elahi Bax, B. L. R., Sup. Vol., 359: 5 W. R., Cr., 80,* considered. QUEEN *v.* SHAMSHERE BEG . . **9 W. R., Cr., 51**

CHARGE TO JURY—*continued.*

1. SUMMING UP IN GENERAL CASES—*continued.*

Omission to sum up evidence—*continued.*

8. ——— *Criminal Procedure Code, 1861, s. 379.*—Under section 379 of the Code of Criminal Procedure a Judge should sum up the evidence on both sides before requiring the jury to deliver their verdict. Under section 439, however, the High Court thought it unnecessary to set aside a conviction in a case in which this was not done. QUEEN *v.* SITWA *alias* SITARAM [14 W. R., Cr., 66

9. ——— **Reasons for Judge's opinion on evidence.**—It is the duty of a Sessions Judge to give a summing up of the evidence as recorded before him, and to state his own reasons for considering a prisoner guilty. QUEEN *v.* NAWAB KHAN [7 W. R., Cr., 25

10. ——— **Statement of Judge's own opinion.**—A Sessions Judge in summing up is bound to advise a jury on questions of fact, and may tell the jury the impression which the evidence has made upon his own mind. QUEEN *v.* DWARKANATH SEN . . . 13 W. R., Cr., 34

11. ——— A Judge may give the jury his opinion of the guilt or innocence of the prisoner, if he shows them clearly that the decision rests with them. QUEEN *v.* ABDOOL JULEEL [W. R., 1864, Cr., 5

12. ——— A Judge in directing a jury should confine himself to a general commentary on the evidence and a statement of the legal offence proved, should such evidence be credited. He should not give a positive opinion as to the guilt or innocence of the accused person. QUEEN *v.* BHARUT CHUNDER . . 1 W. R., Cr., 2

QUEEN *v.* GUNGA BISHEN . 1 W. R., Cr., 26

13. ——— **Judge's opinion as to certain portion of evidence.**—It is open to a Judge in charging the jury to express his opinion as to the effect of a certain portion of the evidence; but he should always be careful to add that it is for the jury to form their own opinion. QUEEN-EMPRESS *v.* BEPIN BISWAS . . I. L. R., 10 Calc., 970

14. ——— **Bare statements of prisoners.**—*Evidence taken before Magistrate.*—Bare statements of prisoners are not admissible in, and ought not to be alluded to by the Judge as, evidence; nor is evidence taken before the Magistrate, unless contradictory of the evidence of the same witnesses as given before the Sessions Court, evidence in the trial, or proper to be put to the jury. QUEEN *v.* BHEKO SINGH . . 7 W. R., Cr., 108

15. ——— **Evidence of person not having knowledge from his own observation.**—The evidence of a person stating before the jury upon oath facts which he does not know of his own observation, facts which constitute the substance of the charge against a prisoner, and which the jury themselves have to enquire into and arrive at as their verdict, ought not to be allowed to go to the jury, and still less so when the person does not orally depose before the jury, but his evidence is presented to them in the form of a written deposition. QUEEN *v.* RAMGOPAL DHUR [10 W. R., 57

CHARGE TO JURY—*continued.*

1. SUMMING UP IN GENERAL CASES—*continued.*

Evidence of person not having knowledge from his own observation—*continued.*

16. ——— **Different trials for same crime.**—*Fresh charge to jury.*—When different trials are held at different times and against different prisoners in respect of the same crime, a new charge to each jury should be delivered in each case. It is not sufficient to read over to the second jury the charge delivered to the first. QUEEN *v.* MAHADEO [W. R., 1864, Cr., 15

2. MISDIRECTION.

17. ——— **Misdirection.**—In giving a warning to a jury not to disbelieve a mass of otherwise consistent evidence, because in one or two minor and immaterial points the witnesses made different statements, a Judge exercises a wise discretion, and affords no ground for the objection of misdirection to the jury. QUEEN *v.* BUSTEE KHAN [1 W. R., Cr., 17

18. ——— *Omission to direct on important point.*—In considering whether a Judge has misdirected the jury, the tenor and general effect of the whole summing up should be looked at, and if, upon the whole summing up, the Court is of opinion that substantially the proper direction has been given to the jury, it will not interfere, though the Judge has omitted to direct the jury expressly on some important point. REG. *v.* PESTANJI DINSHA . . . 10 Bom., 75

19. ——— *Omission to aid jury as to facts.—Finding on fact by Judge.*—A summing up to the jury in which the Sessions Judge gave no aid to the jury in the arrangement of the facts which were spoken to by the witnesses, and himself found facts which he should have put to the jury, was pronounced defective, and a verdict founded thereon was set aside and the prisoner ordered to be released. QUEEN *v.* RAM GOPAL DHUR [10 W. R., Cr., 7

20. ——— *Omission to call attention of jury to evidence of witnesses for defence.*—In summing up a case to the jury, the Judge omitted to call their attention to the evidence of the witnesses for the defence. This evidence appeared to the High Court to be untrustworthy. *Held,* that the summing up was not defective on account of this omission on the part of the Judge. IN THE MATTER OF THE PETITION OF ROCHIA MOHATO. EMPRESS *v.* ROCHIA MOHATO [I. L. R., 7 Calc., 42: 8 C. L. R., 273

CHARGE TO JURY—*continued.*

2. MISDIRECTION—*continued.*

Misdirection—*continued.*

21. ——————— *Duty of Judge.—Omission to explain law as bearing on the facts.—Per* FIELD, *J.*—It is the duty of a Judge to give a direction upon the law to the jury so far as to make them understand the law as bearing upon the facts; and if he does not give them an explanation of the law sufficiently comprehensive to enable them to decide the particular issue, it is a misdirection. IN THE MATTER OF THE PETITION OF JHUBBOO MAHTON. EMPRESS *v.* JHUBBOO MAHTON

[I. L. R., 8 Calc., 739: 12 C. L. R., 233

22. ——————— *Case under clause 26, Letters Patent, 1865.—Charge to jury, Misunderstanding of.*—Mere misunderstanding on the part of bystanders in Court, or counsel engaged in a case, of expressions used by a Judge in charging a jury (where it appears that the expressions used by the Judge were such as ought to have been understood by any reasonable man, having regard to what was proved in the case, and what was said to the jury afterwards), will not constitute misdirection. QUEEN-EMPRESS *v.* SHIB CHUNDER MITTER

[I. L. R., 10 Calc., 1079

23. ——————— *Omission to point out weakness of evidence for prosecution.—Error of law.*—The omission of a Judge to point out to the jury the weakness of the evidence against the accused, and the possibility of other persons being the guilty parties, does not amount to a positive misdirection. In a case where there was some evidence to go to the jury, and no error in law was committed, the Court cannot interfere. QUEEN *v.* CHOONEE

[5 W. R., Cr., 13

24. ——————— *Omission to call attention to fact in favour of accused.*—Three persons, who were attacked and wounded in an affray, informed the police on the same day that the persons who had attacked them were *A.*, *B.*, and *C.* Eighteen days afterwards the same complainants gave to the Magistrate enquiring into the case the names of four other persons who they said, with the three persons first accused, formed the attacking party. The seven accused were tried jointly for the offence before the Additional Recorder of Rangoon and a jury. In his charge to the jury the Additional Recorder omitted to call their attention to the fact that four out of the seven accused had not been mentioned by the prosecutors until after eighteen days had passed over. The prisoners were convicted. *Held*, that the Additional Recorder misdirected the jury; that under the circumstances the misdirection prejudiced the four persons last accused; and that the verdict must be set aside as far as they were concerned. LEIU TU *v.* QUEEN EMPRESS

[I. L. R., 11 Calc., 10

25. ——————— *Admission of inadmissible evidence.—Prejudice to prisoner.—Retrial.*—Where a Judge in his charge to the jury admitted, as receivable evidence, a hearsay statement against the accused, and also an anonymous letter

CHARGE TO JURY—*continued.*

2. MISDIRECTION—*continued.*

Misdirection—*continued.*

which was put in without an attempt to show how or by whom it was sent, it was held that the jury had been misdirected and the accused prejudiced. The High Court on this, not being able to say positively, on a perusal of the evidence, that the accused was innocent, did not dispose of the case, but ordered a new trial. QUEEN *v.* CHUNDER KOOMAR MOZOOMDAR . . . . . **24 W. R., Cr., 77**

26. ——————— *Erroneous direction as to corroboration of accomplice's evidence.—Held*, in a case of murder, that the Judge had not given a proper direction to the jury in telling them that it was for them to consider whether the evidence of the accomplice was strictly corroborated as to the prisoners; that it was not enough that the evidence should disclose a state of facts consistent with the possibility of the truth of the accomplice's story; and that the Judge ought to have gone through the history of the crime as detailed by the accomplices, to point out any independent evidence proving facts showing that the prisoners were or must have been present at or cognizant of the murder. QUEEN *v.* KAROO . . . . . **6 W. R., Cr., 44**

QUEEN *v.* KHOTUB SHEIKH

[6 W. R., Cr., 17

27. ——————— *Erroneous direction where evidence of accomplice is uncorroborated.—Held*, that where the evidence of an accomplice is uncorroborated, the correct practice requires a Sessions Judge not merely to tell the jury that it is unusual to convict on such evidence, but that he should also tell them that it is unsafe, and contrary both to prudence and practice, to do so; yet that his omission to state this does not amount to an error in law. *Reg.* v. *Inam, 3 Bom., Cr., 57*, commented on. REG. *v.* GANU BIN DHAROJI . **6 Bom., Cr., 57**

28. ——————— *Erroneous direction where evidence of approver is uncorroborated.*—Conviction and sentence set aside (GLOVER, *J.*, dissenting) as to two of the prisoners on the ground that there was a misdirection to the jury, because the Judge in summing up omitted to advise the jury not to convict upon the uncorroborated evidence of an approver, and because he treated as corroborative that which was no corroboration in law. QUEEN *v.* NAWAB JAN . . . . . **8 W. R., 19**

29 ——————— *Omission to tell jury that evidence is inadmissible.—Material error.—Held* (WARDEN, *J.*, *dissentiente*), that the omission of the Sessions Judge to tell the jury that the statement of one prisoner is not evidence against his fellow-prisoner is a material error, and one fatal to the trial, notwithstanding that the Sessions Judge dealt with the evidence against each of the prisoners separately. REG. *v.* MIYA VALAD DAUD

[6 Bom., Cr., 10

3. SUMMING UP IN SPECIAL CASES.

30. ——— **Alibi, Proof of.**—*Erroneous direction as to admissibility of document.*—Upon a

CHARGE TO JURY—*continued.*

3. SUMMING UP IN SPECIAL CASES—*continued.*

Alibi, Proof of—*continued.*

plea of *alibi* by the prisoners that they had left Patna on the 12th April 1869, and reached Port Canning on the 20th of the same month, and were not at Patna on the 30th May, the prosecutor adduced in evidence a written statement engrossed on two pieces of stamp paper, one bearing the endorsement of the stamp-vendor as sold on the 13th, and the other on the 18th April, filed on the 20th April, and alleged to bear the verification of the prisoners. No evidence was adduced to prove that the prisoners had signed it. The Judge drew the attention of the jurors to this document, and adverted to it in these terms: "If the written statement was drawn up on an earlier date than the date it bears, it could not have been prepared earlier than the day on which the principal stamp was bought,—*i.e.*, 18th." *Held*, that the document should not have been received in evidence; and that there was a misdirection which contributed materially towards the jury finding the prisoner guilty. QUEEN *v.* GAJRAJ

[3 B L. R., A. Cr., 43

31. ——— **Belonging to gang of thieves.**—*Penal Code, s. 401.—Proof of association.*—In the trial of prisoners for the offence of belonging to a gang of persons associated for the purpose of habitually committing theft or robbery (section 401, Penal Code), the Judge should, in his charge, put clearly to the jury,—1. The necessity of the proof of association. 2. The need of proving that that association was for the purpose of habitual theft, and that habit is to be proved by an aggregate of acts. SHRIRAM VENKATASAMI *v.* THE QUEEN

[6 Mad., 120

32. ——— **Culpable homicide.**—*Provocation.*—In charging a jury on the point of provocation in a case of culpable homicide, a Judge should tell the jury that, to bring the case within the exception to section 300, Penal Code, the prisoner must have been deprived of the power of self-control by grave and sudden provocation; that there ought to have been sufficient cause for such loss of self-control; and that the provocation was not wilfully occasioned by the prisoner as an excuse for doing harm. QUEEN *v.* GUNESH LUSHKAR . 9 W. R., Cr., 72

33. ——— *Penal Code, s. 304.*—In his charge to the jury the Judge should draw a distinction between the two classes of culpable homicide mentioned in section 304 of the Penal Code, and direct them to find specially under which, if either, the prisoner was guilty. QUEEN *v.* KALICHARAN DASS

[6 B. L. R., Ap., 86: 15 W. R., Cr., 17

QUEEN *v.* AMIR KHAN

[6 B. L. R., Ap., 87, note: 12 W. R., Cr., 35

34. ——— **False evidence.**—*Misdirection.*—Where *O.* deposed that he and *R.* were four days in company at *M.*, and the Judge charged the jury that if they found that *R.* was not in company with *O.* during those four days at *M.*, but was at *S.*, it did not matter where *O.* was, because it was clear that he could not have been in company with *R.* at *M.*, and must therefore have given false evidence when he said that he was during those four days in such company at *M.* *Held*, by the majority of the Court (SETON-KARR, *J.*, dissenting), that there had been no misdirection. QUEEN *v.* RAM MONI SEIN

[7 W. R., Cr., 105

35. ——— *Misdirection.*—There is no misdirection, in a case of false evidence, in a Judge pointing out to the jury the contrast between the evidence for the prosecution and the course followed by the prisoner (namely, a simple denial of the charge, coupled with a refusal to examine the witnesses in attendance), so long as the Judge leaves it to the jury to decide between the opposing statements, and to credit whichever they thought most worthy of belief. QUEEN *v.* SEETANATH GHOSAL

[2 W. R., Cr., 60

36. ——— *Duty of Judge.*—Duty of Judge in charging a jury in a case of giving false evidence and abetment of false evidence, discussed. JUGUT MOHINEE DASSEE *v.* MADHU SUDAN DUTT . . . . . 10 C. L. R., 4

37. ——— **Forgery.**—*Misdirection.*—Where accused was charged under section 471 of the Penal Code with having, in a suit brought against them by the vendee of their sister to recover possession of certain property acquired by her by right of inheritance from her father, fraudulently and dishonestly used a forged document as genuine, knowing or having reason to believe it to be a forged document, it appeared that the accused were in possession of the property, and that the document in question purported to be a deed of gift from their father. It was proved that the endorsement of registration which appeared on the document was a forgery. In his charge to the jury the Sessions Judge omitted to deal with the fact of the accused being in possession of the property. He also directed that, the registration endorsement having been proved to be a forgery, it was for the accused persons to establish the genuineness of the document. *Held* that the Sessions Judge, in omitting to deal with the fact of the possession of the accused, and in throwing the onus of proving the genuineness of the document upon them, had misdirected the jury. KHOORSHED KAZI *v.* EMPRESS

[8 C. L. R., 542

38. ——— **Kidnapping.**—*Judge aiding jury with his own opinion.*—Where a Sessions Judge left the jury to decide upon the age of a girl who had been kidnapped, merely aiding them with his own opinion in which they expressed their concurrence,—*Held* that there was no misdirection to the jury. QUEEN *v.* SHAMA KHANKEE

[7 W. R., Cr., 22

39. ——— **Murder.**—*Distinction between murder and culpable homicide.*—When a prisoner is

CHARGE TO JURY—*continued.*

3. SUMMING UP IN SPECIAL CASES—*continued.*

Murder—*continued.*

on his trial by a jury upon a charge of murder, it is the duty of the Judge to point out to the jury accurately the difference between murder and culpable homicide not amounting to murder, and to direct the attention of the jury to the evidence, and to leave them to find the facts and say (under the direction of the Judge as regards the law) of what offence the prisoner is guilty. QUEEN *v.* SHAMSHERE BEG [9 W. R., Cr., 51

40. ——— **Private defence, Right of.**—*Penal Code, s. 100, cls. 1, 2, and 6.—Misdirection.—Held,* that it was no misdirection on the part of the Judge in not calling the attention of the jury to clauses 1 and 2 of section 100 of the Penal Code, when he particularly called their attention to clause 6 of that section. QUEEN *v.* MOOKHTARAM MUNDLE [17 W. R., Cr., 45

41. ——— **Unsoundness of mind.**—*Misdirection.—Criminal Procedure Code, 1871, s. 425.*—A Sessions Judge in his charge to the jury told them that in his judgment the accused was at the time of his trial exhibiting symptoms of unsoundness of mind, and he directed them to find whether the accused was insane at the time he committed the offence. *Held,* that the issue as to whether the accused was of unsound mind at the time of the trial and incapable of properly making his defence, was a preliminary issue to that put by the Sessions Judge, and should, under section 425 of the Code of Criminal Procedure, have been first submitted to the jury. QUEEN *v.* DOORJODHUN SHAMONTO *alias* DEEJOBOR . . . . . 19 W. R., Cr., 26

42. ——— **Question of fact.**—*Proof of previous conviction.*—The question of proof of previous conviction is one of fact which ought to go to the jury and must be determined by a jury. QUEEN *v.* ESAN CHUNDER DEY . 21 W. R., Cr., 40

43. ——— **Questions of law and fact.**—*Competency of child to give evidence.—Evidence Act II of 1855, s. 14.*—Whether or not a child was competent to give evidence within the meaning of section 14, Act II of 1855, was a question for the Judge to decide, and not for the jury, the amount of credit to be given to the statement being all that fell within the province of the jury. The error, however, in leaving the first question to the jury held to be no misdirection. QUEEN *v.* HOSSEINEE [8 W. R., Cr., 60

44. ——— **Recommendation to mercy.**—A Judge ought not to introduce into his direction to the jury any question as to recommending a prisoner to mercy, but should leave that entirely to the jury. QUEEN *v.* DASSEE MOSULMANY [14 W. R., Cr., 46

CHARITABLE BEQUEST.

See WILL—CONSTRUCTION. [I. L. R., 4 Calc., 443

CHARITABLE BEQUEST—*continued.*

1. ——— **Failure of object.**—*Cy près performance.—Construction of will.*—The doctrine of *cy près* as applied to charities rests on the view that charity in the abstract is the *substance* of the gift, and the particular disposition merely the *mode,* so that, in the eye of the Court, the gift, notwithstanding the particular disposition may not be capable of execution, subsists as a legacy which never fails and cannot lapse. It cannot be laid down as a general principle that the *cy près* doctrine is displaced where the residuary bequest is to a charity, or that among charities there is anything analogous to the benefit of survivorship, since cases may easily be supposed where the charitable object of the residuary clause is so limited in its scope, or requires so small an amount to satisfy it, that it would be absurd to allow a large fund bequeathed to a particular charity to fall into it. On the failure of a specific charitable bequest, jurisdiction arises to act on the *cy près* doctrine, whether the residue be given in charity or not, unless upon the construction of the will a direction can be implied that the bequest if it fails should go to the residue. In applying the *cy près* doctrine, regard may be had to the other objects of the testator's bounty, but primary consideration is to be given to the gift which has failed, and to a search for objects akin to it. The character of a charity as being for the relief of misery in a particular locality may guide the Court in framing a *cy près* scheme to benefit that locality. Unless the *cy près* scheme framed by the lower Court be plainly wrong, a Court of Appeal should not interfere with it. MAYOR OF LYONS *v.* ADVOCATE GENERAL OF BENGAL [I. L. R., 1 Calc., 303: 26 W. R., 1: L. R., 3 I. A., 32

2. ——— **Charitable gift.**—*Cy près doctrine.—Lapse.—Construction of will.*—A testator, directed his executor to set apart a sum of ₹7,000 to provide a fund for or towards the education of two or more boys at St. Paul's School, Calcutta, such boys to be natives of Calcutta, of poor and indigent parents, or fatherless children of Armenian or other Christian religion. The testator died in 1867. In 1864 the St. Paul's School, Calcutta, was removed to Darjeeling. In the St. Paul's School, Calcutta, the fees for day scholars and day boarders were ₹8 and 10 respectively. In the St. Paul's School, Darjeeling, there were no day scholars nor any day boarders; and the cost of a regular boarder would be about ₹400 per annum. *Held,* that the gift did not lapse, being a general charitable bequest, and that under the circumstances it must be executed *cy près.* MALCHUS *v.* BROUGHTON [I. L. R., 11 Calc., 591

CHARITABLE FUND, SUIT RELATING TO—

See ADVOCATE GENERAL. [4 Moore's I. A., 190

See SUPREME COURT, MADRAS. [4 Moore's I. A., 190

CHARITABLE INSTITUTION, SUIT FOR SUBSCRIPTION TO—

See RIGHT OF SUIT—SUBSCRIPTION TO CHARITABLE INSTITUTION. [10 C. L. R., 197

CHARITABLE TRUST.

See HINDU LAW—WILL—CONSTRUCTION—VESTED AND CONTINGENT INTERESTS. [I. L. R., 1 Bom., 269

See LIMITATION ACT, 1877, ART. 134 (1871, ART. 134) . I. L. R., 1 Bom., 269

See RELIGIOUS COMMUNITY. [12 Bom., 323

See CASES UNDER RIGHT OF SUIT—CHARITIES.

See WILL—CONSTRUCTION. I. L. R., 5 Calc., 228

——— Suit to enforce—

See RIGHT OF SUIT—INTEREST TO SUPPORT RIGHT . . 6 C. L. R., 58

CHARTER-PARTY.

See BILL OF LADING. [Bourke, O. C., 171, 309 Bourke, A. O. C., 100

See DAMAGES—REMOTENESS OF DAMAGE. [6 B. L. R., Ap., 20

See GUARANTEE. [1 Ind. Jur., N. S., 412

See INJUNCTION—SPECIAL CASES—BREACH OF AGREEMENT . I. L. R., 6 Bom., 5

See PRINCIPAL AND AGENT—LIABILITY OF AGENTS . . I. L. R., 5 Calc., 71

1. ——— **Nomination of ship's agents by freighters.**—*Right of agents to sue on charter-party.—Ships "going seeking," Meaning of.*—A charter-party made between the defendants (the owners of the *Seaforth*) and *H. & Co.* (the freighters) provided that the owners should employ at the ports of discharge the consignee nominated by the freighters to transact the ship business there inwards and outwards on the customary terms, not exceeding 2½ per cent. on amount of freight payable inwards, and 5 per cent. outwards. *H. & Co.* nominated the plaintiffs to transact the ship's business in Bombay (a port of discharge) with the knowledge and consent of the master of the *Seaforth*, and the plaintiffs accepted and acted under such nomination. The defendants refused to pay the plaintiffs' commission on the outward freight of the *Seaforth*, on the ground that, under the circumstances under which such freight was procured, the plaintiffs were not under the charter-party entitled to receive commission on it. *Held*, that the plaintiffs were sufficiently within the consideration of the charter-party to maintain a suit for the breach of such clauses of it as were inserted for their benefit. Meaning of the mercantile expression of ship "going seeking" discussed. BLACKWALL & Co. *v.* JONES & Co. [7 Bom., O. C., 144

CHARTER-PARTY—*continued.*

2. ——— **Right to retain cargo for amount of bill for freight dishonoured.**—*M.* chartered a ship to load a cargo at Cardiff, and proceed therewith to Madras, the freight to be paid in London on unloading and right delivery of the cargo; one third by *M.'s* acceptance at three months from the sailing of the ship (the same to be returned if the cargo were not duly delivered), and the remainder by like bill at three months from the date of delivery in London of the certificate of right delivery of the cargo. The charter-party provided for payment of a commission on the contract, ship lost or not lost, that the £150 should be advanced in cash at the port of discharge on account of the freight against the captain's draft on *M.* The cargo was loaded accordingly, a bill of lading was given for the same, and the ship sailed from Cardiff on the 8th October 1863, *M.* having consigned the cargo to *A. & Co.*, who carried on business at Madras. On the same day the owners drew a bill on *M.* at three months for £261 1*s.* 10*d.*, being one third of the freight. On the 10th October 1863, the general agents in London of *A. & Co.*, advanced to *M.*, on *A. & Co.'s* account and out of their funds, £700, received as security for such advance the bill of lading blank, and endorsed and forwarded the same bill to *A. & Co.* On the 29th October 1863, *M.* accepted the bill for £261 1*s.* 10*d.*; and in the following December he suspended payment, and the bill was protested. On the 14th January 1864, the ship arrived at Madras, and thereupon *A. & Co.*, as holders of the bill of lading, applied for the delivery of the cargo, and offered to advance the £150 in cash pursuant to the charter-party, but the captain claimed to retain the cargo for the value of the dishonoured bill and the balance of freight due. *Held*, that the terms of the contract were at variance with the right of lien so claimed, and that it was not suspended by the bill, nor revived by the freighters' insolvency. ARBUTHNOT *v.* DAIGRE . 2 Mad., 88

See also BJORCK *v.* MADRAS RAILWAY COMPANY. . 2 Mad., 102, note

3. ——— **Freight.**—*Bill of lading.—Liability of master where quantity signed for is more than cargo shipped.*—The plaintiff chartered a ship, of which he was master, to one *C. H. C.*, of Calcutta, under a charter-party, by which it was agreed that the ship (which was then at Melbourne) should proceed to certain ports and there load a cargo for Calcutta, "the cargo to be delivered to the charterer at Calcutta, on being paid freight at and after the rate of the lump sum of £1,150 for the full reach of the ship; the said freight to be paid on the unloading and right delivery of the cargo as customary, less any advances that may have been made." On the arrival of the ship at Calcutta, *C. H. C.* requested the plaintiff to deliver the cargo to the defendants as his agents, which the plaintiff agreed to do on having payment of the freight guaranteed by the defendants. The defendants were *bonâ fide* holders of the bills of lading which had been signed by the plaintiff in respect of the cargo. They sent to the agents of the plaintiff in Calcutta the following letter: "As it will be necessary for us for the protection

CHARTER-PARTY.—Freight—*continued.*

of our interests to get delivery of the cargo, and as we do not care about further trouble in the matter, we agree to guarantee payment of the balance of freight due on the charter-party, less any claims for short delivery," &c. On unloading there was found to be a deficiency in quantity between the goods mentioned in the bills of lading and those actually shipped and delivered. *Held* that, notwithstanding this, the plaintiff was entitled to the whole of the freight specified in the charter-party, and was justified in keeping the cargo until the freight was paid. DODS *v.* STEWART

[8 B. L. R., 340: 17 W. R., 49

4. ——— Conditions precedent.—"*Now on her passage.*"—*Breach of warranty.—Principal and agent.—Undisclosed principal.*—The plaintiffs entered into a contract of charter-party with the defendants, whereby it was agreed between them and the defendants acting for the owners, "that the steamer *Atholl*, now on her passage to Calcutta, being tight, staunch, and strong, &c., shall receive on board from the charterers a complete cargo of merchandise, to consist of 700 tons dead weight, and being so laden shall therewith proceed to London with liberty to call for any legal purpose at any intermediate port or ports; freight to be paid on the above cargo on right delivery of the same at and after the rate of £4-2-6 per ton; charterers to have the option of cancelling the charter-party, if the steamer has not arrived in Calcutta on 15th April 1871." The defendants signed the charter-party as "agents of steamer *Atholl*." The steamer was not, at the time the charter-party was entered into, on her way to Calcutta, being then in the port of London, and she did not start for some days after the date of the charter-party. She touched at Madras and Colombo on her way, and did not arrive in Calcutta until 11th April. Rates of freight having declined since the middle of March, at which time, it was alleged, the steamer ought to have arrived, the plaintiff sued the defendants for damages. *Held*, the defendants were liable. The statement in the charter-party that the streamer was on her passage to Calcutta was a condition precedent. SCHILLER *v.* FINLAY . . . **8 B. L. R., 544**

5 ——— Ship unable to enter port or lie there without previous lightening.—"*Safe port or as near thereunto as she may safely get always afloat.*"—*Rights of parties.*—Where a vessel is chartered to load a full and complete cargo, and being so loaded, to proceed therewith to a "safe port or so near thereunto as she may safely get, and deliver the same always afloat," the master is not bound to sign bills of lading for, or to sail to, a port where the vessel cannot, by reason of her draught of water, lie and discharge "always afloat" without being previously lightened, even if the cost of the requisite lightening would, by the charter-party, fall on the charterers. By the terms of a charter-party a vessel was to take in a full cargo at Bombay, and therewith proceed to a "safe port in the Mediterranean (Spanish ports excluded), as ordered on signing bills of lading, or so near thereunto as she may safely get, and deliver the same to the said charterers

CHARTER-PARTY.—Ship unable to enter port or lie there without previous lightening—*continued.*

or their assignees always afloat." Marseilles was at first named as the port of discharge, but subsequently the vessel was ordered to Cette, a French port a little to the west of Marseilles; and bills of lading, made out for Cette, were tendered to the master for signature. The master refused to sign the bills of lading or sail for Cette. The vessel's draught of water when loaded was such that she could not have entered or lain afloat in Cette harbour without discharging a portion of her cargo. The cost of lightening the vessel by lighters outside the harbour would, under the charter-party, fall on the charterers, and they were willing to incur the expenses necessary for that purpose. *Held*, that it was no breach of the charter-party by the master to refuse to sail to Cette, or to sign bills of lading for that port. GRAHAM & CO. *v.* MERVANJI NUSSERVANJI . . . . **I. L. R., 5 Bom., 539**

6. ——— Principal and agent.—*Charter-party signed by agents for master and owner.—Parties to suit.—Liability of master.—Liability of agents.—Master of ship, the agent of charterer, to sign bill of lading.—Right of master to recover from charterer sums paid by master as damages for short delivery of cargo.—Appropriation of payments.—Contract Act (IX of 1872), ss. 69, 230, 235.*—By a charter-party, dated 20th September 1880, *F., M. & Co.*, as agents for master and owner, let the steam-ship *Hutton* to *E.*, for a term of not less than three and not more than four months, for the sum of R15,000 per month payable in advance. By subsequent agreement the term was extended to 30th March 1881, and the charterer was to pay at the rate of R18,000 a month for the extended time. On 27th February 1881, the ship being about to proceed on her last voyage to Calcutta and thence to Bombay, *E.*, finding himself unable to pay more than R6,000 out of the sum of R18,000, which was then due as hire for the month ending 9th March 1881, requested the plaintiff to pay *F., M. & Co.* on his behalf the remaining R12,000. The plaintiffs did so in consideration of an agreement, whereby *E.* assigned to them all the freight payable to *E.* and all benefits under the said charter-party in respect of the then intended voyage of the *Hutton*. It was also agreed between the plaintiffs and *E.* that the said ship should be consigned to the plaintiffs at Calcutta and also to them at Bombay, and that the plaintiffs should receive all the freight, passage-money, &c., to be recovered for the said voyage, the plaintiffs charging two per cent. commission on the gross value of the freight shipped in Calcutta and two per cent. on the amount of freight collected by them in Bombay, and interest on the said sum of R12,000 at the rate of nine per cent. per annum. Due notice of this agreement was given to *F., M. & Co.* On the 11th March, *E.*, being unable to pay the R6,000, requested the plaintiffs to pay that sum to *F., M. & Co.* on his behalf, which the plaintiffs did,—*E.* agreeing that the said payment should be on the same terms as those on which the R12,000 had been paid. The ship, having proceeded to Calcutta, returned with cargo to

CHARTER-PARTY.—Principal and agent *continued.*

Bombay, where she arrived on 2nd April 1881. *F., M. & Co.*, as agents for master and owner, refused to allow the plaintiffs to collect the freight payable in Bombay, and collected it themselves. The plaintiffs brought this suit, in the first instance, against the owner and the master of the *Hutton* (first and second defendants), praying for an account of the moneys received by the defendants or their agents in respect of the freight, and for payment of the balance found due after deducting the sums properly payable to the defendants for hire of the ship and for R400 damages sustained by the plaintiffs by reason of the wrongful act of the defendants, whereby the plaintiffs had been deprived of the two per cent. commission. The plaintiffs alleged that the balance due to them would be about R9,500. The first defendant did not appear. The second defendant (the master) contended that he was not liable; that *F., M. & Co.* had been especially appointed as agents of the owner; that they were not his (the master's) agents, and that they had no authority to sign the charter-party for him. He admitted that the sum of R12,000 had been paid to *F., M. & Co.* by the plaintiffs as agents for the owner; but as to the R6,000, he denied that it had been paid to *F., M. & Co.* on his account or on account of the owner. He further alleged that there was a large sum due by *E.* in respect of hire of the ship and other proper claims against him under the charter-party, and that the defendants were, therefore, justified in refusing the demands of the plaintiffs as assignees of *E.* until the whole of their claims against *E.* were liquidated. He alleged that *F., M. & Co.* had received the freight of the ship, amounting to R20,426, and he claimed a lien on this sum in respect of the sum of R19,282 due for hire and other charges on the said ship, and R605 for money paid for short delivery of goods. The plaintiffs subsequently made *F., M. & Co.* defendants to the suit. In their written statement, *F., M. & Co.* stated that they had signed the charter-party as agents only and not as principals, and they contended that the plaintiffs could not proceed simultaneously against the first defendant and the second defendant, but must elect to proceed separately against either; and, further, that the plaintiffs could not proceed simultaneously against themselves (*F., M. & Co.*) and the second defendant, but should elect to proceed separately against either. They admitted the receipt of the R12,000 as agents for the first defendant, and not as agents of the second defendant. As to the R6,000, they alleged that it had been paid to them, not on account of the *Hutton*, but in respect of claims which they had against *E.* in connection with the *Clan Gordon*, another ship which had been chartered by *E.* They admitted the receipt of the freight of the *Hutton*, amounting to R20,426, but claimed a lien on this sum in respect of hire and other proper charges due under the charter-party. *Held*, that the second defendant (the master) was not liable on the charter-party. He had given no authority to *F., M. & Co.* to sign it as his agents; and his conduct in acting under the charter-party, being referable to his character of, and duty as, master, did not amount to ratification. But, inasmuch as he claimed to deduct from the freight received in Bombay sums which were paid either by him or to *F., M. & Co.* for him, he was so far a proper party to the suit. *Held* also that, under section 230 of the Contract Act (IX of 1872), *F., M. & Co.* were not liable as principals on the charter-party, as they appeared on the face of the charter-party to have signed merely as agents. But they were liable, under section 235 of the Contract Act, for having untruly represented themselves to be the authorised agents of the master to enter on his behalf into the contract therein contained. Their liability was limited to the amount which could have been recovered from the master if he had really been their principal. No difference was made in their liability by the fact that the owner was also liable. As to the R6,000,—*Held*, on the evidence, that the plaintiffs at the time of the payment had specifically appropriated this sum to the hire then due for the *Hutton*. *Held*, further, that the charter-party was one of the class known as "*locatio navis et operarum magistri*;" that under such a charter-party the master would, as between owner and charterer, sign bills of lading as agent of the charterer; that as between the owner and the charterer the latter was liable to defray the damages for non-performance of the contracts contained in the bills of lading, including damages for short delivery of cargo; and that, such being the liability of *E.* as charterer, the plaintiffs as his assignees were bound by all the equities affecting him, so that the defendants might set off as against the plaintiffs whatever the owner of the *Hutton* might have set off against *E.* if he had been the plaintiff. The second defendant (the master) alleged that he had paid in Bombay certain sums of money to consignees as damages for short delivery of cargo, and he claimed credit for such payments as against the plaintiffs. *Held*, that he had no power to bind *E.* by making such payments on his behalf in Bombay, where both *E.* and the plaintiffs were resident, without the consent either of *E.* or of the plaintiffs. In order to establish these charges against *E.* and his assignees (the plaintiffs), it was necessary for the defendants to prove either that they were, in fact, due, in which case the master would be justified in paying them under section 69 of the Contract Act, or that their correctness had been admitted by *E.* or his agents. The defendants having failed to produce the required proof, the claim of the second defendant was disallowed. HASONBHOY VISRAM *v.* CLAPHAM

[I. L. R., 7 Bom., 51

CHEATING.

See CHARGE—FORM OF CHARGE—SPECIAL CASES.

[1 Mad., 31: 1 Ind. Jur., O. S., 94

See FORGERY . . **21 W. R., Cr., 41**

1. ——— *Penal Code, s. 415.—Want of dishonest intention.*—To induce a son to pay his father's debts, by acting merely on his fear of consequences to his father, is not cheating. To describe these consequences as more serious than they were likely to be may be to deceive, but is not cheat-

CHEATING—*continued.*

ing, if done without any fraudulent or dishonest intention. QUEEN *v.* RAJCOOMAR BANERJEE [W. R., 1864, Cr., 25

2. ——— **Dishonest intention at time of taking money.**—The mere taking money one day, and dishonestly running away without paying the next day, is not necessarily cheating. There must be an intention to deceive and defraud at the time of taking the money, and the subsequent conduct of the prisoner would only be evidence to show the previous dishonest intention. QUEEN *v.* HERRAMUN HULWYE [5 W. R., Cr., 5 : 1 Ind. Jur., N. S., 97

3. ——— **Giving false information.**—*Penal Code, s. 415.*—A person attempted to obtain his recruitment in the police of a district by giving certain information which he knew to be false to the District Superintendent of Police,—*Held*, that he had not committed the offence of "cheating" within the meaning of section 415 of the Penal Code. EMPRESS *v.* DWARKA PRASAD [I. L. R., 6 All., 97

4. ——— **Passenger by railway.**—*Penal Code, s. 417.—Railway Act, 1854.*—A passenger by railway travelling in a carriage of higher class than that for which he has paid fare, is not guilty of cheating under section 417 of the Indian Penal Code, but is indictable under the Railway Act XVIII of 1854. REG. *v.* DAYABHAI PARJARAM [1 Bom., 140

5. ——— **Unlawful entry to exhibition.**—*Penal Code, s. 415.*—Where the accused secretly entered an exhibition building without having purchased a ticket, and was there apprehended, it was held that such act did not amount to the offence of cheating under section 415 of the Penal Code. REG. *v.* MAHERVANJI BEJANJI . 6 Bom., Cr., 6

6. ——— **Intention to cheat.**—*Penal Code, s. 417.*—To justify a conviction for the offence of cheating, there must be some evidence of an intention to cheat at the time when the promise (the omission to perform which completes the offence of cheating) is made. REG. *v.* HARGOVANDAS [9 Bom., 448

7. ——— **False representation in application to Collector.**—The defendant was convicted of cheating. He applied to the tahsildar for a specified quantity of land on cowle tenure free of tax for five years, and falsely represented that the land was waste land. *Held*, a good conviction. ANONYMOUS . . . 6 Mad., Ap., 12

8. ——— **Attempting to commit breach of trust.**—*Criminal Procedure Code, 1872, ss. 455, 456.—Framing incorrect document.*—Where a person was charged by an Assistant Sessions Judge with (1) attempting to commit criminal breach of trust as a public servant; (2) framing as a public servant an incorrect document to cause an injury; (3) framing as such public servant an incorrect document to save a person from punishment; and was acquitted on the ground the he was not a public servant, though the Judge found that he had framed the document with a fraudulent intent. The High Court held that the Judge ought to have convicted him of attempting to cheat under sections 455 and 456 of the Code of Criminal Procedure; and as the facts which he would have had to meet on that charge were the same as he had to meet on the charge of criminal breach of trust, allowed the objection urged at the hearing, though not distinctly taken in their appeal by the Government, and ordered a re-trial of the accused. REG. *v.* RAMAJIRAV JIVBAJIRAV [12 Bom., 1

CHEATING. — **Attempting to commit breach of trust**—*continued.*

9. ——— **Proof necessary for offence of cheating.**—A contractor in the Public Works Department, who was charged with cheating in respect of a sum of money which he received on account for work which it was alleged he had not then finished, was acquitted on the evidence, because it was not proved, (1) that there was a false pretence made use of by accused; (2) that he knew he was making use of a false pretence or that he intended to defraud; (3) that the Public Works Department were deceived by the pretence on account of their belief in its truth; and (4) that the accused received the money with the intention of causing wrongful loss to the Government. QUEEN *v.* KALIPUDDO PORAMANICK [23 W. R., Cr., 43

10. ——— **Obtaining property on false pretence.**—*Penal Code, s. 415.*—A person hiring certain property for use at a wedding, paying a portion of the hire, and giving a written promise to pay the balance of the hire, and to restore the property after the wedding, he being well aware that there was to be no wedding, and intending when he got the property to apply for its attachment in a civil suit in respect of an alleged claim, is guilty of cheating. QUEEN *v.* KADIR BUX . . . 3 N. W., 16

11. ——— **Obtaining money on false pretences.**—*Taking money on promise to return jewels.*—The prisoners received a Government promissory note, promising to return certain jewels pledged to them, but not intending to do so, and they subsequently claimed to retain the note for another debt alleged to be due to them by the sender,—*Held*, that they were guilty of cheating. QUEEN *v.* SIRODURSHUN DASS . . . . 3 N. W., 17

12. ——— **Wrongful gain or loss.**—*Penal Code, s. 415 and ss. 23 and 24.*—A person who purchased rice from a famine relief officer at a certain rate (16 seers to the rupee) on condition that he should sell it at a seer the rupee less, was convicted of cheating under section 420 of the Penal Code because he did not sell it at the rate agreed on but at 12 seers to the rupee. *Held*, that as within the meaning of sections 23 and 24 of the Penal Code there had been no wrongful gain or wrongful loss to any one, no offence had been committed under section 415 of the Penal Code. QUEEN *v.* LAL MAHOMED [22 W. R., Cr., 82

CHEATING BY PERSONATION.

1. ——— **Passing off girl for marriage as of high caste.**—*Penal Code, ss. 373, 415, 416, 419.*—Where two girls were brought by the prisoners on speculation, taken to a foreign and distant district, palmed off as women of much higher caste than they really were, and married to two Rajpoots after receiving the usual bonus,—*Held*, that the prisoners could not be convicted under section 373 of the Penal Code, but of cheating and false personation under sections 415 and 416. QUEEN *v.* DABEE SINGH [7 W. R., Cr., 55

2. ——— *Penal Code, s. 416.*—Where the accused represented to the prosecutor that a girl was a Brahmin, and thereby induced him to part with his money in consideration of the marriage of the girl to his brother, when the girl really was of the Sudra caste, it was held that he was guilty of cheating by false personation under section 416 of the Penal Code. QUEEN *v.* MOHIM CHUNDER SIL [16 W. R., Cr., 42

3. ——— **False representation as to personality.**—*Penal Code, s. 416.*—Where a person represented a girl to be the daughter of one woman, when she was within his knowledge the daughter of another woman,—*Held*, that he was guilty of cheating by personation under section 416 of the Penal Code, and that it was unnecessary to bring in section 109 relating to abetment. QUEEN *v.* DHUNPUT OJHAH . . . . . 7 W. R., Cr., 51

CHEMICAL EXAMINER, REPORT OF—

See EVIDENCE—CRIMINAL CASES—CHEMICAL EXAMINER . 6 B. L. R., Ap., 122
6 Bom., Cr., 75
6 Mad., Ap., 11
I. L. R., 10 Calc., 1026

CHEQUE TAKEN IN PAYMENT, DISHONOUR OF—

See BILL OF EXCHANGE. [7 B. L. R., 431

CHEQUE TAKEN IN PAYMENT OF RENT.

See TENDER . . I. L. R., 4 Calc., 572

CHERRA POONJEE RAJ.

See FOREIGN STATE. [I. L. R., 11 Calc., 17

CHIEF JUSTICE, POWER OF—

——— *Refusal by Bench of Judges to hear affidavits in support of application for transfer of trial to another district.—Application to the Chief Justice to appoint another Bench to hear and determine case.—Interlocutory order in criminal matters, Finality of.—High Court Charter Act (24 and 25 Vict., c. 104), s. 14.*—Where a rule had been obtained on behalf of a prisoner, calling on the prosecution to show cause why the case should not be transferred for trial to some other Court of Session than that in which it was then pending, on the ground that such strong feeling and prejudice existed in the district against the accused as to render it unlikely that he would get a fair trial, a Division Bench of the High Court, duly constituted, consisting of two Judges, refused to allow the affidavits in support of the application to be read and discharged the rule. Subsequently, an application was made to the Chief Justice to appoint another Bench of the High Court to hear and determine the rule, on the ground that it had not been heard, and that consequently the order passed by the Bench discharging it was null and void. *Held* that the Chief Justice, having once appointed a Bench under section 14 of the Charter Act (24 and 25 Victoria, Cap. 104) to hear any particular case, has no power to interfere when the case has been disposed of by that Bench. *Held*, also, that the refusal of the Bench to hear the affidavits read, if an error at all, was simply one of law in the course of dealing with a matter clearly within their jurisdiction; and that, therefore, the decision could not be treated as a nullity, or its legality questioned by the Chief Justice. *Held*, further, that whether the judgment had been signed or not, previous to the application being made to the Chief Justice, an interlocutory order of such a nature in a criminal matter is not final, but may be reviewed or reconsidered, or a similar application may be entertained as often as the Court in its discretion may think proper. IN THE MATTER OF THE PETITION OF ABDOOL SOBAN [I. L. R., 8 Calc., 63

CHILDREN, ACCESS TO—

See DIVORCE ACT, S. 41 . 5 B. L. R., 71

CHILDREN, CUSTODY OF—

See DIVORCE ACT, S. 41. [6 B. L. R., 318

See CASES UNDER HINDU LAW—GUARDIAN.

See MAHOMEDAN LAW—DIVORCE. [I. L. R., 2 All., 71

See CASES UNDER MAHOMEDAN LAW—GUARDIAN.

See MAJORITY ACT, 1875. [I. L. R., 9 Mad., 391

CHOSE IN ACTION.

See ASSIGNMENT OF CHOSE IN ACTION.

CHOTA NAGPORE.

See SALE FOR ARREARS OF RENT—UNDER-TENURES, SALE OF— [10 C. L. R., 76

CHOTA NAGPORE RAJ.

See HINDU LAW—ALIENATION — RESTRAINT ON ALIENATION. [I. L. R., 7 Calc., 461

CHOTA NAGPORE LANDLORD AND TENANT ACT.

——— *Beng. Act I of 1879, s. 37.—Appeal in ejectment suits.*—There is no prohibition in section 37 of Act I of 1879 against an appeal in ejectment suits in Chota Nagpore. RAMJAN KHAN *v.* RAMAN CHAMAR . . . . . **11 C. L. R., 480**

CHOTA NAGPORE TENURES ACT (Bengal Act II of 1869).

——— *Powers of Special Commissioner.*—The scope and object of Bengal Act II of 1869 is to determine the quantity of lands of certain specified descriptions within villages, to which the Special Commissioner, named under the Act, may have been appointed. Nothing in the Act empowers an officer so appointed to determine a question of disputed boundary between two villages, and to oust the Civil Courts of their ordinary jurisdiction in determining the rights of parties under conflicting titles as proprietors of such villages. SHAM CHUNDER ADHICARY *v.* SOBIN BHOOPAL SING . **I. L. R., 8 Calc., 397 [10 C. L. R., 419**

CHOWKIDAR.

See LIMITATION ACT, 1877, ART. 7 (1859, S. 1, CL. 2) . **18 W. R., 298**

See BENGAL ACT VI OF 1870. **[I. L. R., 11 Calc., 632**

CHUR LANDS.

See CASES UNDER ACCRETION—CHUR OR ISLAND IN NAVIGABLE RIVER.

See CASES UNDER ONUS PROBANDI—LIMITATION AND ADVERSE POSSESSION. **[I. L. R., 5 Calc., 36**

1. ——— **Possession of chur lands.**—*Title.—Evidence.*—The cultivation of chur lands, like that of waste or jungle lands, carries no *primâ facie* character of usurpation or wrong; and the claimant against a purchaser, *bonâ fide* and without notice, in possession, must strictly prove his title. EKOWEI SING *v.* HIRALAL SEAL **[2 B. L. R., P. C. 4: 11 W. R., P. C., 2 12 Moore's I. A., 136**

2. ——— *Suit for chur lands.—Survey.—Possession.—Title.*—In a suit regarding a chur claimed by defendant as having formed on the bank of the bank of the river adjacent to his village, and by plaintiff on the ground that the bed of the river belonged to his village, the Court upheld the state of matters existing at the time when a survey had been made, on the ground that the survey had been made at a time when neither of the present parties held any right in the land, but when both villages belonged to the same proprietor; and that it was some evidence of possession at that time, not only of the julkur, but of the right of property in the river, and possession under these circumstances was some evidence of title. MOHINEE MOHUN DASS *v.* ASSANOOLLAH . . . **17 W. R., 73**

3. ——— **Evidence as to position of.**—*Local investigation.—Maps.*—In a dispute as to the position of chur lands, where the change in the

CHUR LANDS.—Evidence as to position of—*continued.*

course of a river threw doubt upon their position, the judgment of the Court of first instance, given after local investigation, was upheld against the decision of the High Court founded on inspection of the maps and on the arguments adduced before it. SARAT SUNDARI DEBI *v.* PROSONNO COOMAR TAGORE . **6 B. L. R., 677: 15 W. R., P. C., 20 [13 Moore's I. A., 607**

CIRCULAR ORDER 41 of 1866.

See LOCAL INVESTIGATION. **[I. L. R., 4 Calc., 718**

——— **25 of 1870.**

See LOCAL INVESTIGATION. **[I. L. R., 4 Calc., 718**

——— **10th July 1874.**

See BENGAL RENT ACT, 1869, S. 58. **[I. L. R., 3 Calc., 547: 1 C. L. R., 149**

CIRCULAR ORDERS BY JUDICIAL COMMISSIONER OF PUNJAB.

See INDIAN COUNCILS ACT. **[12 B. L. R., 167: 18 W. R., 389**

CITATION.

See LETTERS OF ADMINISTRATION. **[I. L. R., 4 Calc., 87**

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877).

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—CLAIM TO PROPERTY PROPERTY SEIZED IN EXECUTION. **[I. L. R., 2 Bom., 365**

——— **s. 2 (Civil Procedure Code, 1859, s. 356).**

See CASES UNDER APPEAL—DECREES.

See APPEAL—ORDERS. **[I. L. R., 2 All., 357 I. L. R., 6 All., 211**

See ARBITRATION—REMISSION TO ARBITRATORS . . **I. L. R., 3 All., 286**

See JURISDICTION—SUITS FOR LAND—PROPERTY IN DIFFERENT DISTRICTS. **[I. L. R., 4 Calc., 222**

See PLEADER—APPOINTMENT AND APPEARANCE . **I. L. R., 8 Bom., 105**

1. ——— **Decree, Definition of.**—*Orders in a suit or in execution of decree.—Per* JACKSON, *J.*—The word "decree," as defined in Act X of 1877, does not include "orders," either original or appellate, upon matters arising in the course of a suit or in execution of a decree. RUNJIT SINGH *v.* MEHERBAN KOER **[I. L. R., 3 Calc., 662: 2 C. L. R., 391**

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877). Decree, Definition of—*continued.*

2. ——————— The definition of "decree" in section 2 of the Civil Procedure Code means that where the proceeding of the Court finally disposes of the suit, so long as it remains upon the record, it is a "decree." WILLIAMS *v.* BROWN
[I. L. R., 8 All., 108

3. ——————— **Judicial proceeding.**—*Civil Procedure Code, 1877, ss. 333, 522, 526, 531.*—The term "judicial proceeding," as used in section 2 of the Code of Civil Procedure (Act X of 1877), must be understood to mean a judicial proceeding of the same nature as a suit, or such proceedings as are referred to in sections 333, 522, 526, and 531 of the Code. The definition given in the Code of Criminal Procedure (Act X of 1872) is not applicable. DALPATBHAI BHAGUBHAI *v.* AMARSANG KHEMABHAI
[I. L. R., 2 Bom., 553

4. ——————— **s. 2 and ss. 53, 54.—Rejection of plaint.**—The words, "rejecting the plaint," in section 2, are not limited to the cases provided for in sections 53, 54. BENI RAM BHUTT *v.* RAM LAL DHUBRI . . . **I. L. R., 13 Calc., 189**

5. ——————— **s. 2.—"Signed."—"*Stamped.*"**—The expression "person referred to" in section 2 of Act X of 1877, means person referred to in the subsequent sections of the Code as being required to sign or verify certain documents, and it is not a condition precedent to such person being able to use a stamp that he should be unable to write his name. MAHARAJA OF BENARES *v.* DEBI DAYAL NOMA
[I. L. R., 3 All., 575

6. ——————— **Public officer.**—*Official trustee.*—The official trustee is a "public officer" within the definition given in section 2, Act X of 1877. SHAHUNSHAH BEGUM *v.* FERGUSSON
[I. L. R., 7 Calc., 499

7. ——————— **Subordinate Court.**—*Collector's Court.—Beng. Civil Courts Act, 1871, s. 15.*—A Collector's Court, although it exercises certain powers under the Civil Procedure Code, is not a Civil Court within the meaning of section 15 of Act VI of 1871, nor is it subordinate to a District Court within the meaning of Act X of 1877, section 2. IN THE MATTER OF BODRU ROHMAN
[3 C. L. R., 508

——————— **s. 3.**

See ABATEMENT OF SUIT—APPEALS.
[I. L. R., 7 Mad., 195

See CASES UNDER APPEAL—RIGHT OF APPEAL, EFFECT OF REPEAL ON—

See CASES UNDER EXECUTION OF DECREE—EFFECT OF REPEAL OF ACT PENDING SUIT.

1. ——————— **Effect of repeal of Civil Procedure Code, 1859.**—*General Clauses Consolidation Act, I of 1868, s. 6.—"Proceedings." "Procedure."*—In all suits instituted before Act X of 1877 came into force, in which an appeal lay to the High Court under Act VIII of 1859, an appeal still lies notwithstanding the repeal of that Act by Act X of 1877. *Per* GARTH, *C. J.*—A suit is a "judicial proceeding," and the words "any proceedings" in section 6 of Act I of 1868 include all proceedings in a suit from the date of its institution to its final disposal, and therefore include proceedings in appeal. The word "procedure" in section 3, Act X of 1877, has not the same meaning as the word "proceedings" in the above-mentioned section. The proceedings in a suit instituted before Act X of 1877 came into force, including a special appeal if the old Code allowed one, go on to the end of the suit notwithstanding the repeal of the old Code. The "procedure"—that is to say, the machinery by which those proceedings are conducted—is, after decree, to be that provided by the new Code. RUNJIT SINGH *v.* MEHERBAN KOER
[I. L. R., 3 Calc., 662: C. L. R., 291

BURKUT HOSSEIN *v.* MAJIDOONNISSA
[3 C. L. R., 208

NADIR HOSSEIN *v.* BISSEN CHAND BASSARAT
[3 C. L. R., 437

2. ——————— *Suit instituted before, but appeal brought after, repeal of Act VIII of 1859.—Effect of repeal.—Civil Procedure Code, 1877, ss. 556, 558, and 588.—Appeal.*—Where a suit had been instituted under Act VIII of 1859, but decided at a time when Act X of 1877 had come into operation, and an appeal was presented against such decision, section 3 of Act X of 1877 distinctly indicates that such an appeal is to be governed by the law of procedure in force at the date of the presentation of the appeal. Where, therefore, an appeal presented when Act X of 1877 was in force, has been dismissed under section 556 of that Act, the appellant may apply for its re-admission under section 558; and if such re-admission is refused, he is entitled to an appeal under section 588 (*v*). ELAHI BUKSH *v.* MARACHOW . . **I. L. R., 4 Calc., 825**
[3 C. L. R., 593

3. ——————— *Decree, Meaning of.*—The effect of the proviso to section 3 of the Civil Procedure Code of 1877 taken in connection with the definition of the word "decree" in section 2 is, that in all suits pending when that Code came into force, the practice and procedure to be followed down to the final result of such suits (*i.e.*, when nothing remains to be done but to execute the decree or to appeal from it) are the same as previously existed, but that in all subsequent proceedings in execution of the decree, or in appeal from it, the practice and procedure provided by the Civil Procedure Code of 1877 are to be observed. The word "decree" in section 3 of the Civil Procedure Code, 1877, means an order final in its nature, and does not include an interlocutory order, such as an order of reference to take accounts, although such order may, in general, be properly termed a "decree," and, therefore, a suit which has been referred by the

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 3.—Effect of repeal of Civil Procedure Code, 1859 —*continued.*

Court to the Commissioner to take accounts is still in a stage "prior to decree" within the meaning of section 3 of the Civil Procedure Code of 1877. RUSTOMJI BURJORJI *v.* KESSOWJI NAIK [I. L. R., 3 Bom., 161

4. ——— *Effect of change of law on proceedings already commenced.—Attachment.—Enforcement of decree.—Political pension.*—On the 28th of September 1877,—*i.e.*, three days before the new Code of Civil Procedure (Act X of 1877) came into operation,—an application was made for the enforcement of a money decree by attachment (*inter alia*) of a political pension enjoyed by the defendants. Under section 216 of the former Code (Act VIII of 1859) a notice was issued on the same day to the defendants, calling upon them to show cause why the decree should not be executed. The defendants accordingly appeared on the day fixed, at which date the new Code had come into force, and contended that under section 266, clause (*g*), of the new Code, the pension was no longer attachable. *Held*, that all proceedings commenced and pending when Act X of 1877 became law were, under the General Clauses Act (I of 1868), section 6, to be governed by the Code theretofore in force, the general rule of construction contained in that section not being affected or varied by sections 1 and 3 of Act X of 1877; and that a *bonâ fide* application for enforcement of a decree in a particular way, coupled with an order of the Court in furtherance of that object, as much constitutes a proceeding in execution commenced and pending as the actual issue of a warrant of attachment. VIDYARAM *v.* CHANDRASHEKHARRAM . . . I. L. R., 4 Bom., 163

5. ——— **Effect of repeal of Civil Procedure Code, 1877.**—*Proceedings commenced before repeal.*—Clause 3 of section 3 of the Civil Procedure Code (XIV of 1882) provides that nothing in that Code shall apply to any proceedings after decree that had been commenced and were still pending on the 1st June 1882. In case of any question connected with proceedings commenced prior to that date, the applicability of the Code of 1882 depends on whether the new proceeding subsequent to that date, out of which the question has immediately arisen, is so intimately connected with the proceedings prior to that date as to be regarded as part of them. A decree was passed in 1870 by which the suit was referred to the Commissioner to take accounts. On the 21st June 1882, the Commissioner, in the course of taking the said accounts, issued a warrant ordering the defendants to show cause why they should not give inspection of certain books. *Held*, that the question as to inspection was so intimately connected with the taking of the accounts that it should be regarded as part of the same proceedings, and as these had commenced and were still pending on the 1st June 1882, the question whether the order refusing inspection was appealable or not, was (under section 3 of Act XIV of 1882) to be determined by the Civil Procedure Code (Act

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 3.—Effect of repeal of Civil Procedure Code, 1877 —*continued.*

VIII) of 1859, and not by the Code of 1882. RUSTOMJI BURJORJI *v.* KESSOWJI NAIK [I. L. R., 8 Bom., 287

——— **s. 5.**

See LOCAL GOVERNMENT, POWER TO— [I. L. R., 9 Mad., 112

See SMALL CAUSE COURT, MOFUSSIL—PRACTICE AND PROCEDURE—MISCELLANEOUS CASES. [I. L. R., 2 Bom., 641

——— **s. 6 (1859, s. 383).**

See DEPUTY COMMISSIONER OF AKYAB. [I. L. R., 4 Calc., 94

——— **s. 11 (1859, s. 1).**

See JURISDICTION OF CIVIL COURT—CASTE I. L. R., 5 Bom., 80

See RIGHT OF SUIT—FRESH SUITS [I. L. R., 9 Calc., 602

——— **s. 12.**

See RES JUDICATA—MATTERS IN ISSUE. [8 C. L. R., 113

——— **s. 13 (1859, s. 2).**

See ESTOPPEL—ESTOPPEL BY JUDGMENT [7 B. L. R., 367

See CASES UNDER RES JUDICATA.

——— **s. 14.**

See RES JUDICATA—ESTOPPEL BY JUDGMENT . . I. L. R., 4 Mad., 359

——— **s. 15 (1859, s. 6, first paragraph).**

See SUBORDINATE JUDGE, JURISDICTION OF— . . I. L. R., 7 All., 230

——— **s. 16 (1859, s. 5).**

See CASES UNDER JURISDICTION—CAUSES OF JURISDICTION—DWELLING OR RESIDENCE.

See CASES UNDER JURISDICTION—CAUSES OF JURISDICTION—CARRYING ON BUSINESS, &c.

See CASES UNDER JURISDICTION—SUITS FOR LAND.

See JURISDICTION—SUITS FOR LAND—PROPERTY IN DIFFERENT DISTRICTS. [I. L. R., 8 All., 117

See SERVICE OF SUMMONS. [I. L. R., 9 Calc., 733

See TRANSFER OF CIVIL CASE—GENERAL CASES . . . 1 Agra, 178

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 17 (Act XXIII of 1861, s. 4).

See HUNDI, LIABILITY ON—
[I. L. R., 1 All., 392

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION—BREACH OF CONTRACT . I. L. R., 4 All., 423
[I. L. R., 5 All., 277

See JURISDICTION—CAUSES OF JURISDICTION—CARRYING ON BUSINESS, &c.
6 C. L. R., 417

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION—NEGOTIABLE INSTRUMENTS.
[I. L. R., 9 Calc., 105

See JURISDICTION—CAUSES OF JURISDICTION—DWELLING OR RESIDENCE.
[I. L. R., 1 All., 51

See PRACTICE—CIVIL CASES—TRANSFER OF CASE . . 7 Mad., Ap., 34

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—DWELLING OR CARRYING ON BUSINESS.
[6 Bom., A. C., 131, 256
3 Mad., 374
18 W. R., 312

——— s. 19 (1859, Parts of ss. 11 and 12).

See PRACTICE—CIVIL CASES—LEAVE TO SUE OR DEFEND.
[I. L. R., 3 Calc., 370

——— s. 20.

See JURISDICTION—SUITS FOR LAND—PROPERTY IN DIFFERENT DISTRICTS.
[I. L. R., 8 All., 117

See STAY OF PROCEEDINGS.
[4 C. L. R., 282

——— s. 23.

See TRANSFER OF CIVIL CASE—GROUND FOR TRANSFER.
[I. L. R., 9 Calc., 980
2 C. L. R., 352

——— s. 24 (1859, s. 13).

See TRANSFER OF CIVIL CASE—GENERAL CASES . . I. L. R., 5 All., 60
[I. L. R., 2 All., 241
I. L. R., 3 All., 568

——— s. 25 (1859, s. 6, latter part).

See APPEAL—ORDERS.
[I. L. R., 5 All., 274

See EXECUTION OF DECREE—TRANSFER OF DECREE FOR EXECUTION.
[Marsh., 195
I. L. R., 1 All., 180
I. L. R., 5 Bom., 680

See CASES UNDER TRANSFER OF CIVIL CASE.

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 25 (1859, s. 6, latter part)—*continued.*

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622.
[I. L. R., 6 All., 233

——— s. 26.

See MISJOINDER.
[I. L. R., 8 Mad., 361

——— ss. 26-41, ch. III (1859, s. 73).

See CASES UNDER PARTIES.

——— s. 27.

See PARTIES—ADDING PARTIES TO SUITS—PLAINTIFFS . I. L. R., 6 Calc., 370

——— s. 28.

See MULTIFARIOUSNESS.
[I. L. R., 4 Calc., 949
I. L. R., 7 Calc., 739
I. L. R., 5 All., 163
I. L. R., 12 Calc., 555
I. L. R., 13 Calc., 147

See SPECIFIC RELIEF ACT, s. 19.
[I. L. R., 8 Calc., 963

——— s. 29.

See PARTIES—PARTIES TO SUITS—NEGOTIABLE INSTRUMENTS.
[I. L. R., 3 Calc., 541

——— s. 30.

See CO-SHARERS—ERECTION OF BUILDINGS ON JOINT PROPERTY.
[I. L. R., 5 All., 602

See CASES UNDER PARTIES—SUITS BY SOME OF A CLASS AS REPRESENTATIVES OF CLASS.

See PRACTICE—CIVIL CASES—LEAVE TO SUE OR DEFEND.
[I. L. R., 9 Calc., 604

See RIGHT OF SUIT—CHARITIES.
[I. L. R., 8 Calc., 32
I. L. R., 7 All., 178
I. L. R., 8 Bom., 432
I. L. R., 11 Calc., 33

——— s. 31.

See MULTIFARIOUSNESS.
[I. L. R., 4 Calc., 949

——— s. 32.

See APPEAL—ORDERS.
[I. L. R., 13 Calc., 100

See LIMITATION, QUESTION OF—
[I. L. R., 12 Calc., 642

See CASES UNDER PARTIES—ADDING PARTIES TO SUITS.

See SUPERINTENDENCE OF HIGH COURT. CIVIL PROCEDURE CODE, s. 622.
[I. L. R., 13 Calc., 90

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 34.

See PARTIES—OBJECTION AS TO DEFECT OF PARTIES . I. L. R., 5 Bom., 609

——— **s. 35 (1859, s. 115).**

See s. 38 (1859, s. 17). [2 Bom., 109: 2nd Ed., 103

——— **s. 36 (1859, s. 16).**

See LUNATIC . I. L. R., 7 Calc., 242

See PLEADER—APPOINTMENT AND APPEARANCE . . I. L. R., 8 Bom., 105

——— **s. 37 (1859, s. 17).**

See CASES UNDER SERVICE OF SUMMONS.

——— **ss. 37, 38, 417, 432 (1859, s. 17, cl. 2).**

1. ——— **Recognised agent.**—*Gomastah.*—A recognised agent, under clause 2, section 17, Act VIII of 1859, cannot prosecute or defend a suit in his own name. A gomastah of a firm ceases to be a recognised agent under clause 2, section 17, Act VIII of 1859, when the business of the firm ceased before the institution of the suit. MOKHA HARAKRAJ JOSHI *v.* BISESWAR DOSS . . 5 B. L. R., Ap., 11 [13 W. R. 344

2. ——— *Filing and verification of plaint.*—*Held,* that an agent of a party residing within the jurisdiction of the Court, not being an authorised agent as contemplated by clause 1, section 17, Act VIII of 1859, was not competent to appear as plaintiff on behalf of his principal, and to file and verify the plaint as required by section 27 of that enactment. THORNHILL *v.* TAYLOR [1 Agra, 115

3. ——— *Presentation of plaint.*—*Munim of firm.*—*Partner.*—The munim of a firm is not, for the purpose of presenting a plaint, the recognised agent (under section 17 of the Civil Procedure Code) of a partner who is present within the jurisdiction. The munim and such partner should join in presenting the plaint or appointing a pleader. The partner's not so joining is not a ground on which an Appellate Court should reverse the decree of a lower Court, unless the irregularity affects the merits of the case or the jurisdiction of the Court. BISANDAS VALAD MAGNIRAM *v.* LAKMICHAND KISANCHAND . . . 6 Bom., A. C., 150

4. ——— *Ground for dismissing suit.*—Where a lower Appellate Court threw out a case on the ground that the plaint had not been filed by a recognised agent within the meaning of section 17, Act VIII of 1859, though that point had been disposed of by the Court of first instance,—*Held,* that the case should not have been thrown out on such a technical objection not affecting the merits of the case. MANNOO DOSSEE *v.* ISHAN CHUNDER BONNERJEA . . . . 15 W. R., 245

5. ——— *Munim of firm being wound up.*—The munim of a firm which has

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), ss. 37, 38, 417, 432 (1859, s. 17, cl. 2).—Recognised agent —*continued.*

ceased to carry on business, who is engaged in collecting the assets of such firm and otherwise winding up its affairs, is a recognised agent of the owner of such firm within the meaning of section 17, clause 2 of the Civil Procedure Code, and can, on behalf of his absent principal, maintain or defend a suit brought in respect of the business of the firm whose affairs he is engaged in winding up. TUKAJI MAHARAJ HALKAR *v.* PITAMBARDAS NARANGI . . 9 Bom., 427

6. ——— *Mooktear.*—A mere mooktear, unless specially authorised, is not the recognised agent of the judgment-debtor on whom notice can be rightly served within the meaning of the Civil Procedure Code. KRISTO CHUNDER GOOPTO *v.* FUZUL ALI KHAN . . 17 W. R., 389.

——— **ss. 38 & 35 (1859, s. 17 and s. 115).**—*Application by representatives for execution of decree.*—*Authority to appear.*—*Held* that, where one of several representatives of a deceased judgment-creditor applies for the execution of a decree, the general powers of attorney contemplated by section 17, Clause 1 of Act VIII of 1859, are not necessary, but it is sufficient if the applicant is authorised under section 115 to act for the other representatives. AMBARAM HARIVALLABHDAS *v.* HIMAT SING KALIANJI . . 2 Bom., 109: 2nd Ed., 103

——— **ss. 39 & 40 (1859, s. 18).**

See PLEADER—APPOINTMENT AND APPEARANCE . . . 8 W. R., 92

——— **s. 43 (1859, s. 7).**

See ONUS PROBANDI—RELINQUISHMENT OF PORTION OF CLAIM . 19 W. R., 429

See CASES UNDER RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM.

See RES JUDICATA—CAUSES OF ACTION. [I. L. R., 6 Calc., 559

See RES JUDICATA—MATTERS IN ISSUE. [I. L. R., 5 Mad., 1 I. L. R., 7 Bom., 377

——— **s. 44.**

See APPEAL—DECREES. [I. L. R., 8 All., 191

See APPELLATE COURT—OBJECTION TAKEN FOR FIRST TIME ON APPEAL—SPECIAL CASES . . I. L. R., 5 Bom., 554

See CASES UNDER JOINDER OF CAUSES OF ACTION.

See RES JUDICATA—MATTERS IN ISSUE. [I. L. R., 6 All., 358

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622. [I. L. R., 8 All., 191

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 45.

See MULTIFARIOUSNESS.
[I. L. R., 4 Calc., 949
I. L. R., 4 All., 163
I. L. R., 5 All., 163
I. L. R., 7 Bom., 289
I. L. R., 6 All., 106
I. L. R., 8 Bom., 616
I. L. R., 8 Mad., 75

——— **ss. 49, 50 (1859, s. 26).**

See CASES UNDER PLAINT—FORM AND CONTENTS OF PLAINT.

——— **s. 50.**—*Suit by person claiming under Will.—Probate—Mofussil of Bombay Presidency.*—There is no law at present in force in the mofussil which obliges a person claiming under a will to obtain probate of the will, or otherwise establish his right as executor, administrator, or legatee, before he can sue in respect to any property which he claims under the will. In any suit or proceeding instituted by him, it is for the Court in which the suit or proceeding is pending to determine, for the purposes of such suit or proceeding, whether the will is genuine and valid, and confers upon the plaintiff or applicant the right which he claims. BHAGVANSANG *v.* BECHARDAS . . . . I. L. R., 6 Bom., 73

——— **s. 51 (1859, ss. 27, 28).**

See WRITTEN STATEMENT—FILING WRITTEN STATEMENT. Bourke, O. C., 153

——— **ss. 51, 52 (1859, ss. 27, 28).**

See PLAINT—VERIFICATION AND SIGNATURE . . I. L. R., 4 Bom., 468

See WRITTEN STATEMENT—FILING WRITTEN STATEMENT.
[Bourke, O. C., 153

——— **s. 53 (1859, ss. 29 & 32).**

See CIVIL PROCEDURE CODE, 1882, s. 2.
[I. L. R., 13 Calc., 189

See CASES UNDER PLAINT—AMENDMENT OF PLAINT.

——— **s. 54 (1859, ss. 31, 32).**

See APPEAL—ORDERS.
[I. L. R., 2 All., 357

See APPELLATE COURT—REJECTION OR ADMISSION OF EVIDENCE ADMITTED OR REJECTED BY COURT BELOW—VALUATION OF SUIT, ERROR IN—
[4 B. L. R., A. C., 139
11 W. R., 145

See CIVIL PROCEDURE CODE, 1882, s. 2.
[I. L. R., 13 Calc., 189

See COURT FEES ACT, 1870, s. 10.
[I. L. R., 2 Mad., 308
I. L. R., 7 All., 528

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1882), s. 54 (1859, ss. 31, 32)—*continued.*

See CASES UNDER PLAINT—RETURN OF PLAINT.

See CASES UNDER PLAINT—REJECTION OF PLAINT.

See VALUATION OF SUIT—APPEAL.
[24 W. R., 258

——— **s. 55.**

See COURT FEES ACT, 1870, s. 10.
[I. L. R., 7 All., 528

——— **s. 56 (1859, s. 36).**

See APPEAL—ACTS—ACT XXVI OF 1867.
[6 B. L. R., Ap., 11, 12
7 B. L. R., 663, 664, note

See RES JUDICATA—JUDGMENTS ON TECHNICAL POINTS . 4 Bom., A. C., 110

——— **s. 57 (1859, s. 30: Act XXIII of 1861, s. 3).**

See APPELLATE COURT—REJECTION OR ADMISSION OF EVIDENCE ADMITTED OR REJECTED BY COURT BELOW—VALUATION OF SUIT, ERROR IN—
[5 B. L. R., Ap., 15

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION—GENERALLY.
[5 Mad., Ap., 4
6 Mad., 43

See CASES UNDER PLAINT—RETURN OF PLAINT.

——— **s. 59 (1859, s. 39).**

See PLAINT—REJECTION OF PLAINT.
[2 Bom., 391: 2nd Ed., 369

See CASES UNDER PRODUCTION OF DOCUMENTS.

——— **s. 61 (Bills of Exchange Act, V of 1866, s. 14).**

See RIGHT OF SUIT—DOCUMENTS, LOSS OR DESTRUCTION OF—
[I. L. R., 2 All., 754

See PARTIES—PARTIES TO SUITS—NEGOTIABLE INSTRUMENTS.
[I. L. R., 2 All., 754

——— **s. 63 (1859, s. 39, para. 4).**

See PRODUCTION OF DOCUMENTS.
[I. L. R., 8 Bom., 377
I. L. R., 8 Mad., 373

——— **s. 66.**

See APPEAL—DEFAULT IN APPEARANCE.
[I. L. R., 8 All., 20

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877)—*continued.*

——— ss. 66 & 67 (1859, s. 42).—*Order for personal appearance.—Hearing ex parte.*—An order may be made for an *ex parte* hearing on proof of service of summons issued under section 42, Act VIII of 1859. KISTODHONE DUTT *v.* NILMONEY SINGH . . . . . Cor., 3

——— s. 69 (1859, s. 45).—*Allowance of time for appearing and answering.*—Under section 45 of the Code of Civil Procedure, a defendant in a suit is entitled to "sufficient time to enable him to appear and answer in person or by pleader." What may be "sufficient time" in a particular case can only be determined by considering the peculiar circumstances of the case. Where the time allowed is manifestly insufficient, an Appellate Court will interfere. KHADAR BHI *v.* RAHIMAN BHI [3 Mad., 167

——— s. 75 (1859, s. 49).

See SERVICE OF SUMMONS. [17 W. R., 33

——— s. 76.

See SERVICE OF SUMMONS. [I. L. R., 4 Bom., 416

——— s. 77 (1859, s. 61).

See SERVICE OF SUMMONS. [I. L. R., 9 Calc., 733

——— s. 80 (1859, s. 55).

See SERVICE OF SUMMONS. [7 Bom., A. C., 138
I. L. R., 10 Bom., 202

——— s. 82 (1859, s. 57).

See SERVICE OF SUMMONS. [I. L. R., 2 Bom., 449
I. L. R., 10 Bom., 202

——— s. 84 (1859, s. 58).

See SERVICE OF SUMMONS. [I. L. R., 2 Bom., 449

——— s. 87 (Prisoners' Testimony Act, XV of 1869, ss. 15 & 16).—*Act XV of 1869, s. 16.—Signature of jailor.—Judicial notice.*—The Court will take judicial notice of the signature of the jailor under section 16, Act XV of 1869, Prisoners' Testimony Act. TAMOR SING *v.* KALIDAS ROY [4 B. L. R., O. C., 51

——— s. 89 (1859, s. 60).

See SERVICE OF PROCESS. [15 W. R., 31

See SERVICE OF SUMMONS. [2 B. L. R., A. C., 59

——— s. 93 (Act XXIII of 1861, s. 2).

See LIMITATION ACT, 1877, ART. 179 (1871, ART. 167; 1859, s. 20)—NATURE OF APPLICATION—GENERALLY. [13 W. R., 83

See SERVICE OF PROCESS. [3 B. L. R., Ap., 25: 11 W. R., 290

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877) *continued*

1. ——— s. 97 (Act XXIII of 1861, s. 5).—*Default in depositing allowance for notice to defendant.—Dismissal of suit.*—Where the Court of first instance ordered a co-defendant to be joined in the suit, but the plaintiff failed to pay the allowance necessary for the purpose of causing a notice to be served on such co-defendant, who accordingly did not appear at the hearing,—*Held*, that the proper course for the Court to have adopted was to dismiss the suit under section 5 of Act XXIII of 1861. *Semble*,—The provisions contained in the first portion of section 5 of Act XXIII of 1861 are imperative. ABAS *v.* IBRAHIMJI . . . 5 Bom., A. C., 119

2. ——— *Default in depositing allowance for notice to respondent.*—A notice to a respondent having been returned unserved, owing to the omission on the part of the appellant to deposit the requisite tulubana in the proper Court, the default under sections 5 and 6, Act XXIII of 1861, was held to be in no way excused by the fact of its having been committed by an ignorant karpurdaz, or man of business, whom appellant chose to employ rather than a vakeel. PRAN CHUNDER ROY *v.* JUGGESSUR MOOKERJEE [11 W. R., 417

——— ss. 97, 582 (Act XXIII of 1861, ss. 5 & 6).

See SPECIAL APPEAL—ORDERS SUBJECT TO APPEAL . 7 W. R., 338

——— ss. 98, 99 (1859, s. 110).

See ss. 102, 103 (1859, s. 114). [4 Mad., 56

1. ——— *Restoration of case struck off by mistake as being compromised.*—It is incidental to every Court of Justice to be able, in its discretion, to restore to its files any case which it has itself removed therefrom undetermined. DEEN DYAL PARAMANICK *v.* RAM COOMAR CHOWDHRY . 9 W. R., 283

2. ——— *Inability to attend.—Default in appearance.*—The affidavit of a party alleging inability to attend from illness is not enough to satisfy the Court, but for this purpose there must be a medical certificate, or the affidavits of third parties. DHUNSOOK DOSS *v.* HURRY BABOO [Bourke, O. C., 115

3. ——— Case struck out for default in appearance.—Where a case had been struck out for non-attendance of the parties, an order was made for its restoration on an affidavit that the absence of the parties was owing to an understanding between them for an adjournment, and that the plaintiff had a case on the merits. The order was made apparently under section 119. DAMOODUR DOSS *v.* CHOONEE BIBEE . . Cor., 120, 123: 2 Hyde, 216

4. ——— *Practice.*—When a case has been struck out in consequence of the non-appearance of the plaintiff, the Court will grant a fresh summons. PEARY MOHUN DOSS *v.* PARBUTTY CHURN MOOKERJEE . . . 1 Ind. Jur., N. S., 40

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), ss. 98, 99 (1859, s. 110)—*continued.*

5. ——— Dismissal for default in appearance.—*Non-appearance of plaintiff.—Fresh suit.*—When a suit is dismissed for default of the plaintiff, and no appearance has been entered by the defendant, the plaintiff can, under section 110, Act VIII of 1859, bring a fresh suit after a lapse of thirty days, if it be not otherwise barred by lapse of time. NABADWIP CHANDRA SIRKAR *v.* KALINATH PAL . . . . . 3 B. L. R., Ap., 130

See POGHA MAHTON *v.* GOOBOO BABOO. [24 W. R., 114

6. ——— Default in appearance.—*Act XXIII of 1861, s. 38.—Proceedings in execution of decree.*—The provisions of section 110 of Act VIII of 1859 are properly applicable under section 33 of Act XXIII of 1861 to proceedings in execution of decree. RAJPAL *v.* CHOORAMUN . 4 N. W., 10

See SEETUL PERSHAD *v.* MAHOMED KUREEM KHAN . . . 5 N. W., 164

——— s. 99 (1859, s. 110: Act XXIII of 1861, s. 7).—*Failure of plaintiff to pay Court-fee for issue of summons.—Non-appearance of defendant.—Act VIII of 1859, s. 110.—Act XXIII of 1861, ss. 5, 7.—Fresh suit.*—Where the plaintiff in a suit failed to deposit tulubana required for the purpose of issuing summonses to certain persons whom it was proposed to make defendants in addition to the original defendants in such suit, and the Court on that ground irregularly dismissed such suit as against such original defendants by an order purporting to be made under section 110 of Act VII of 1859 on a day previous to that fixed for the hearing of such suit,—*Held,* that such order of dismissal did not preclude the plaintiff from instituting a fresh suit. GULAB DAI *v.* JIWAN RAM . I. L. R., 2 All., 318

——— ss. 99 and 97 (Act XXIII of 1861, s. 7 and s. 5).—*Neglect to deposit tulubana for application to execute decree.*—A decree-holder having allowed the term of three years to run within a very few days of expiry before applying for execution, and then, though allowed five days to pay tulubana, having neglected to do so, his application was found to be not *bonâ fide. Held,* that section 7, Act XXIII of 1861, did not apply to the case, that section applying only to suits dismissed under the provisions of section 5 of that Act. TARUCK CHUNDER CHUCKERBUTTY *v.* HURO CHUNDER CHUCKERBUTTY [15 W. R., 473

——— ss. 98, 99.—*Application that appellant be required to give security.—Order directing appellant to show cause.—Absence of counsel to support application.—Dismissal of application.—Application to restore case to register.—Civil Procedure Code, s. 647.*—A petition was made under section 549 of the Civil Procedure Code, praying that an appellant might be required to give security for the costs of the appeal. The ground upon which the petition was based was that the appellant was not pecuniarily in a position to pay the costs of the appeal if it should be dismissed. An order was passed directing the appellant to show cause why the prayer of the petitioner should not be granted. When the petition came on for hearing, no one appeared to support it or to show cause against it, and it was accordingly rejected. An application was subsequently made on behalf of the petitioner praying that the case might be restored to the register, on the ground that counsel for the petitioner was absent on the occasion of the hearing for fifteen minutes only, and that, as no one on behalf of the appellant had appeared to show cause, the petition should have been granted, and the absence of petitioner's counsel was immaterial. *Held,* that the matter was dealt with by section 98 of the Civil Procedure Code, and that section 647 of the Code, prescribing that the procedure laid down for suits should be followed as far as it could be made applicable in proceedings other than suits, made section 99 the rule by which the Court was to be guided. *Held,* also, that although no general rule could be laid down that the absence of counsel, when a case has been called on, should be treated as by itself a sufficient reason for restoring to the register either a regular suit, or an appeal, or a miscellaneous application, but each case of the kind must be dealt with according to its own particular circumstances, in the present case, taking the circumstances into consideration, an absence of counsel for fifteen minutes was not enough to preclude the Court from restoring the petition to the register. LACKMI CHAND *v.* GUTTO BAI [I. L. R., 7 All., 542

——— s. 100.—*Procedure where plaintiff appears but defendant does not.—Hearing ex parte.*—When the plaintiff in a suit appears at the hearing and the defendant does not appear, the proper procedure to follow is that prescribed by section 100 of Act X of 1877, whether the defendant has been summoned only to appear and answer the claim, or has in addition been summoned to attend and give evidence. It is not necessary, before proceeding to hear and determine a suit *ex parte* under section 100, that all the process prescribed by law for compelling the attendance of the defendant as witness should be exhausted. It is sufficient that due service of the summons upon the defendant is proved. If such proof is not given, the courses to be adopted are one or other of those mentioned in clauses (*b*) and (*c*) of section 100, according to the circumstances of the case. TARUCK NATH MULLICK *v.* JEAMAT NOSYA [I. L. R., 5 Calc., 353

——— s. 100, para. 2, and s. 101 (1859, s. 111).

See ss. 102, 103 (1859, s. 114). [4 Mad., 56

——— *Non-appearance of defendant.—Adjourned hearing.—Costs.*—A case had been placed on the undefended board in consequence of the non-appearance of the defendant, and the hearing had been adjourned at the instance of the plaintiff to a subsequent day. On that day the defendant

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 100, para. 2, and s. 101 (1859, s. 111)—*continued.*

appeared, and it was contended that he could not be heard until he had shown good cause for his previous non-appearance, or at least that the Court would put him on terms. The Court held that the defendant was entitled to appear as a right, and an application that he should pay the costs of a postponement was refused. The costs were ordered to be costs in the cause. NEWTON *v.* KURNEEDHONE [9 B. L. R., Ap., 15

——— **s. 100, para. 3 (1859, s. 113).**—*Adjournment for defendant to produce evidence where he appears although proper notice not given.*—Where, if defendant had not appeared, the Court would have been bound under section 113, Act VIII of 1859, to adjourn the hearing to a future day on the ground that sufficient time had not been given to him to appear and answer to the suit, it was held that his appearing ought not to put him in a worse position, and that it was a reasonable request made on his behalf by his vakeel that time should be given to him to produce such evidence as he could in support of his case. ABDOOL KUREEM *v.* AWLAD [18 W. R., 141

——— **s. 102.**

See APPEAL—DEFAULT IN APPEARANCE. [I. L. R., 8 All., 20

——— **ss. 102, 103 (1859, s. 114).**

See s. 108 (1859, s. 119). [2 Bom., 282: 2nd Ed., 267

See APPEAL—DEFAULT IN APPEARANCE. [I. L. R., 3 All., 292

See APPEAL—SALE IN EXECUTION OF DECREE . I. L. R., 10 Bom., 433

See LOCAL INVESTIGATION. [1 Ind. Jur., O. S., 3: W. R., F. B., 1: Marsh., 139

1. ——— **Dismissal of former suit for default.**—The plaintiff bought from *L.* an estate which *L.* had purchased from *G.* *L.* sued *G.* for confirmation of possession, and that suit was dismissed for default. The plaintiff's purchase was made pending that suit. In a suit for possession on the allegation of dispossession,—*Held*, that the plaintiff's suit was not, under section 114 of Act VIII of 1859, barred by the former decision against *L.* MAHABIR PRASAD *v.* LALA RAM [5 B. L. R., 327, note: 11 W. R., 193

2. ——— **First hearing of suit.**—*Non-appearance.—Civil Procedure Code, 1859, ss. 110, 111, and 114.—Semble,*—Section 114 as well as sections 110 and 111 of the Code have reference only to the first hearing of the suit, which may be either on the day named in the summons or on a subsequent day to which such hearing may have been adjourned. COMALAMMAL *v.* RUNGASWAMY IYENGAR [4 Mad., 56

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), ss. 102, 103 (1859, s. 114)—*continued.*

3. ——— **Abandonment of proceedings under s. 269, Act VIII of 1859.**—The abandonment of proceedings taken under section 269, Civil Procedure Code, 1859, does not amount to dismissal in default under section 114, and is no bar to plaintiff's bringing a fresh suit. FUTTEH ALI *v.* KUREEM ALI . . . . 10 W. R., 61

4. ——— **Case in execution of decree.**—The judgment-debtors having appeared and raised objections to the execution of a decree, the Court after investigation proceeded to pass judgment in the absence of the decree-holder. *Held*, that the action of the Court was taken under section 114, Code of Civil Procedure, and that the decree-holder had no right of appeal, but if aggrieved might apply for a re-hearing. KALEE KRISTO THAKOOR *v.* MAHOMED KADAR . . . 12 W. R., 428

5. ——— **Dismissal for default.**—*Party interested refused relief.*—*S.* sued to establish his claim to certain property, as the next heir of its former owner, on the death of whose grand-mother the property had been taken possession of by defendant, *P.*, and obtained a decree. Upon this, *P.* appealed, and while the case was under appeal, *S.* sold his rights to *H.*, who on application to the Court was made a party to the suit. The case was then remanded for further enquiry to the first Court, which dismissed the claim on account of default of both plaintiff and defendant. *H.* then applied for opportunity to show that he had not been in default, but his application was rejected on the ground that he was no party to the suit. He then appealed, but the Judge also ruled that he was no party. *Held* that, when the case was remanded for re-trial, some date should have been fixed for the re-hearing, which would have given the parties opportunity to appear and take measures to carry on the suit, and that the Judge's decision must be set aside, *H.* having been in reality a party to the suit. HARADHUN CHUCKERBUTTY *v.* PROTAP NARAIN CHOWDRY . 14 W. R., 401

6. ——— **Non-attendance of plaintiff.**—The dismissal of a suit for the plaintiff's non-attendance is a highly penal matter, and the punishment ought not to be inflicted unless after a distinct order to attend, and upon proof that the plaintiff has deliberately disobeyed the Court's order. PEAREE MOHUN BOSE *v.* HURISH CHUNDER GHOSE [17 W. R., 141

7. ——— **Order striking off suit.**—An order made in a suit "number kharij or struck off" is not a passing of judgment against the plaintiff by defaulit under section 114, Act VIII of 1859, precluding him from bringing a fresh suit in respect of the same cause of action. KHOOB LALL SINGH *v.* TOOLSEE SINGH . . 17 W. R., 219

8. ——— **Suit struck off for default.**—*Appeal.—Civil Procedure Code, 1859, ss. 114, 119.*—In a case struck off for default, if the order has been

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), ss. 102, 103 (1859, s. 114).—Suit struck off for default—*continued.*

properly made under Act VIII of 1859, section 114, the remedy is by motion under section 119; if improperly made, it is open to appeal. ULUCK MONEE CHOWDHRAIN *v.* PANCH COOMAR CHUNDER CHOWDHRY . . . . . **21 W. R., 124**

——— **s. 103 (1859, ss. 114, 119).**

See RES JUDICATA—JUDGMENTS ON TECHNICAL POINTS . **I. L. R., 9 Calc., 426**

See SPECIFIC RELIEF ACT, s. 9.
[I. L. R., 4 Mad., 217

——— **s. 103.**—*Suit by purchaser of mortgaged land against mortgagee for redemption.—Subsequent suit by purchaser against vendor and mortgagee for possession.—Cause of action.*—In 1879 the plaintiff purchased from one *B.* (defendant No. 1) the land in question in the suit, which was then in the possession of one *R.* (defendant No. 2) as mortgagee. *B.* undertook to pay off the mortgage, but failed to do so. In 1881 the plaintiff brought a suit for redemption against *R.* which was dismissed for non-appearance of the plaintiff under section 102 of the Civil Procedure Code (X of 1877). He subsequently filed the present suit against *B.* and *R.* to recover possession of the land. The defendant pleaded that the suit was barred under the provisions of section 103 of the Civil Procedure Code. *Held*, that the cause of action in the two suits was different, and that the present suit was not barred. RAMCHANDRA JIVAJI TILVE *v.* KHATAL MAHOMED GORI . . **I. L. R., 10 Bom., 28**

——— **s. 103 & s. 158.**—*Adjournment for defendant.—Default by plaintiff.—Dismissal of suit.—Application to restore suit.*—Where a suit was adjourned on the application of the defendant, and on the day to which the case was adjourned the plaintiff was absent and the suit was dismissed for default by an order purporting to be passed under section 158 of the Code of Civil Procedure, 1882,—*Held*, that section 158 was not applicable to the circumstances, and that the plaintiff was entitled to apply under section 103 to have the dismissal set aside. VENKATA RAMAYA APPARAU *v.* ANUMUKONDA RANGAYA NAYUDU
[I. L. R., 7 Mad., 41

——— **s. 107.**

See APPEAL—DEFAULT IN APPEARANCE.
[I. L. R., 8 All., 20

——— **s. 108 (1859, s. 119).**

See CASES UNDER APPEAL—EX PARTE CASES.

See CIVIL PROCEDURE CODE, 1882, ss. 102, 103 (1859, s. 114) . **21 W. R., 124**

See EXECUTION OF DECREE—STRIKING OFF EXECUTION PROCEEDINGS.
[I. L. R., 10 Calc., 416

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 108 (1859, s. 119) *—continued.*

See LIMITATION ACT, 1877, ART. 164 (1871, ART. 157; ACT VIII OF 1859, s. 119).
[6 W. R., Mis., 51
1 N. W., Ed. 1873, 133
7 W. R., 198, 375
B. L. R., Sup. Vol., 947: 9 W. R., 236
13 W. R., 436
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See WITNESS—CIVIL CASES—SUMMONING WITNESSES . . . **20 W. R., 3**

1. ——— **Cases in appeal.**—Section 119, Act VIII of 1859, did not apply to cases in appeal. ANONYMOUS CASE . . **1 Ind. Jur., O. S., 68.**

RAM LAL CHOWDHRY *v.* SURDAREE JAH
[W. R., 1864, Mis., 21

OMDA BEBEE *v.* ACOWRIE SINGH
[7 W. R., 425

2. ——— A party to a suit against whom a judgment *ex parte* has been passed in regular appeal, cannot prefer a special appeal from that judgment. He must first proceed under section 119 of the Civil Procedure Code to get rid of the *ex parte* judgment against him. DEVAPPA SETTI *v.* RAMANADHA BHATT
[3 Mad., 109

But *see* CHINNAPPA CHETTI *v.* NADARAJA PILLAI
[6 Mad., 1

3. ——— **Suits for rent.**—*Beng. Act VIII of 1869, s. 34.*—Section 119 of the Civil Procedure Code (Act VIII of 1859) was made applicable to rent suits under Bengal Act VIII of 1869 by the provisions of section 34 of the latter Act. DRABAMAYI GUPTIA *v.* TARRACHARAN SEN.
[7 B. L. R., 207: 16 W. R., 17

4. ——— **Decree under s. 148, Civil Procedure Code.**—Section 119 of Act VIII of 1859 did not empower a Judge to set aside a decree passed under section 148 of the same Act. COMALAMAL *v.* RAMASAWMY IYENGAR . **4 Mad., 56**

5. ——— **Validity of attachment.**—The effect of granting an application under section 119 of Act VIII of 1859, is to declare that there has not been yet a valid decree in the suit, and thereby any attachment that has issued in execution of the decree which has been set aside becomes invalid. LALA JAGAT NARAYAN *v.* TULSIRAM
[1 B. L. R., A. C., 17

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 108 (1859, s. 119)—*continued.*

6. ——— **Ground for setting aside decree.**—*Property wrongly attached.*—In an application to have an *ex parte* decree set aside, a judgment-debtor is entitled to say the property attached is not his. SOOKH MOYEE DOSSEE *v.* NURMOODA DOSSEE . . . **15 W. R., 210**

See RADHA BENODE CHOWDHRY *v.* DEGUMBUREE DOSSEE. **[B. L. R., Sup Vol., 947**

SHIB CHUNDER BHADOORY *v.* LUKHEE DEBIA CHOWDHRAIN . . **6 W. R. Mis., 51**

But he must prove the allegation

KALEE PROSAD *v.* DIGUMBER CHATTERJEE **[25 W. R., 72**

in which case the proof was held to be insufficient.

7. ——— *Fraudulent personation.*—Where a party applies, under section 119, Code of Civil Procedure, to have an *ex parte* decree set aside, on the allegation that the decree was obtained upon a petition of confession of judgment put in by a person fraudulently employed to personate him, the Court is bound to enquire into the truth of the allegation, and if it be established the decree may be set aside. KOROONAMOYEE DASSEE *v.* NOBO KISHORE SEIN . **6 W. R., Mis., 36**

8. ——— **Appearance.**—*Appearance by pleader.—Ex parte decision.*—An appearance in person or by pleader, without putting in any answer or written statement, is an appearance within the meaning of section 119 of Act VIII of 1859, and the judgment pronounced thereafter is not an *ex parte* judgment, and therefore an appeal will lie. GOLUCKBUR *v.* BISHONATH GEEREE . **Marsh., 32**

JANKEE RAM DOSS *v.* CHUNDRABUTTY DEBIA **[7 W. R., 295**

9. ——— *Appearance by pleader.—Ex parte hearing.—Held,* that the hearing of a suit in which a pleader was duly appointed on behalf of the defendant, but not instructed to answer, or instructed not to answer at all, was an "*ex parte* hearing," and that no appeal lay from a judgment passed in such suit. BHIMACHARYA BIN VYANAKATACHARYA *v.* FAKIRAPPA BIN ANNANDAPPA **[4 Bom., A. C., 206**

10. ——— *Appearance by pleader.*—Where a defendant appears in person or by pleader, the fact that the defendant is not prepared to put in a written statement does not warrant the trial of a suit *ex parte.* SIVARAJADHANI NILAKANTHAM PILLAI *v.* KUPPA GANTULU RAMIAH PANTULU . . . . . **2 Mad., 311**

11. ——— *Appearance by pleader.*—When a dully authorised vakeel of the defendant under a vakalutnamah filed in Court appears for his client on the day fixed, and the case comes on for hearing, the decree passed on such hearing is not an *ex parte* decree, even though the pleader be not sufficiently instructed to proceed with the case. DHAN BHAGUT *v.* RAMESSUR DUTT SINGH . . . . . **20 W. R., 53**

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 108 (1859, s. 119)—*continued.*

12. ——— **Sufficient cause for non-appearance.**—*Absence of counsel or attorney.*—On an application made, under section 119 of Act VIII of 1859, to set aside a judgment by default,—*Held,* that the words "prevented by any sufficient cause from appearing," should be read so as to include the case of the absence of the plaintiff's counsel or attorney, when such absence has been caused by a *bonâ fide* mistake. Under such circumstances a judgment by default under section 114 was set aside upon payment by the attorney of the plaintiff of the costs of the hearing. ORIENTAL FINANCE CORPORATION *v.* MERCANTILE CREDIT AND FINANCE CORPORATION **[2 Bom., 282: 2nd Ed., 267**

13. ——— **Absence of pleader.**—Where, in the absence of a plaintiff's pleader, the case was decided, it was held to have been decided *ex parte,* and his proper course was held to be an application for review, not a special appeal. BEEJOY GOBIND SIRCAR *v.* RADHA BENODE MISSER **[10 W. R., 348**

14. ——— **Filing written statement.**—*Ex parte case.*—Where a defendant entered appearance and filed a written statement, the case cannot be *ex parte* though the defendant does not appear in person at the hearing; and the defendant's vakeel is entitled to cross-examine the plaintiff's witnesses. PAKAKTAR *v.* JAKRIRAM BHOKATH **[11 W. R., 5**

15. ——— **Written statement, Tender of.**—*Ex parte decree.—Appeal.—Appearance of defendant.*—The Court of first instance refused to receive the defendant's written statement because it had been tendered after the day on which the Court had ordered it to be filed, and the delay had not been satisfactorily explained. The Court, however, framed the issues in the presence of the defendant's pleader, who was also allowed to cross-examine the plaintiff's witnesses. The Court made a decree in favour of the plaintiff. In appeal, the District Judge held that the decree of the first Court was *ex parte,* under section 119 of the Civil Procedure Code, and that, therefore, no appeal lay. *Held* by the High Court, in special appeal, that the decree of the first Court was not *ex parte* under the circumstances. RAGHAPA BIN HANMAPA *v.* PARAPA BIN SHIVAPA **[I. L. R., 1 Bom., 217**

16. ——— **Non-appearance at adjourned hearing, after former appearance.**—*Ex parte judgment.—Appeal.*—The provision in section 119 of Act VIII of 1859 that "no appeal shall lie from a judgment passed *ex parte* against a defendant who has not appeared," must be understood to apply to the case of a defendant who has not appeared at all, and not to the case of a defendant who, having once appeared, fails to appear on a subsequent day to which the hearing of the cause has been adjourned. ZAINUL-ABDIN KHAN *v.* AHMAD RAZA KHAN **[I. L. R., 2 All., 67: L. R., 5 I. A., 233**

KALEE CHURN DUTT *v.* MODHOO SOODUN GHOSE **[6 W. R., 86**

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 108 (1859, s. 119).—Non-appearance at adjourned hearing, after former appearance—*continued.*

17. ——————— *Appeal from ex parte decree.*—A suit was postponed on the application of the defendant's pleader, but on his applying for further adjournment at the time fixed for hearing the application was refused; the Court tried the case, the defendant not appearing and not being represented, and gave a decree for the plaintiff. An appeal was allowed, and the case was sent back for re-trial. AMRITNATH JHA *v.* ROY DHUNPUT SINGH **[8 B. L. R., 44: 15 W. R., 503**

18. ——————— *Re-hearing granted after expiration of time limited for application.—Ex parte decree.*—The plaintiff obtained an *ex parte* decree on the 5th July 1873, of which he took out execution on the 9th August. On the 11th of November, the defendant applied for and obtained a re-hearing under section 119, Act VIII of 1859. On the re-hearing his suit was dismissed by both the lower Courts on the merits. *Held*, on a special appeal to the High Court, that although section 119 provides that an order for re-hearing shall be final, it is final only in the sense that it is not by itself open to appeal, and that the plaintiff was not precluded by that section from raising the objection that the order for re-hearing was made after the time limited therein, and therefore ought to be set aside as made without jurisdiction. RUNGLALL MISSER *v.* TOKHUN MISSER . **I. L. R., 2 Calc., 114: 25 W. R., 304**

19. ——— **Suit, Adjournment of hearing of.**—*"Appearance" of defendant.—Civil Procedure Code, ss. 108, 157.*—A Munsif, before whom a suit was pending, fixed, by way of adjournment, a particular date for its disposal. Upon the date so fixed, it was necessary to take evidence upon issues of fact which had previously been settled. The plaintiffs appeared on that day. The defendants did not appear, but there was in Court a pleader who had been instructed by the two principal defendants at the outset, and who had filed his vakalutnama. There was nothing to show that he had ever received any other instructions whatever, either as to the facts of the case or the conduct of the defence, or that the defendants had done anything beyond giving the pleader the instructions above referred to. Under these circumstances the plaintiffs gave their evidence and the Munsif decreed the claim. *Held* that, under the circumstances stated, the defendant's pleader must be taken not to have been in Court on the date fixed, for the purpose of defending the suit on behalf of the defendants, inasmuch as, upon that part of the case, he had not been instructed; that it was therefore a fair inference that the defendants did not appear, and the case was disposed of under section 157 of the Civil Procedure Code; and that, under these circumstances, the provisions of section 108 were applicable, and the decree was an *ex parte* decision, which it was open to the Munsif to reconsider. *Hira Dai* v. *Hira Lal, I. L. R., 7 All., 538*, followed. RAMTAHAL RAM *v.* RAMESHAR RAM . **I. L. R., 8 All., 140**

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 108 (1859, s. 119)—*continued.*

20 ——— **Absence of defendant on adjourned hearing.**—*Non-appearance.*—Section 119, Act VIII of 1859, does not apply to a defendant who is only absent on an adjourned hearing. It relates only to one who has never appeared. GORACHAND GOSWAMI *v.* RAGHU MANDAL **[3 B. L. R., Ap., 121: 12 W. R., 169**

21. ——— **Non-appearance of defendant after filing written statement.**—A defendant filed a written statement in a suit, and when the case was called on for final disposal, an application was made by counsel on his behalf for an adjournment; but the application was refused, and no one appearing for him, the case was proceeded with, and a judgment was obtained by the plaintiff. The defendant afterwards applied for an order setting aside the judgment, on the ground that he was prevented from appearing when the suit was called on. *Held*, that the application was within section 119 of Act VIII of 1859, and the Court had no power in granting the order to impose terms as under section 111. ADMINISTRATOR GENERAL OF BENGAL *v.* LALA DYARAM DOSS . . . **6 B. L. R., 688**

DOYAL MISTREE v. KUPOOR CHAND **[I. L. R., 4 Calc., 318: 3 C. L. R., 482**

22. ——— **Default in appearance after adjournment.**—The parties to a suit appeared on the day fixed for the first hearing. On the application of defendant's vakeel the hearing of the suit was adjourned in order to enable them to obtain certain documents from the Collector's office and afterwards put in written statements. This they failed to do on the day to which the hearing was adjourned, and when the suit came on for final hearing they were still in default, and also failed to appear in person or by vakeel. A decree was given for the plaintiff. *Held*, that the decree of the original Court was not an *ex parte* decree under section 147 of the Code of Civil Procedure for non-appearance, but a decree under section 148, and was therefore appealable. RANGASAMY MUDELLIAR *v.* SIRANGAN. THANDRAYA GOUNDEN *v.* SITHAIYAN . . **4 Mad., 254**

23. ——— **Absence at adjourned hearing.**—*Putting in written statement.*—A mere formal appearance in Court with no further action than the putting in a written statement does not prevent a decision in the absence of the defendant from being regarded as an *ex parte* decision under the Civil Procedure Code. PURUS RAM *v.* JUYUNTEE PERSHAD . . . **1 N. W., Ed. 1873, 154**

24. ——— **Ex parte decree against one defendant.**—*Right to reopen the whole case.—Act X of 1859, s. 58.*—When a suit has been decreed against several defendants, and one of them, who was not present at the hearing, obtains a re-hearing and files a written statement in which for the first time the objection is taken that the suit could not have been proceeded with, inasmuch as plaintiff had improperly joined two distinct causes of action

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 108 (1859, s. 119).—Ex parte decree against one defendant—*continued.*

against two different individuals, the Court is not justified in reopening the whole case. Section 119, Act VIII of 1859, does not contemplate the setting aside of that portion of the decree in such a case which refers to the other defendants. Section 58, Act X of 1859, treated as an authority by analogy in such a case; and section 119, Act VIII of 1859, interpreted. HURO KRISHNO DASS *v.* MOTEECHAND BABOO . . . . **8 W. R., 260**

See, however, NISTARINEE DOSSEE *v.* DEBNATH BOSE . . . **20 W. R., 286**

and BROJONATH SURMAH CHUCKERBUTTY *v.* ANUND MOYEE DEBIA CHOWDHRAIN **[7 W. R., 237**

25. ——— **Sufficient cause for non-appearance.**—*Mistake.*—On appeal from the rejection of an application made, under section 119 of Act VIII of 1859, to set aside a judgment by default, —*Held*, that in order to satisfy the Court, "that the plaintiff was prevented by any sufficient cause from appearing," it was enough to show that there had been a *bonâ fide* mistake, which was not unreasonable. HARDATRAI SHRIKISANDAS *v.* VICTORIA FINANCE AND BULLION ASSOCIATION **[3 Bom., O. C., 60**

26. ——— **Non-appearance of one of several defendants.**—*Ex parte decree.*—In a case in which one of many defendants, who was made a party to the suit, did not appear, and a decree for possession was passed without any such special orders regarding that defendant as might have been passed under section 116, Act VIII of 1859,—*Held*, that no *ex parte* judgment was passed against her, and she could not reopen the suit under section 119, Code of Civil Procedure. SHEELABUTTY DEBIA *v.* TARINEE CHURN CHUCKERBUTTY . . **9 W. R., 597**

27. ——— **Right of party who has not come in to take benefit of order of dismissal of suit.**—A suit having been decreed against a number of defendants, some of whom did not appear, one (*R.*) of the latter applied for a new trial under section 119, Act VIII of 1859, and the case was remanded by the Judge to the Sudder Ameen. On the last day of the new trial, another (*K.*) of the defendants, against whom judgment had been given *ex parte*, tendered a written statement in which it was alleged that summons had not been duly served upon her. The statement was received, and the suit was dismissed *in toto*. In appeal, the Principal Sudder Ameen reversed that part of the decree which related to *K.*, on the ground that she had presented no petition in conformity with section 119 of the Code. *Held*, that *K.* was properly before the Sudder Ameen's Court, and was entitled to the benefit of the order of dismissal, and that the Principal Sudder Ameen went on too narrow a ground, and should have tried the case on its merits. KOOBOONAMOYEE DEBIA *v.* NUBOKISHEN MOOKERJEE . . . **11 W. R., 18**

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 108 (1859, s. 119)—*continued.*

28. ——— **Decree obtained on document afterwards alleged to be forged.**—*Ex parte decree.*—*W.* obtained a decree against *D.* and others, founded upon a solehnamah said to have been put in by them. Certain property belonging to *D.* was attached in execution, and a notice of sale proclaimed. Thereupon *D.* came into Court alleging that she had never had notice of the original suit, and that the solehnamah put in, as far as she was concerned, was a cheat and a forgery, and asked for an enquiry, and to be relieved from the execution. *Held*, that the decree was not an *ex parte* decree, and could not therefore be disturbed by a resort to the provisions of section 119, Act VIII of 1859. HEMMO MOYEE DAYEE *v.* WATSON & Co. . **14 W. R., 297**

29. ——— **Insufficient reason for non-appearance.**—*Ex parte decision.*—Where defendants, summoned under Section 41 of Act VIII of 1859, did not appear on the day fixed for them to appear and answer, and their reasons for non-attendance not being considered sufficient, they were not allowed to appear in the case,—*Held*, that the lower Appellate Court was right in refusing to hear an appeal from that decision. JOY PROKASH SINGH *v.* MEGHRAJ SINGH . . . . . **12 W. R., 207**

30. ——— **Ground for setting aside ex parte decree.**—*Order for review.*—Where after an *ex parte* decree defendant appeared earlier than fifteen days after service of process, and swore that no summons had been served on him in the case which led to the *ex parte* decree, and that the contract under which the case had been decreed against him had been broken by the plaintiff himself, it was held that good and sufficient cause was shown for defendant's previous non-appearance, and a *primâ facie* case had been made out to lead to the conclusion that there had been failure of justice. *Held*, that as this evidence was given in the presence of the mooktears on both sides, the Court's order that the case should be entered on the register of cases was a proper order admitting the review. AUNUND MOYEE DASSEE *v.* AUNUD SOONDUR MOZOOMDAR . **13 W. R., 237**

31. ——— **Defendant showing no sufficient cause for non-appearance.**—*Appearance by vakeel.*—*Ex parte case.*—One of several defendants in a suit did not enter appearance until nearly a month after the date fixed for the first hearing, when he applied by a vakeel for leave to be heard in answer, under the last part of section 111, Code of Civil Procedure. In the absence of good and sufficient cause for previous non-appearance, his application was rejected and an *ex parte* judgment given against him. After this he applied, at the instance of the Appellate Court, for a re-hearing, on the ground that the summons had not been duly served upon him. This application was rejected and the order of rejection was upheld on appeal. In special appeal he contended that the case did did not fall within section 119, and that he was entitled to have the regular appeal previously preferred determined upon the record as it stood, nothwithstanding his prayer had been rejected

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 108 (1859, s. 119).—Defendant showing no sufficient cause for non-appearance—*continued.*

under section 113. *Held*, that the mere fact of the special appellant having appeared by a vakeel in the way mentioned above, could not be taken as an appearance within the meaning of section 119, and was not sufficient to prevent the Court from passing a judgment *ex parte* against him. MAHOMED HOSSEIN *v.* MUNTOZUL HUQ . . . **18 W. R., 400**

32. ——— Cause for non-appearance at adjourned hearing.—*Appearance at first hearing.*—Where a defendant was prevented by the fraud of the plaintiff from appearing on the last day of hearing, the suit was held to have been decided *ex parte*, notwithstanding that the defendant had been represented on the first day of hearing; and the first Court was held to have done right in restoring the case to the file under Act VIII of 1859, section 119. DENOO PAROYE *v.* CHINTA MONEE CHOWDHRY **[18 W. R., 457**

33. ——— Prevention from appearing by sufficient cause.—*Ex parte decree against minors.*—An *ex parte* decree having been granted in a suit against *A.* personally and as guardian of her infant sons, the infants subsequently applied, under section 119 of Act VIII of 1859, to set aside the decree, on the ground that the summons had not been duly served upon *A.*, and the application was dismissed. On appeal to the High Court,—*Held*, that although so far as the decrees made *A.* personally liable the Court had no power to interfere, yet as the infants were not responsible for their non-appearances, it might be said that they had been prevented by "sufficient cause from appearing," and that the decrees might be set aside under section 119 of Act VIII of 1859 (Act X of 1877, section 108) as against them. KESHO PERSHAD *v.* HIRDOY NARAIN . . **6 C. L. R., 69**

34. ——— Dismissal for default of prosecution.—*Absence of witnesses.*—The plaintiff's witnesses not being present on the day fixed for the hearing of the plaintiff's suit, it was dismissed for default of prosecution under section 114 of the Code of Civil Procedure, and was afterwards re-admitted under section 119. *Held*, that the default not being of the nature described in section 114, the suit was wrongly dismissed under that section, and for the same reason that the suit was improperly dismissed under that section, it was also improperly re-admitted under section 119. MAHOMED AZEEMOOLLA *v.* ALI BUKSH . . . . **5 N. W., 75**

See also RAM SUNDAR SINGH *v.* RAM BANDHAN SINGH . **7 N. W., 126**

35. ——— Dismissal for default of case in execution of decree.—*Appeal.*—The remedy, when a case in execution of a decree is disposed of in the absence of the judgment-debtor, is that provided by section 119 of Act VIII of 1859, and not an appeal. SHEETUL PERSHAD *v.* MAHOMED KUREEM KHAN . . . . . **5 N. W., 164**

RAJPAL *v.* CHOORAMUN . . **4 N. W., 10**

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 108 (1859, s. 119)—*continued.*

36. ——— Procedure on grant of new trial of ex parte case.—Where the lower Appellate Court admitted an application under section 119 for re-trial of a case which had been decided *ex parte* by the Munsif, it was held to have done right in sending for the record, in order that the case as a suit should be heard and tried by the Appellate Court; the object of the law being that a suit should assume a complete form and go to a full trial, and not be divided between different Courts. KHOOB LALL SAHOO *v.* KADIR BUKSH . . **15 W. R., 431**

37. ——— Ex parte decree passed on appeal.—*Procedure.*—*M.* sued *A.* and others on a bond-debt, and obtained a decree against *A.* alone. He appealed to the District Judge, who passed a decree declaring all parties to be liable jointly. On the decree-holder taking out execution, two of the defendants applied to the Subordinate Judge under Act VIII of 1859, section 119; and their application being rejected, they applied to the District Judge, who referred them to the High Court. *Held*, that the Subordinate Judge had no jurisdiction, but the proper course for the parties was to apply to the District Judge under section 119. ZIMUTUNNISSA BIBEE *v.* MUDDUN MOHUN PAL . . **22 W. R., 537**

38. ——— "Appearance" of defendant under Civil Procedure Code, sections 100, 101.—*Ex parte decree.*—The first hearing of a suit was fixed for the 12th December 1883, on which day the defendant did not appear, and the case was adjourned to the 18th December, and, as the defendant did not then appear, a decree was passed in favour of the plaintiff. A vakalutnama had been previously filed on the defendant's part, and he had also objected to an application filed by the plaintiff for attachment of the defendant's property before judgment. *Held*, that these acts on the defendant's part did not constitute an "appearance" by him within the meaning of section 100 of the Civil Procedure Code, which referred to an appearance in answer to a summons to appear and answer the claim on a day specified, issued under section 64; that the decree was therefore *ex parte* within the meaning of sections 100 and 108, and an appeal consequently lay to the High Court under section 588, clause (9), from an order rejecting an application to set the decree aside. *Zain-ul-abdin Khan* v. *Ahmad Raza Khan, I. L. R., 2 All., 67: L. R., 5 I. A., 233*, distinguished. *The Administrator General of Bengal* v. *Dyaram Das, 6 B. L. R., 688; Bhimacharya* v. *Fakirappa, 4 Bom., 206*; and *Bibee Haloo* v. *Atwaro, 7 W. R., 81*, referred to. *Per* MAHMOOD, *J.*—That the Court on the 18th December seemed to have acted under section 157 of the Civil Procedure Code, and, choosing the first of the alternative courses allowed by that section, acted under Chapter VII of the Code, and passed an *ex parte* decree under the provisions of section 100 of that chapter. HIRA DAI *v.* HIRA LAL **[I. L. R., 7 All., 538**

39. ——— Reversal of Judge's order by High Court.—*Appeal.*—A suit having been

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 108 (1859, s. 119).—Reversal of Judge's order by High Court—*continued.*

decreed *ex parte*, defendant applied for a revival thereof, under section 119, Code of Civil Procedure. The application having been rejected, defendant appealed, and the first Court was directed to enquire whether there was sufficient cause for the non-appearance of the defendant. This was done, and the defendant was allowed to defend the suit. The plaintiff then appealed to the Judge, who reversed the last order. Both parties then went back to the Munsif, who, on 26th April 1867, recorded a proceeding that the original *ex parte* order was to stand In the meantime the defendant appealed to the High Court, which reversed the Judge's order. *Held*, that the effect of the High Court's order was to render valid the Munsif's order admitting the defendant to defend the suit, and that no application for review was necessary on the part of the defendant. *Held*, that the High Court's order being a final decision by way of appeal on a question which arose in the suit, could not be interfered with, except by the Privy Council. NUBO KRISTO MOOKERJEE *v.* NADIAR CHUND HATTEE [12 W. R., 374

——— **s. 110 (1859, s. 120).**

See WRITTEN STATEMENT. [I. L. R., 5 Bom., 400

——— **s. 111 (1859, s. 121).**

See CASES UNDER SET-OFF.

——— **s. 112 (1859, s. 122).**

See WRITTEN STATEMENT. [3 B. L. R., Ap., 11
11 W. R., 171
12 B. L. R., Ap., 19

——— **ss. 114 & (115 1859, s. 123).**

See WRITTEN STATEMENT. [Bourke, O. C., 153
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——— **s 116)1859, s. 124).**

See WRITTEN STATEMENT. [3 B. L. R., Ap., 11
12 B. L. R., Ap., 19

——— **ss. 118, 119 (1859, s. 125).**—*Non-appearance of defendant.—Appearance by pleader.*—Where defendants summoned under section 41, Act VIII of 1859, did not appear on the day fixed for them to appear and answer, and their reasons for non-attendance not having been considered sufficient, they were not allowed to appear in the case,—*Held*, that the Court of first instance was justified in disposing of the case in their absence, and that section 125, Act VIII of 1859, contemplates a case in which a party who has appeared at the proper time afterwards appears by pleader. JOY PROKASH SINGH *v.* MEGHRAJ SINGH . . 12 W. R., 207

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 120 (1859, s. 127).

See s. 177 (1859, s. 170) . 20 W. R., 165
[22 W. R., 270

1. ——— **Dismissal of suit on inability to answer material questions.**—The plaintiff's mooktear being unable to answer certain questions necessary for the statement of the proper issues, the plaintiff was called upon either to appear personally and reply to the Court's queries, or to send some one who could reply. Having done neither,—*Held*, that the lower Court was competent to dismiss the suit under section 127, Act VIII of 1859. NILMONEE SINGH DEO *v.* RAM HUREE MISSER [2 W. R., 161

2. ——— **Inability of pleader to answer material questions.**—*Materiality of absent witnesses.*—Instead of dismissing plaintiff's suit on account of his pleader's inability on the day of trial to prove which of his absent witnesses, against whom he had applied for further processes to be issued, were material, the proper course for the Judge was to allow the plaintiff a certain time to produce evidence upon this point, upon payment by him of all the costs of adjournment. PEAREE MOHUN BOSE *v.* HURISH CHUNDER GHOSE . 17 W. R., 141

——— **s. 121.**

See PRACTICE—CIVIL CASES—INSPECTION AND PRODUCTION OF DOCUMENTS. [I. L. R., 5 Calc., 707
I. L. R., 10 Calc, 505

——— **s. 129.**

See INSPECTION OF DOCUMENTS. [I. L. R., 8 All., 265

——— **s. 130.**

See INSPECTION OF DOCUMENTS. [I. L. R., 2 Bom., 453

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, S. 622. [I. L. R., 9 Mad., 256

——— **s. 131.**

See INSPECTION OF DOCUMENTS. [I. L. R., 10 Calc., 56

——— **s. 132.**

See INSPECTION OF DOCUMENTS. [I. L. R., 5 Bom., 467

——— **s. 133.**

See INSPECTION OF DOCUMENTS. [I. L. R., 10 Calc., 56
I. L. R., 11 Calc., 655

——— **s. 135.**

See INSPECTION OF DOCUMENTS. [I. L. R., 6 Bom., 572
I. L. R., 10 Calc., 808

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 136.

See APPEAL—EX PARTE CASES.
[I. L. R., 7 All., 159

See CONTEMPT OF COURT.
I. L. R., 7 Bom., 1, 5

See INSPECTION OF DOCUMENTS.
[I. L. R., 8 All., 265

See PRACTICE—CIVIL CASES—INSPECTION AND PRODUCTION OF DOCUMENTS.
[I. L. R., 9 Calc., 923

——— *Exercise of powers given by section.*—The powers given to the Court by section 136 of Act X of 1877 should not be exercised except in extreme cases. SHAM KISHORE MUNDLE *v.* SHOSHI BHOOSAN BISWAS
[I. L. R., 5 Calc., 707: 5 C. L. R., 509

1. ——— s. 137 (1859, s. 138).—*Application for production of documents in another case.—Discretion of Court.—Per* NORMAN, *C. J.*—When a proper application was made to a Judge under section 138, Act VIII of 1859, to send for, from the records of his own Court, papers which would be evidence in the case before the Court, the Judge had no discretion in the matter, but the section must be treated as giving a power which the Judge was bound to exercise,—the principle being that where a statute conferred an authority to do a judicial act in a certain case, it was imperative on those authorised to exercise the authority when the case arose. *Per* KEMP, *J.*—It was in the discretion of the Court to send for them or not. *Per* STEER, *J.*—Though the Judge was not bound to send for them, it would be unfair not to do so. RUGHOONATH BOSE *v.* OOMED ALI . W. R., F. B., 177

2. ——— Papers specially mentioned.—*Production of record.*—Under section 138 a Court was not bound to send for the whole record, but only for such papers as might be specially mentioned in the application. JANOKEE BEEBEE *v.* HABEEBUL HOSSEIN . . . W. R., 1864, 272

3. ——— Decision on document sent for from record of another case.—A Judge may send for and inspect any document filed with any record in his Court, and there is nothing in the Code of Procedure to prevent his basing his decision, wholly or mainly, on such document. BUNWAREE LALL *v.* KISTO BEHARY ROY . . 1 W. R., 63

4. ——— Admissibility of documents from record of another case.—*Held*, that a Civil Court which inspects the records of another case under section 138 of Act VIII of 1859, can only use as evidence such documents as are otherwise unobjectionable and admissible for or against either of the parties to the suit. NARAPPA BIN APPA HEGDI *v.* GAPAYA BIN KAPAYA
[2 Bom., 361: 2nd Ed., 341

5. ——— Objection of Judge to send for record in another case.—A Judge was not bound, under section 138, Act VIII of 1859, upon the application of any of the parties to a suit, to send for the record of any other suit. HEERAMUN ROY *v.* TAHOOR ENAM . . . 7 W. R., 109

CORAAH *v.* GOOROO CHURN GHOSE
[18 W. R., 13

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 137 (1859, s. 138)—*continued.*

6. ——— Omission to summon Registrar.—In a suit on a registered bond in which defendant asked the Court to send for the registration books, with a view to prove the non-existence of the bond at the time it purported to be certified,—*Held*, that as defendant had failed to summon the Deputy Registrar, it was not necessary for the Judge to use the discretion given in section 138, Act VIII of 1859. MONMOHINEE DABEE *v.* SREEDHAMA CHURN RANNA
[14 W. R., 302

7. ——— Records from Court of Wards.—Where records from a Government office are required as evidence, it is for the Court to send for them; but papers required from a Court of Wards, which is not a Government office, must be obtained by the party who needs them, by means of a summons on the proper officer. SOBBEE JHA *v.* SHOSHEENAUTH JHA . . . 15 W. R., 150

8. ——— Public record.—*Cazee's book.*—A cazee's book is not strictly an official record. Before a document could be inspected under the provisions of section 138, Code of Civil Procedure, which applied to Appellate as well as Original Courts, the Court was bound to see whether it came under the description of a public record. JUGGERNATH SAHOO *v.* MAHOMED HOSSEIN . . 15 W. R., 173

9. ——— Sending records sent for by another Court.—*Discretion of Court.*—A Court had no discretion to refuse to send records which had been sent for by another Civil Court under section 138 of Act VIII of 1859. IN THE MATTER OF GOLAP COOMARY DASSEE *v.* SOONDUR NARAIN DEO
[4 C. L. R., 36

——— ss. 138 & 139 (1859, s. 128).

1. ——— Documentary evidence.—Parties are required to have with them in Court, at the first hearing of the suit, all their documentary evidence, but need not file it then, unless it is called for. MAHBUB HOSSEIN *v.* PATASU KUMARI
[1 B. L. R., A. C., 120: 10 W. R., 179

2. ——— Filing documents with plaint.—*Translation of document.*—By section 128 of Act VIII of 1859, it was not necessary to file with the plaint all the documents that the plaintiff intended to give in evidence. A document which is to be given in evidence need not be translated previous to the hearing of the case. KAMEENEE DOSSEE *v.* HURROMONEY DOSSEE
[Bourke, O. C., 91: Cor., 151

3. ——— Documents produced but not filed.—This section applies to documents which have been produced at the filing of the plaint but not filed, and in this way is not incompatible with section 39. PREMSOOKH CHUNDER *v.* RAJKISTO MUTTER
[1 Hyde, 145

4. ——— Exhibits.—Documents produced in Court under section 128, Act VIII of 1859, become, upon and by reason of their production, exhibits in the case. RAOJEE GUNESH *v.* RAO JALEE PERSHAD
[8 W. R., 91

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), ss. 138 & 139 (1859, s. 128)—*continued.*

5. ——— **Right to adduce fresh documentary evidence after issues settled.**—*Ground for rejecting or admitting.*—Under section 128, Act VIII of 1859, the parties, though not entitled as of right to adduce fresh documentary evidence after the issues in the case are settled, may yet tender such evidence, stating the grounds upon which it was not tendered at an earlier stage; and the Judge may receive or reject such evidence, but the grounds on which he acts should be stated on the record. WATSON & Co. *v.* KUNHYE BAHADOOR [9 W. R., 294

6. ——— **Documents not filed with record owing to mistake of Court's officers.**—A Civil Court is bound to receive as evidence authenticated documents named in the plaint, and filed by the plaintiff's pleader on the day appointed for fixing issues, even though, through inadvertence of the amlah, they were not made part of the record. RAM RUNJUN CHUCKERBUTTY *v.* ANUND COOMAR MOOKERJEE . . . . . 15 W. R., 323

7. ——— **Documentary evidence, Production of.**—A party is bound, under Act VIII of 1859, section 128, to be prepared at all points with his documentary evidence, and as soon as the Court has framed the issues which it thinks proper to lay down, at once to tender (if called upon) the documentary evidence bearing thereon. The words "first hearing in the suit" are defined by section 139, and do not mean the first hearing on the issue. GOUR HUREE CHOWDHRY *v.* PRAN HUREE LAHA [21 W. R., 42

8. ——— The main object of section 128 was to prevent parties from manufacturing evidence pending the trial, to meet unexpected exigencies, and not to shut out true, good, and valuable evidence, merely because the party had, without good and assignable cause, abstained from bringing it before the Court at the first hearing. IKRAM HOSSEIN *v.* RAM LOCHUN DUTT . 23 W. R., 29

——— **s. 140 (1859, s. 129).**

See SUPERINTENDENCE OF HIGH COURT—CHARTER ACT, s. 15 . 18 W. R., 511

1. ——— **Opportunity for Court to inspect evidence.**—A Court cannot be said to have received documents as admissible in evidence when, for want of time to inspect and consider them, it orders them to be filed; nor would it be wrong in law in rejecting or returning them after proper inspection; the object of section 129, Act VIII of 1859, being that papers should be produced in a regular manner, and inspected by a Court at its convenience. SOODUKHINA CHOWDHRY *v.* RAJ MOHUN BOSE [11 W. R., 350

2. ——— **Reception on record of irrelevant and inadmissible documents.**—Attention drawn to the neglected provision of the Code of Civil Procedure, 1859 (section 129), which prohibits

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 140 (1859, s. 129).—Reception on record of irrelevant and inadmissible documents—*continued.*

Courts from receiving on the record of a case, without restriction and without discrimination, documents which are either irrelevant or inadmissible. ISSUR CHUNDER GHOSE *v.* RUSSEEK LAL MUNDUL [11 W. R., 576

3. ——— **Admission and rejection of documents.**—At the stage of a suit referred to in Act VIII of 1859, sections 128, 129, and 132, the Court ought to sort the documents tendered into two classes: those relevant and admissible, and those irrelevant and inadmissible; and to reject *in limine* all documents which are evidently such as cannot be used as evidence in the suit. The admission of a document at this stage does not imply that it is evidence, but merely declares that it may, if properly treated, be used as evidence in the suit, and filing it as a part of the record does not confer any authority on such document or operate to dispense with any proof of genuineness. Courts of first instance ought to specify what portions of the documentary evidence on the record they have accepted, and what portions they have refused to listen to. All the proceedings of the parties in respect of the use of documentary evidence are matters to be recorded on the proceedings of the Court by the Judge's own note. TUMEEZODDY *v.* BUSARUT . . . . . 21 W. R., 76

——— **s. 141 (1859, s. 132).**—*Production of documents.—Endorsement.*—Exhibits produced in Court ought to be endorsed with the name of the person who produces them as required by section 132 of Act VIII of 1859. BISRAM SINGH *alias* BISHEN SINGH *v.* INDURJEET KOONWAR . 6 W. R., 1

——— **ss. 146, 147 (1859, s. 139).**

See CASES UNDER ISSUES.

——— **s. 147 (1859, s. 139).**

See CASES UNDER ISSUES.

——— **s. 149 (1859, s. 141).**

See CASES UNDER ISSUES.

——— **ss. 154, 155 (1859, s. 145).**

1. ——— **Power of Sitting Judge.**—*Practice.*—When the issues are framed and the plaintiff and defendant are ready and willing to proceed, the Sitting Judge has power under section 145 to proceed to the hearing and final disposal of the case. ANONYMOUS . . . 1 Ind. Jur., O. S., 14

2. ——— **Procedure where day is fixed for settlement of issues.**—When a day is fixed for the settlement of issues in a case, the Court ought not to proceed to dispose finally of the case except with reference to the specific circumstances detailed in section 145, Act VIII of 1859. JEHAWAN *v.* GOOLAB KHAN . 1 N. W., 97: Ed. 1873, 147

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), ss. 154, 155 (1859, s. 145)—*continued.*

3. ——— **Adjournment of case.**—*Necessity of further evidence.*—Although a case may have been set down for final disposal, if it be a case in which further evidence is required, the Judge is bound, under section 145, Act VIII of 1859, to adjourn the case, unless he is satisfied that the plaintiff has, without sufficient cause, failed to produce his evidence. AMEER ALI *v.* RAM BAHADOOR SINGH [7 W. R., 84

4. ——— **Non-production of evidence at proper time.**—The great object of the Procedure Code in requiring a day to be fixed for the hearing of a case and all the evidence to be adduced on that day, is that parties may thus be confronted with each other, and the whole evidence on either side be at one and the same time before the Court. Where a party fails to produce his documents at the proper time, a Court commits no error in law in refusing to send for them subsequently, if not satisfied that they are necessary for the ends of justice. SOBBEE JHA *v.* SHOSHEENATH JHA . . 15 W. R., 150

——— s. 156 (1859, s. 146).

1. ——— **Adjournment of case.**—*Sufficient cause.—Suit not fixed for hearing.*—Without defining what is the right mode of exercising the discretion vested in the Judge with regard to adjournments, the High Court held that the Judge ought, under section 146 of the Code, to have granted an adjournment in this case when it was applied for, on the first day after the Judge's return to the district that the applicant really had an opportunity of appearing before the Judge, in order to enable the applicant to file his documents and produce his witnesses; section 147, Act VIII of 1859, not applying to a case where no day has been fixed for the hearing of the case. SEETARAM SAHOO *v.* GOLAM SAHOO BAHADUR 18 W. R., 325

2. ——— **Ground for adjournment.**—*Medical certificate.*—Where defendant had known for some time previously that his case was coming on and what evidence was necessary, a medical certificate, to the effect that he was confined to his bed by lumbago, was held to be no sufficient ground for adjournment. ELIAS *v.* JORAWAR MULL . 24 W. R., 202

——— s. 158 (1859, s. 148).

1. ——— **Remand by Appellate Court.**—The terms of section 148, Act VIII of 1859, do not prevent an Appellate Court, on good and sufficient cause shown, from remanding a case disposed of thereunder, in order that justice may be done between the parties. LOCHUN MUNDUL *v.* WUZEER PURAMANICK . . 13 W. R., 464

2. ——— *Fresh evidence.*—When a case is remanded by an Appellate Court under section 148, Act VIII of 1859, with a direction that it shall be proceeded with, the Court of first instance has no authority to receive new evidence, nor the lower Appellate Court to decide thereupon. PADMA LOCHUN *v.* SIRDAR KHAN . 3 I. L. R., Ap., 91

S. C. PUDDO LOCHUN *v.* SIRDAR KHAN [12 W. R., 23

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 158 (1859, s. 148)—*continued.*

3. ——— **Adjournment for final disposal.**—*Dismissal of suit after adjournment.—Non-appearance of plaintiff.*—In a suit, issues having been settled, the final hearing of the suit was adjourned to a fixed date for final disposal. On that date plaintiff did not appear, and the suit was dismissed under section 148 of Act VIII of 1859. *Held* that, as this was not a case which had been adjourned in favour of either party to enable him to "produce his proofs or cause the attendance of his witnesses," the order was not one which could properly be made. RYALL *v.* SHEERMAN [I. L. R., 1 Mad., 287

4. ——— **Dismissal of suit after adjournment.**—The first hearing of a suit took place on the 16th November, when issues were settled, and the final hearing of the suit was fixed for the 22nd January following. On the 22nd of January the plaintiff changed her vakeel, and applied by the new vakeel for a summons for a witness, and on the 23rd, the new vakeel stating that owing to the absence of his witnesses he was not prepared to go on with the case, the Judge dismissed the suit. *Held* that, under section 148 of the Civil Procedure Code, the Judge was justified in dismissing the suit. COMALAMMAL *v.* RANGASAWMY IYENGAR . . 4 Mad., 56

5. ——— The first hearing of a suit was fixed for the 10th July 1867. Neither of the parties nor their vakeels appeared. Thereupon the Court dismissed the suit under section 148 of the Civil Procedure Code, but afterwards, upon the application of the plaintiff's vakeel, restored it to the file for hearing, under section 119. Plaintiff obtained further adjournments to produce witnesses, the last being an adjournment to the 28th September. On that day the vakeels of both parties appeared, but no witnesses, and the Court again dismissed the suit under section 148, for failure to produce witnesses. On the 22nd of October the suit was again, under section 119, restored to the file on the application of the plaintiff's vakeel, and a decision was afterwards come to for the plaintiff upon the merits. On appeal the last-mentioned decree was reversed, and the decree passed under section 148 (whether the first or second decree was not specified) upheld, upon the ground that, as section 119 was inapplicable to a decree passed under section 148, the Court of first instance had acted without jurisdiction in restoring the suit to the file. *Held*, on special appeal, reversing the decision of the lower Appellate Court, that the first decree of dismissal being a decree which might have been made under section 147, was one to which section 119 might be applied. That the second decree of dismissal was one to which section 148 alone applied, consequently one subject only to review or to an appeal, and the proceeding had in October 1867 being substantially an application for review, was one which the Court had power to grant. AMBALAVANA PADEIYATCHI *v.* SABRAMANIA PADEIYATCHI [6 Mad., 262

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 158 (1859, s. 148)—*continued.*

6. ——— **Refusal to allow examination of defendant as a witness.**—*Dismissal in default of other evidence.*—The Court of first instance refused to grant plaintiff's application to be allowed to examine second defendant as a witness on her behalf, thinking the grounds of such application insufficient for the exercise of its discretion under section 162 of the Civil Procedure Code. On the adjourned date of hearing, plaintiff failed to produce any other witness, and the suit was dismissed under section 148. On regular appeal, the Civil Judge considered that the Court of first instance ought not to have refused plaintiff's application, but held that the refusal was a final order not open to question in appeal. On special appeal,—*Held,* that the Civil Judge was wrong on the latter point; that if the plaintiff had been prevented from examining the second defendant on sufficient grounds, she had not committed default under section 148; that the decree on the finding of the Civil Court was not maintainable without enabling plaintiff to examine second defendant; and that that finding was conclusive in the special appeal. The decrees of both the lower Courts were consequently set aside and the case remanded. LATCHMANA RAU SAIB *v.* ROGUNATHA RAU [6 Mad., 299

7. ——— **Dismissal of suit for non-attendance of witnesses.**—The plaintiff, upon whose application the Court of first instance adjourned the hearing of the suit, failed to cause the attendance of his witnesses on the day fixed for the further hearing, and the Court of first instance threw out the suit, stating that it did so under section 110, Act VIII of 1859. Both parties to the suit were represented on that day by their pleaders. The Court of first instance subsequently entertained and rejected an application under section 119 for a re-hearing. The lower Appellate Court admitted and allowed an appeal against the order of the Court of first instance. Both the orders of the lower Courts were reversed, it being held that the Court of first instance must be regarded as having acted under section 148 of the Code. KASHEE PERSHAD *v.* DEBI DAS [7 N. W., 77

8. ——— **Adjournment for process to enforce attendance of witnesses.**—Where adjournments are made by a Court, in order to give effect to its processes for compelling the attendance of the witnesses, being thus made as much on its own motion at the instance of the defendant as at the instance of the plaintiff, the case cannot be said to come under Act VIII of 1859, section 148, which contemplates a case where a party has obtained time to produce his witnesses and has failed to do so. PEAREE MOHUN BERA *v.* SHAMA CHURN MYTEE [19 W. R., 34

——— **s. 159 (1859, s. 149).**

See WITNESS—CIVIL CASES—SUMMONING WITNESSES . . 3 C. L. R., 569
[I. L. R., 9 Bom., 308

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), ss. 160, 161 (1859, s. 151).

See APPEAL—ORDERS . 12 W. R., 430

See WITNESS—CIVIL CASES—EXPENSES OF WITNESSES . . 9 W. R., 128

——— **s. 163 (1859, s. 152).**

See SUMMONS TO PRODUCE DOCUMENTS.
[W. R., 1864, 164

——— **s. 164 (1859, s. 153).**

See SUMMONS TO PRODUCE DOCUMENTS.
[W. R., 1864, 164

——— **s. 167 (1859, s. 154).**

See WITNESS—CIVIL CASES—SUMMONING WITNESSES . I. L. R., 9 Bom., 308

——— **s. 168 (1859, s. 159).**

See WITNESS—CIVIL CASES—ABSCONDING WITNESSES . . . 1 W. R., 25
[7 W. R., Cr., 58
8 W. R., 505
13 W. R., 416
15 W. R., 176

——— **ss. 174, 175 (1859, s. 168).**

See WITNESS—CIVIL CASES—ABSCONDING WITNESSES . . 1 W. R., 25
[5 Mad., 104
7 W. R., Cr., 58
9 W. R., 359
6 W. R., 235
13 W. R., 324

——— **s. 177 (1859, ss. 126, 170).**

See PROBATE—JURISDICTION OF DISTRICT COURTS . I. L. R., 9 Bom., 241

See RES JUDICATA—JUDGMENTS ON TECHNICAL POINTS . I. L. R., 2 Calc., 222

See WITNESS—CIVIL CASES—EXAMINATION OF WITNESSES—CROSS-EXAMINATION . . . 2 B. L. R., Ap., 12

1. ——— **Order of Court requiring party to attend, Disobedience to.**—*Subsequent decree in his favour.*—The plaintiff was ordered to attend and give evidence under section 170, Act VIII of 1859, but failed to do so. The Court, however, being satisfied with the evidence in support of his case, gave a decree in his favour. *Held,* that the decree was valid. BISSONAUTH MOJOOMDHUR *v.* KHETTUR CHUNDER SEN . . . Marsh., 467

2. ——— **Defendant bona fide requiring evidence of plaintiff.**—*Non-attendance of plaintiff.*—A defendant, who *bonâ fide* and for a substantial reason requires the evidence of the plaintiff to be taken, ought not, in ordinary circumstances, to have a decree made against him until that evidence has been given. ROY DHUNPUT SINGH *v.* PREM BIBEE . . . . . 24 W. R., 72

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 177 (1859, ss. 126, 170)—*continued.*

3. ——— **Appearance of some of several plaintiffs.**—Section 170, Act VIII of 1859, authorised dismissal for default only against the plaintiff who failed or refused to attend, not against the plaintiffs who appeared. PROSUNNO COOMAR SHAHA *v.* GOOROO PERSHAD ROY . . **1 W. R., 25**

BINODE RAM SEIN *v.* BROHMO MOYEE DEBIA **[1 W. R., 168**

4. ——— **Claim barred by limitation.**—*Defendant not appearing.*—Section 170, Act VIII of 1859, was not intended to empower a Court to decree a claim which on the face of it is barred by limitation, simply because the defendants had been summoned and did not appear. DOORGA DUTT SINGH *v.* KALIKA SOOKUL. GIREEDHAREE SINGH *v.* KALIKA SOOKUL . . . . . **7 W. R., 46**

5. ——— **Non-attendance of witness.**—The discretion which a Court had, under section 170 of Act VIII of 1859, of passing judgment against a party for non-compliance with the Court's order to attend and give evidence or produce documents in a suit, was not confined to cases where the party summoning him could not prove his case otherwise than by the evidence of such other party, or where the fact to be proved was solely and exclusively within the knowledge of such other party. KASHINATH SHAHA *v.* DWARKANATH SIRKAR **[9 B. L. R., 215: 17 W. R., 550**

ISHAN CHANDRA GHOSE *v.* HARISH CHANDRA BANERJEE **[9 B. L. R., 218, note: 12 W. R., 369**

6. ——— In a suit for contribution in respect of Government revenue, the defendants, co-sharers, were, on the application of the plaintiff, ordered to attend to give evidence, but they failed to appear. The Principal Sudder Ameen thereupon dismissed the suit, on the ground that as the plaintiff's case had not been established, he was not entitled to a decree simply by reason of the defendants' failure to enter appearance. *Held*, the suit should not have been dismissed. In a case where a party summoned to attend as a witness refuses to attend and give evidence, and the party who requires the evidence is unable to make out his case without it, his suit should not be dismissed for want of proof, when the points on which he fails depend upon matters of fact which may reasonably be presumed to be peculiarly in the knowledge of the defaulting parties, as for instance in the present case, the extent of their own shares, and the amount they had paid on account of revenue. HEMANGINI DASI *v.* RAMNIDHI KUNDU **[1 B. L. R., S. N., 10: 10 W. R., 158**

7. ——— **Default of defendant to attend.**—*Examination of parties to the suit.*—When a plaintiff alleges that the defendant has a personal knowledge of the matters in dispute and the defendant denies that he has such knowledge, the Court before exercising the discretion of decreeing the suit as upon default should be satisfied on evidence as to the existence of such knowledge on the part of the defendant. LAITH NARAIN DEO *v.* BOLAKEE CHOWDHRY . . . . . **W. R., 1864, 24**

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 177 (1859, ss. 126, 170).—Default of defendant to attend—*continued.*

8. ——— **Dismissal of suit on plaintiff's non-appearance when summoned as witness by defendant.**—A Court is not bound to dismiss a case on account of the non-appearance of a plaintiff summoned by the defendant to attend as a witness, when the defendant did not petition for attachment or other legal process to be made by the Court to compel the plaintiff's appearance. BUSTEE NARAIN ROY *v.* SHAM SOONDER NUNDEE **[2 W. R., Act X, 43**

9. ——— *Applicability to rent suits.*—Section 170 was applicable to the procedure in suits under the Bengal Rent Act. CHUNDER MOHUN MOJOOMDAR *v.* KETOORAM BOSE **[4 W. R., Act X, 18**

SOOPUN KHAN *v.* HURO PERSHAD PAUL **[4 W. R., Act X, 50**

Also section 166. SOOPUN KHAN *v.* HURO PERSHAD PAUL . . **4 W. R., Act X., 50**

10. ——— **Failure of defendant to appear.**—*Discretion of Court.*—Section 170 was discretionary. Under it the first Court might decide against a defendant, on the ground of his failure to appear, even without going into the plaintiff's evidence, and the lower Appellate Court was equally within the law in going into the whole case on its merits. GOPAL LALL BOSE *v.* KALEENATH MOOKERJEE . . . . . **5 W. R., 89**

RAJCHUNDER GHOSE *v.* KOYLASH CHUNDER BANERJEE . . . **6 W. R., Act X, 86**

11. ——— **Wilful default.**—The stringent provisions of section 170, Act VIII of 1859, ought to be applied only in the case of contumacious litigants. DATA HURRUKMAN PYNE *v.* OODOY CHAND PYNE . . . . . **6 W. R., 247**

THAKOOR LALL MISSER *v.* BROMOMOYEE DABEE **[15 W. R., 253**

But not to plaintiffs on whose part there is no proof of cognizance of the issue of a commission for their examination, or no proof of wilful default. DATA HURRUKMAN PYNE *v.* OODOY CHAND PYNE **[6 W. R., 247**

12. ——— **Defendant as witness for plaintiff refusing to produce documents.**—In a suit to recover the balance due on a partnership transaction, the first defendant, who was examined as a witness for the plaintiff, refused to produce certain accounts relating to the partnership which he was directed to produce by the Civil Judge. Thereupon judgment was given against the defendant under section 170 of the Code of Civil Procedure. On appeal, the High Court, holding that the accounts were relevant and material evidence in the suit, and that the Civil Judge was justified in requiring the first de-

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 177 (1859, ss. 126, 170).—Defendant as witness for plaintiff refusing to produce documents —*continued.*

fendant to produce them, and being satisfied that the accounts were in possession or control of the first defendant, affirmed the judgment of the Civil Judge. KATAKAM VENKAIYA *v.* BHUPALAM PEDDA MULLASAPPAH . . . . . 4 Mad., 142

13. ——— **Waiver of default by Court.**—The provisions of section 170 of the Code of Civil Procedure ought to be exercised with the most temperate discretion. Where the Court might have treated one of the defendants as in default, and passed judgment against him under the above section, but instead of doing so passed over the default and made an order adjourning the further hearing of the suit, and on the day to which the hearing was adjourned disposed of the suit under section 170,—*Held*, that the Court by its own act was not in a position to treat the defendant as in default. PUDIYAR VASUDAVAN NAMBUDRIPAD *v.* KAYAKA KOVILAGATHA VALIA RANY [4 Mad., 231

14. ——— **Order to one plaintiff in suit to attend and give evidence.**—The Civil Judge, on appeal, reversing the decree of the District Munsif, dismissed a suit brought by two plaintiffs under section 170 of the Code of Civil Procedure, on the ground that the first plaintiff had without lawful excuse failed to comply with the order of the Court requiring his attendance to give evidence. There was no order or summons to the first plaintiff to attend to give evidence in this suit, but a summons was issued to the plaintiff to attend to give evidence in another suit to which the second plaintiff was no party, and which was heard together with this appeal. *Held* (reversing the decision of the Sessions Judge), that non-compliance with the summons to give evidence in the other appeal was not enough to warrant the exercise of the power in this case. Section 170 requires that there should be a failure to comply with an order to attend to give evidence in the particular suit. ARUNACHELLA MUDALY *v.* VENCATACHELLA MUDALY . . 5 Mad., 269

15. ——— **Discretion in enforcing penalty under the section.**—In a case which Act VIII of 1859, section 170, is provided to meet, the Court ought not to take everything for granted against the party in fault, but to require the other party to prove his case so far as he can without the desired evidence, to consider well the effect of the default or refusal with reference to the rules of evidence, and to hear what evidence the defaulting party adduces before imposing upon him the penalty of default. MAHOMED AMIDOOLLA *v.* DURBESH SHAIKH . . . . . 24 W. R., 314

16. ——— **Non-attendance of defendant when cited as a witness.**—The non-attendance of defendant when cited as a witness to give evidence is not alone sufficient to justify the decision of the suit against him under section 170 of the Civil Procedure Code. His absence may be an unfavourable circumstance, but the Court will not always be

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 177 (1859, ss. 126, 170).—Non-attendance of defendant when cited as a witness—*continued.*

disposed to attach to it such weight as to regard it as justifying a decree in the plaintiff's favour. ROOP NARAIN MISSER *v.* KASHEE RAM SINGH TIMBIRAM . . . . . 2 N. W., 67

BHALLY MAHOMED BUKSHEE *v.* NOBIN CHUNDER ROY CHOWDHRY . 15 W. R., 269

17. ——— **Proceedings in execution of decree.**—A Court may avail itself in an execution case of the power given by section 170, Act VIII of 1859, to summon a party to give evidence; and on his failing to comply with that order, to pass judgment against him. DESHAN HOSSEIN *v.* KHODIJA [8 W. R., 64

18. ——— **Notice to attend, Failure to comply with.**—To render a person liable to the penalty prescribed by section 170, Act VIII of 1859, it must be shown that notice had been duly served on him, and that he had failed to comply with the requisition contained in that notice. GOOROODASS ROY *v.* GREEDHUR SEIN . . 11 W. R., 110

19. ——— **Default of defendant to give evidence.**—Where a plaintiff has not given any evidence in support of his case, he is not entitled to a decree merely on the default of the defendant to give evidence. DAMOODUR BHOOSHUN *v.* RUGHO NATH PANJA . . . . 12 W. R., 242

THAKOOR LALL MISSER *v.* BROHMO MOYEE DABEE . . . . 15 W. R., 253

20. ——— **Default of plaintiff to appear.**—*Reasons for summoning witness.*—In a suit for the right of pre-emption, on the ground that plaintiff was a shafee khalit, defendant, who alleged that plaintiff was only a benami shareholder, offered to establish his case on the deposition of the plaintiff alone. The latter not appearing on summons, the suit was decreed against him under section 170, Code of Civil Procedure. On this he appealed, and the Judge ordered the Munsif to give him further time to appear. This was granted, and then extended again and again by the Munsif, who, on the plaintiff failing to appear again, gave a decree against him under the same law as before. The case was then appealed to the Judge, who ordered the case to be tried on its merits, remarking that the presence of the plaintiff was not necessary. *Held*, that as the plaintiff's liability to appear and give evidence had been already determined by a competent Court, and never denied by himself, he could not take advantage of a technical objection to show that he was not bound to come because the formalities of the law had not been observed or his evidence shown to be necessary. JHOOMUCK SINGH *v.* JEETUN LALL [12 W. R., 359

21. ——— **Failure to produce evidence.**—In a suit by the putnidar for rent due under a dur-putni, defendant was summoned to produce the dur-putni pottah and a bynamah which he had produced on a former occasion in a different suit.

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 177 (1859, ss. 126, 170).—Failure to produce evidence—*continued.*

On his representing that they were lost, plaintiff put in a certified copy of the bynamah obtained from the office of the Registrar of Deeds. *Held*, that as the defendant failed to produce the bynamah or to prove that it was out of his power to do so, the Judge might have passed judgment against him at once under section 170, Act VIII of 1859. TARA CHAND BANERJEE *v.* BOISTUB CHURN BHUDRO [16 W. R., 196

22. ——— **Defendant not appearing when summoned by plaintiff.**—Where the plaintiff gave no evidence at all in support of her case, it was held not just to put in force against the defendant, who, when summoned to appear and give evidence, deliberately declined to do so, the stringent provisions of section 170, Act VIII of 1859. The exercise of the discretion conferred by that section must be reasonable and judicial. ALEH AHMED SAJJADANUSHEEN *v.* NUSSEBUN . 17 W. R., 563

23. ——— **Refusal to answer material questions.**—*Dismissal of suit.*—A judgment passed against a plaintiff, under section 126 of Act VIII of 1859, was reversed by the High Court in special appeal, as there was nothing on the record to show that the party refused to answer any material question relating to the suit. KRISHNAJI NIMKAR *v.* VISHNU NIMKAR . 2 Bom., 360: 2nd Ed., 340

24. ——— **Discretion of Court to summon party as witness.**—Where the law allows a discretion to any Court, it presumes that such discretion will be soundly and properly exercised; and where it is shown that the discretion was not so exercised, the omission will be a ground for interference by the superior Court. Accordingly, the Subordinate Judge's order under section 170 was set aside on the ground that he had not exercised his discretion at all, inasmuch as he had ignored the fact that plaintiff had given very substantial reasons for his inability to attend and give evidence when summoned to do so; and as the Subordinate Judge had held substantially that there was sufficient evidence to prove plaintiff's claim, plaintiff was entitled to a decree, his failure to give evidence notwithstanding. ISHAN CHUNDER SEN *v.* ONATH NATH DEB. COWELL v. ISHAN CHUNDER SEN . . . 18 W. R., 16

25. ——— **Default of party to appear when summoned as witness.**—*Willingness to attend.—Lawful excuse.*—A defendant's saying that he was willing to attend when he did not attend and showed no reason why he could not, is no lawful excuse for his non-attendance when summoned to attend. What is or is not a lawful excuse must depend on the circumstances of each case. DOORGA DUTT SINGH *v.* JHEENGOOR JHA . . 18 W. R., 63

26. ——— **Refusal of applicant for certificate to attend.**—The appellant having applied to the Judge for a certificate to collect the debts of one *R.*, whose adopted son he claimed to be, referred in evidence to an ikrarnamah of adoption, of

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 177 (1859, ss. 126, 170).—Refusal of applicant for certificate to attend—*continued.*

which he filed a copy procured from the Cazee's books, alleging that the original had been made away with by an agent who had been bought over by his opponent. In the course of re-trial of the case on remand, the Judge required the petitioner to attend for the purpose of examination, and as after being warned he did not do so, and assigned no good cause for his absence, upheld his former decision, and rejected the application. *Held*, that the Judge exercised the powers conferred by section 170, Civil Procedure Code, and that it was a proper exercise of discretion to take the course which he did take at that stage of the proceedings. SEETARAM SAHOO *v.* SHEO GOLAM SAHOO . . . . . 19 W. R., 183

27. ——— **Receipt of order to attend.**—*Non-attendance.—Materiality of evidence.*—A Court is not justified, under either section 127 or section 170 of Act VIII of 1859, in imposing penal consequences upon a party who fails to appear, by passing a verdict against him, unless it is clearly made manifest, first, that he had been ordered or directed to attend and wilfully refused to obey the order or direction; and, secondly, that the evidence which he was required to give was really material to the matter in suit. *Quære,*—Whether the party must be proved by other evidence to have personally received notice of the order before the penal provisions are applied. RAJ CHOOKUN DUSWANDI *v.* BUSJEET TEWARRE [20 W. R., 165

See OBHOY CHURN MOOKERJEE *v.* PEAREE DOSSIA . . . 22 W. R., 270

——— **s. 179.**

See RIGHT TO BEGIN . 7 C. L. R., 274
[9 C. L. R., 1
I. L. R., 8 Bom., 287

——— **ss. 181-190 (1859, s. 172).**

See JUDGMENT—CIVIL CASES—FORM AND CONTENTS OF JUDGMENT.
[4 Bom., A. C., 98

See PROBATE—OPPOSITION TO AND REVOCATION OF GRANT . 24 W. R., 162

——— **s. 191.**

See JUDGE—POWER OF JUDGE.
[I. L. R., 8 All., 35, 576

——— **s. 191, s. 198.**—*Hearing of suit.—Power of Judge to deal with evidence taken down by his predecessor.*—A Subordinate Judge, having taken all the evidence in a suit before him, and having completed the hearing of the suit except for the arguments of counsel on both sides, was removed, and the case came on for hearing before his successor. The new Subordinate Judge took up the case from the point at which it had been left by his predecessor, and proceeded to judgment and decree. *Held*, that the only power given by the Civil Procedure Code in

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877, s. 191, s. 198)— *continued.*

such cases is to allow the evidence taken at the first trial to be used as evidence at the second trial, and not to allow the two hearings to be linked together and virtually made one; that the Subordinate Judge should have fixed a day for the entire hearing of the suit before himself, and should first have heard the opening statement on behalf of the plaintiff, the evidence produced by both sides, and the arguments on behalf of both, and then finally decided the case which he had himself heard and tried; that he might, in accordance with the provisions of section 191 of the Civil Procedure Code, have allowed the depositions which had been taken before his predecessor to be put in; and that in neglecting to take this course, and in deciding the case upon materials which were never before him, his action was illegal, and the judgment and decree were nullities. JAGRAM DAS *v.* NARAIN LAL . . . . I. L. R., 7 All., 857

——— s. 198 (1859, s. 183).

See JUDGMENT—CIVIL CASES—FORM AND CONTENTS OF JUDGMENT.
[4 Bom., A. C., 98

——— s. 204 (1859, s. 186).

See ISSUES—DECISION ON ISSUES.
[I. L. R., 10 Calc., 1095

See SPECIAL APPEAL—OTHER ERRORS OF LAW AND PROCEDURE—JUDGMENTS.
[I. L. R., 8 Bom., 368

——— ss. 205, 206 (1859, s. 189).

See DECREE—FORM OF DECREE—COSTS.
[15 W. R., 4, 326

——— s. 206.

See APPEAL—ORDERS.
[I. L. R., 7 All., 276, 411, 606

See DECREE—ALTERATION OR AMENDMENT OF DECREE . I. L. R., 6 All., 30
[I. L. R., 7 All., 755, 875
I. L. R., 9 Mad., 354
I. L. R., 8 All., 377, 492

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWER OF COURT.
[I. L. R., 8 All., 377

See LIMITATION ACT, 1877, s. 4.
[I. L. R., 8 All., 519

See LIMITATION ACT, 1877, ART. 178.
[I. L. R., 4 All., 23

See RES JUDICATA—MATTERS IN ISSUE.
[I. L. R., 7 All., 606

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622.
[I. L. R., 7 All., 276, 411, 875, 876
I. L. R., 8 All., 519

——— s. 207 (1859, s. 190).

See DECREE—FORM OF DECREE—GENERAL RULES AS TO FORM OF DECREES.
[19 W. R., 81

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 209 (XXIII of 1861, s. 10).

See INTEREST, OMISSION TO STIPULATE FOR, &c.—CONTRACTS.
[I. L. R., 3 Mad., 125
I. L. R., 12 Calc., 569

——— s. 210 (1859, s. 194).

See DECREE—ALTERATION OR AMENDMENT OF DECREE . . 2 Hay, 68, 95
[4 Bom., A. C., 77
I. L. R., 2 All., 129, 320, 649
I. L. R., 7 Mad., 152
I. L. R., 11 Calc., 143

See DEKKHAN AGRICULTURISTS' RELIEF ACT, s. 20 . I. L. R., 5 Bom., 604

See INTEREST, OMISSION TO STIPULATE FOR, &c.—CONTRACTS . 1 Agra, 270
[I. L. R., 3 Bom., 202
I. L. R., 4 Bom., 96

See LIMITATION ACT, 1877, ART. 179—ORDER FOR PAYMENT AT SPECIFIED DATE . I. L. R., 11 Calc., 143

See SPECIAL APPEAL—OTHER ERRORS OF LAW AND PROCEDURE—DISCRETION, EXERCISE OF, IN VARIOUS CASES.
[1 Agra, 116, 270

See SURETY—EXECUTION OF DECREE AGAINST SURETY.
[I. L. R., 3 All., 809

——— ss. 211, 212 (1859, ss. 196, 197).

See s. 244 . 1 B. L. R., A. C., 138

——— s. 212 (1859, s. 197).—*Suit and decree for possession.—Assessment of mesne profits.—Execution of decree.*—Where a decree is made under section 197 of Act VIII of 1859, proceedings taken after the original decree for possession, for the purpose of determining the amount of mesne profits, are in effect proceedings in continuation of the original suit, and until those proceedings are brought to a close, and an assessment of the mesne profits come to, it cannot be said that a decree for any specific amount of money exists. The wording of section 197 is quite consistent with the view that, where a decree for possession is given, and an enquiry as to the amount of mesne profits is reserved, the decree for possession of the land is only a partial decree in the suit, and that there is to be a further enquiry and a further decree in respect of mesne profits. The words "for the execution of the decree" refer only to the execution of the decree for the land, and cannot refer to execution of that which has not then taken the form of a decree. DILDAR HOSSEIN *v.* MUJEEDUNNISSA. . I. L. R., 4 Calc., 629

See KRISHNAN *v.* NILAKANDAN.
[I. L. R., 8 Mad., 137

——— s. 215—

See CONTRACT ACT, s. 265.
[I. L. R., 5 All., 500

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 216 (1859, s. 195).

See SET-OFF—SET-OFF ALLOWED.
[25 W. R., 275

——— **ss. 219, 220 (1859, s. 187).**

See COSTS—SPECIAL CASES—THIRD PERSON, PAYMENT BY—
[Bourke, O. C., 44: Id., A. O. C., 96

See COSTS—SPECIAL CASES—PARTITION.
1 Hyde, 122

See COSTS—SPECIAL CASES—SMALL CAUSE COURT SUITS . . 1 Hyde, 172

——— **s. 220.**

See PAUPER SUIT—SUITS.
[I. L. R., 8 Bom., 577

——— **s. 221.**

See SET-OFF—SET-OFF ALLOWED.
[I. L. R., 4 Calc., 742

——— **s. 223 (1859, ss. 285, 286).**

See CASES UNDER EXECUTION OF DECREE—TRANSFER OF DECREE FOR EXECUTION, &c.

——— **s. 224 (1859, s. 285).**

See APPEAL—EXECUTION OF DECREE—QUESTION IN EXECUTION.
[6 N. W., 73

See LIMITATION ACT, 1877, ART. 179 (1871, ART. 167)—STEP IN AID OF EXECUTION—SUITS AND OTHER PROCEEDINGS BY DECREE-HOLDER . I. L. R., 1 All., 525

——— **ss. 224, 225 (1859, ss. 285, 286).**

See EXECUTION OF DECREE—TRANSFER OF DECREE FOR EXECUTION, &c.
[I. L. R., 3 Calc., 512
23 W. R., 225

——— **ss. 226, 228 (1859, s. 287).**

See EXECUTION OF DECREE—TRANSFER OF DECREE FOR EXECUTION, &c.
[I. L. R., 1 Bom., 82

——— **(1859, ss. 287, 294).**

See EXECUTION OF DECREE—STAY OF EXECUTION . . I. L. R., 7 All., 330

——— **s. 229 (1859, s. 284).**

See CASES UNDER EXECUTION OF DECREE—TRANSFER OF DECREE FOR EXECUTION, &c.

——— *Cooch Behar.—Court of the Dewan Ahilkar.—Jurisdiction.*—It not being shown that the Court of Dewan Ahilkar of Cooch Behar is a Court within the British territories, or a Court established by the Governor General in a foreign State,—*Held*, the Judge of Rajshaye had no jurisdiction, under section 284, Act VIII of 1859, to execute a decree of that Court. JADAB CHANDRA TOI PARAMANIK *v.* DINANATH DAS
[4 B. L. R., A. C., 134: 13 W. R., 154

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), ss. 230 & 231 (1859, s. 207).

See APPEAL—DECREES.
[I. L. R., 7 Bom., 301

See APPEAL—ORDERS . 5 Mad., 183

See CASES UNDER EXECUTION OF DECREE—JOINT DECREES, EXECUTION OF AND LIABILITY UNDER—

See CASES UNDER LIMITATION ACT, 1877, ART. 179 (1871, 167; 1859, s. 20)—JOINT DECREES.

See SALE IN EXECUTION OF DECREE—INVALID SALES—DECREES BARRED BY LIMITATION . I. L. R., 6 Mad., 237

1. ——— **Application of section.**—Section 230 does not apply to decrees made by the High Courts. MAYABHAI *v.* TRIBHUVANDAS
[I. L. R., 6 Bom., 258

2. ——— **Effect of section.**—*Decree of High Court.—Revivor.—Limitation Act, 1877, art. 180.*—Section 230 of the Code of Civil Procedure, 1882, does not affect the period of limitation prescribed by article 180 of Schedule II of the Limitation Act, 1877. GANAPATHI *v.* BALASUNDARA
[I. L. R., 7 Mad., 540

3. ——— **Date of the passing of the Code.**—*Date of its coming into force.*—The date referred to in the last paragraph of section 230 of the Civil Procedure Code (Act X of 1877) as the date of "the passing of" that Act held to be the 30th March 1877, the date when that Act received the assent of the Governor General, and not the 1st October 1877, the date of the coming into force of that Act. DAMODAR DAS HARI DAS *v.* UTTAMCHAND SAVIACHAND
[I. L. R., 7 Bom., 214

4. ——— **Law in force immediately before passing of the Code.**—*Civil Procedure Code, 1877, as amended by Act XII of 1879.—Execution of decree.—Limitation.*—In the last paragraph of section 230 of the Code of Civil Procedure, Act XIV of 1882, the words "the law in force immediately before the passing of this Code," refer to and include Act X of 1877, as amended by Act XII of 1879. *Musharraf Begum* v. *Ghalib Ali, I. L. R., 6 All., 189*, dissented from. GOLUCK CHANDRA MYTEE *v.* HARAPRIAH DEBI . . I. L. R., 12 Calc., 559

5. ——— *Limitation.—Twelve years' rule prior to that Code.—Civil Procedure Code (Act X of 1877).*—In section 230 of the Code of Civil Procedure, 1882, the words "law in force" include the Civil Procedure Code, 1877, as well as the Limitation Act then in force, *Held*, therefore, where an application for execution of a decree of 1872 had been made and granted in January 1882, and under section 230 of the Code of Civil Procedure, 1877, further execution became barred, before the date on which the Civil Procedure Code, 1882, came into force, that no application within three years from such date could be granted under section 230 of that Code. KOLLU SHETTATI *v.* MANJAYA
[I. L. R., 9 Mad., 454

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), ss. 230 & 231 (1859, s. 207).—Law in force immediately before passing of the Code—*continued.*

6. ——— *Execution of decree.—Act X of 1877 (Civil Procedure Code), s. 230.*—The holder of a decree applied for execution under section 230 of Act X of 1877, and the application was granted. Within three years after the passing of Act XIV of 1882, by which Act X of 1877 was repealed, he applied, for the first time, under section 230 of the former Act, for execution of the decree. At the time this application was made more than twelve years had elapsed from the date of the decree. *Held* by STRAIGHT, BRODHURST, and TYRRELL, *JJ.*, that the application might be granted, it being the first made under section 230 of Act XIV of 1882, and the first made after the expiration of twelve years from the date of the decree, and not being barred by the last paragraph of section 230 of that Act, read in conjunction with the third paragraph of section 230 of Act X of 1877, the "law in force" mentioned in the last paragraph of section 230 of Act XIV of 1882 referring to the law of limitation in force at the time the Act was passed, and not to the third paragraph of section 230 of Act X of 1877. *Held* by STUART, *C. J.*, and OLDFIELD, *J.*, that the application should not be granted, the effect of the last paragraph of section 230 of Act XIV of 1882 being to bar any proceedings to enforce a decree under that Act which would have been barred under section 230 of Act X of 1877, if taken thereunder, on the ground that the period of twelve years had elapsed from the dates specified in that section. MUSHARRAF BEGUM *v.* GHALIB ALI . . . . . I. L. R., 6 All., 189

7. ——— *Revival of barred decrees.—Twelve years' old decree.—Act X of 1877 (Civil Procedure Code), s. 230.*—Where an application was made under section 230 of the Civil Procedure Code, 1877, as amended by Act XII of 1879, for execution of a decree more than twelve years old, and the application was granted,—*Held*, that a subsequent application for execution of the decree, under section 230 of the Civil Procedure Code, 1882, should have been refused, since the decree had been once allowed the benefit of the three years' grace under the last paragraph of section 230 of the Code of 1877, and then became dead or unexecutable. *Held*, that there is nothing in the Code of 1882 to justify the conclusion that it was intended to revive decrees which had become dead before it became law, and that here the decree-holder's right having already become dead before the enactment of the present Code, the passing of that Code could not bring that right into existence again. *Musharraf Begum Ali* v. *Ghalib Ali, I. L. R., 6 All., 189*, distinguished. BHAWANI DAS *v.* DAULAT RAM . . . I. L. R., 6 All., 388

8. ——— **Former application for execution under Act VIII of 1859.**—An application under Act VIII of 1859 for execution of a decree was rejected by the District Judge on the ground that the judgment-creditor had withdrawn from the former application. This order was reversed on appeal, and the case was sent back for disposal on its merits. The Judge then held that Act X of

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), ss. 230 & 231 (1859, s. 206).—Former application for execution under Act VIII of 1859—*continued.*

1877, which had just come into force, applied, and, on the ground that the decree-holder had failed to get execution upon his former application, dismissed the petition. The Judge referred the case to the High Court upon the question whether he was, under the circumstances, at liberty to grant the application. *Held* that he was. The application should have been dealt with under the law which was in force at the time execution was sought. The effect of the provisions of section 230 of Act X of 1877 considered. BYRADDI SUBBAREDDI *v.* DASSUPPA RAJU [I. L. R., 1 Mad., 408

9. ——— *Effect of striking off execution proceedings.—Procedure.*—A decree was obtained on the 10th July 1858, and applications to execute it were made in June 1862 and January 1866. The last application prior to the coming into operation of the Civil Procedure Code of 1877 was on the 10th January 1876. This proceeding was struck off. The decree-holder on the 13th June 1879 again applied for execution; the decree was transferred to S. for execution, where, on objection that it was more than twelve years old, and therefore barred by section 230 of Act X of 1877, the execution proceedings were again struck off on the 17th January 1880. This order was appealed against, and eventually, on the 25th April 1881, the application was re-admitted. In June 1881 an application was made to the S. Court for transfer of the case for execution to D., which was granted, and the case transferred; but no steps having been taken by the decree-holder in the D. Court, it was struck off by that Court on the 19th August 1881. On the 4th March 1882 (the judgment-debtor having died meanwhile), an application was made to the D. Court to restore the proceedings for execution against his representative. Notices were issued, and the 2nd June was eventually fixed for the hearing. On that day no one was present on behalf of the decree-holder (whose pleader had died in the meantime), and the case was again struck off. On the 11th July 1882, application was made to restore the proceedings, notices were issued, and a day fixed for hearing, and after numerous adjournments the objections of the judgment-debtor were overruled on the 5th March 1883, and execution of the decree granted. On appeal, the Judge found that the execution proceedings had been continuous throughout, and that there had been no unreasonable delay in the prosecution of the execution proceedings. *Held*, that execution of the decree was not barred by section 230 of the Code of Civil Procedure. BISWA SONAN CHUNDER GOSSYAMY *v.* BINANDA CHUNDER DIBINGAR ADHIKAR GOSSYAMY . I. L. R., 10 Calc., 416

10. ——— The clause of section 230 of Act X of 1877, which prohibits a subsequent application for execution, only applies where the previous application has been made under that section, and not where such previous application has been made under Act VIII of 1859. ASHOOTOSH DUTT *v.* DOORGA CHUEN CHATTERJEE [I. L. R., 6 Calc., 504: 8 C. L. R., 23

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), ss. 230 & 231 (1859, s. 206).—Former application for execution under Act VIII of 1859—*continued.*

11. ——————— *Execution of decree.*—*Held*, that the words "the last preceding application" in the third clause of section 230 of Act X of 1877 mean an application under that section, and not an application under Act VIII of 1859. RAM KISHEN *v.* SEDHU **I. L. R., 2 All., 275**

12. ——— **Former application for execution under Act X of 1877.**—*Execution of decree.—Twelve years' old decree.—Statutes, Construction of.—General words.—Retrospective effect.*—The holder of a decree bearing date the 15th June 1872 applied for execution thereof on the 9th February 1855, the previous application being dated the 27th November 1883. *Held*, that the application for execution was not barred by section 230 of the Civil Procedure Code. *Musharraf Begum* v. *Ghalib Ali, I. L. R., 6 All., 189*, followed. *Goluck Chandra Mytee* v. *Harapriah Debi, I. L. R., 12 Calc., 559; Bhawani Das* v. *Daulat Ram, I. L. R., 6 All., 388*; and *Sreenath Gooho* v. *Yusoof Khan, I. L. R., 7 Calc., 556*, referred to. *Tufail Ahmad* v. *Sadhu Saran Singh, Weekly Notes, All., 1885, p. 193*, discussed and dissented from by MAHMOOD, *J. Per* MAHMOOD, *J.*—The rule of construction being that a limited meaning can only be given to general words in a statute where the statute itself justifies such limitation, the words "any decree" in the proviso to section 230 of the Civil Procedure Code must not be construed as confined to such decrees as would be barred on the date of the Code coming into force, inasmuch as no reason for so restricting the meaning of those words can be found in the Code or is suggested by the legislative policy upon which clauses such as the proviso in question are based. This policy is to prevent a sudden disturbance of existing rights in consequence of new legislation; but it is beyond its object and scope to revive rights or remedies which have already expired before the new Act comes into operation, and although the Legislature may revive such rights or remedies, it can only do so by express words to that effect. JOKHU RAM *v.* RAM DIN . . . . . **I. L. R., 8 All., 419**

13. ——— **Due diligence in execution.**—*Execution of decree.—Limitation.*—The concluding clause of section 230 of Act X of 1877 refers to the question of limitation, not that of due diligence. Where, therefore, the decree-holder had not on the last preceding application under section 230 of Act X of 1877 used due diligence to procure complete satisfaction of the decree, and Act X of 1877 had not been in force three years,—*Held*, that the provisions of the third clause of section 230 of Act X of 1877 were applicable to a subsequent application under that section. SOHAN LAL *v.* KARIM BAKHSH **[I. L. R., 2 All., 281**

14. ——— **Application for execution not made under the Civil Procedure Code, 1882.**—*Decree.—Application for execution.—Limitation.*—On the first June 1880, several decree-holders applied to the Subordinate Civil Court of Parner for execution of their decrees. They had taken out execution several times previously, the date of their last preceding applications being 1st June 1877. The Subordinate Judge was of opinion that the applications were barred under the last clause of section 230 of the Civil Procedure Code, Act X of 1877. On his referring the cases to the High Court,—*Held* that the applications were not barred, inasmuch as the previous applications for execution had not been made under section 230 of Act X of 1877, that Act not being then in force. ANANDRAV CHIMUJI *v.* THAKAR CHAND **[I. L. R., 5 Bom., 245**

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), ss. 230 & 231 (1859, s. 207).—Application for execution not made under the Civil Procedure Code, 1882—*continued.*

15. ——————— On the 3rd June 1879, an application was made for execution of a decree passed in 1836, and upon that application certain property was attached. On the 23rd October following, the proceedings were struck off, an order, however, being made at the same time that the attachment should continue. On the 31st December 1880, the decree-holder applied that the property under attachment should be sold. The last preceding application for execution previous to the 3rd June 1879 was made on the 8th August 1877. It was objected that the proceedings upon the applications of the 31st December 1880 and 3rd June 1879 were barred under section 230 of the Code of Civil Procedure. *Held*, that these proceedings were not barred, inasmuch as the previous application had not been made under section 230 of the Code. *Anandrav Chimuji Avati* v. *Thakar Chand, I. L. R., 5 Bom., 245*, followed. *Held*, also, that the application of 3rd December 1880 could not be treated as a fresh application for execution within the meaning of the third paragraph of the section referred to. PANAUL HUQ *v.* KISHEN MUN DABEE **[9 C. L. R., 297**

16. ——— **Granting of application for execution of decree.**—An application for execution of a decree which was more than twelve years old, having been made on the 14th August 1880, under section 230 of the Code of Civil Procedure, an order was made for the attachment of the moveable property of the judgment-debtor. No moveable property having been found, the Court was asked to attach his immoveable property, but, refusing to do so, struck off the proceedings. The application for execution having been renewed on the 13th September 1880, it was held that the former application for execution must be treated as having been granted within the meaning of section 230 of the Code, and consequently that the further application was barred under that section, the decree being more than twelve years old. AFRANNESSA CHOWDHRANI *v.* SHARAFUTULLAH CHOWDHRY . . **9 C. L. R., 321**

17. ——————— *Issue of notice to debtor.*—Where an application to execute a decree of 1862 was made under section 230 of the Code of Civil Procedure, 1877, on the 14th of December 1877,

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), ss. 230 & 231 (1859, s. 207).—Granting of application for execution of decree—*continued.*

and a notice was issued to the judgment-debtor under section 248, but no further steps were taken, —*Held*, that a subsequent application made within three years from that date was not affected by the twelve years' rule, as the last preceding application had not been granted within the meaning of section 230. CHENGAYA *v.* APPASAMI AYYAR

[I. L. R., 6 Mad., 172

18. ——————— *Transfer of decree.—Due diligence.*—The transferee of a decree applied, while an application by the original holder of such decree to execute it was pending, to be allowed to execute it. The Court, in accordance with section 232 of Act X of 1877, directed notice of the transferee's application to be given to the transferor and the judgment-debtor. The transferee failed to pay the Court-fee leviable for the issue of such notice, and the Court dismissed his application. The transferee subsequently made a second application to be allowed to execute the decree. *Held*, that such application could not be rejected, with reference to section 230 of Act X of 1877, on the ground that due diligence had not been used on the former application to procure complete satisfaction of the decree, because such application had not been granted; and, therefore, the question whether "on the last preceding application" due diligence was used to procure such satisfaction did not arise. SADIK ALI KHAN *v.* MUHAMMAD HUSAIN KHAN

I. L. R., 2 All., 384

19. ——————— *Passing of the Act.—Meaning of the expression "granted" in s. 230.*—Under section 230 of Act X of 1877, an application for execution is said to be "granted" when it is made regularly and formally. The expression "granted" is equivalent to the expression "admitted" as used in section 245. Where, therefore, an application for execution under section 230 of Act X of 1877 is not "granted" a subsequent regular and formal application under the same section may be allowed if made within time. DEWAN ALI *v.* SOROSHIBALA DABEE

[I. L. R., 8 Calc., 297: 10 C. L. R., 111

20. ——————— *Meaning of "granted."*—Under section 230 of the Civil Procedure Code, after a decree is twelve years old, there is a prohibition against its being executed more than once,—*i.e.*, an application for execution should not be granted if a previous application has been allowed under the provisions of that section. The mere filing of a petition with the result that the application contained in it is subsequently struck off, is not "granting" an application within the meaning of section 230 of the Code; and sections 245, 248, and 249 show that there is a broad distinction between admitting an application for the purpose of issuing notice to the other side and of hearing the objections that may be urged, and a decision of the Court as provided in section 249. In 1865 a decree was passed for a sum of money payable by yearly instalments for a period of sixteen years. Down to March 1877, various amounts were paid on account of the decree. In that

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), ss. 230 & 231 (1859, s. 207).—Granting of application for execution of decree—*continued.*

month an application was made for execution of the decree, the result being an arrangement for liquidation of the amount then due, which was confirmed by the Court. A second application for execution was made on the 9th March 1881, the decree then being more than twelve years old. All that was done with reference to this application was that notice to appear was issued to the judgment-debtor's representatives, and subsequently a petition was filed notifying that an arrangement had been effected, under which a certain sum had been paid by one of the said representatives in satisfaction of the claim against him, and that the other had agreed to pay the balance by yearly instalments. Upon this the application for execution was struck off. On the 5th March 1883, another application for execution was made, notice to appear was issued, and after this notice a petition was put in intimating that an arrangement had been come to, and praying that execution might be postponed, whereupon the application was struck off. Again, on the 31st March 1884, the decree-holder applied once more for execution of the decree. *Held*, that neither the previous application of the 9th March 1881, nor that of the 5th March 1883, could properly be said to have been "granted" within the meaning of section 230 of the Civil Procedure Code, and, under these circumstances, the decree, though twelve years old and upwards, was not barred by that section, and the application for execution should be allowed. PARAGA KUAR *v.* BHAGWAN DIN

[I. L. R., 8 All., 301

21. ——————— *Twelve years' old decree.—Meaning of "granted."*—A decree passed in April 1872 was kept alive by various applications for execution up to 1883. In February and December of that year two such applications were made, but the proceedings on both occasions terminated in the applications being struck off without any money being realised under the decree. In November 1884, the decree-holder again applied for execution, the application being the first made after the decree had become twelve years old, and being made within three years from the passing of the Civil Procedure Code, 1882. *Held*, that the application must be entertained in accordance with the ruling of the Full Bench in *Musharraf Begum* v. *Ghalib Ali, I. L. R., 6 All., 189 Tufail Ahmad* v. *Sadho Saran Singh, Weekly Notes, All., 1885, p. 193*, dissented from. *Jokhu Ram* v. *Ram Din, I. L. R., 8 All., 419*, referred to. *Per* MAHMOOD, *J.*, that the previous execution proceedings, initiated by the applications of February and December 1883, having terminated in those applications being struck off, it could not be said that the applications were "granted" within the meaning of section 230 of the Civil Procedure Code. *Paraga Kuar* v. *Bhagwan Das, I. L. R., 8 All., 301*, referred to. RAMADHAR *v.* RAM DAYAL

[I. L. R., 8 All., 536

22. ——————— *Order passed more than twelve years from decree on application passed within time.*—The terms of section 230 of the

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), ss. 230 & 231 (1859, s. 207).—Granting of application for execution of decree—*continued.*

Code of Civil Procedure, which provide that no subsequent application to execute the same decree shall be granted after the expiry of twelve years from the date of the decree, do not render invalid an order passed after twelve years from the date of a decree, granting an application for execution made before the twelve years' term had expired. SENRA DISAI VENRA JAGATH VIRARAMA DIKKERVIJAYA SETHARAYAR *v.* ANNASAMI AYYAR . . I. L. R., 6 Mad., 359

23. ——— **Second application for execution of decree.**—*Failure to satisfy decree on first application.*—In execution of a decree passed more than twelve years before the date of the Civil Procedure Code (Act X of 1877), certain judgment-creditors applied for the attachment and sale of certain specified property belonging to their judgment-debtor, previous to the date on which the three years allowed for such execution, under section 230, would have expired. Subsequently, after the three years had elapsed, they filed a fresh application, praying that certain other property of their judgment-debtor might be attached and sold in lieu of that specified in their former application, and that the latter might be released. *Held*, that execution of the decree was barred by limitation. *Per* PRINSEP, *J.*—Under section 230 of the Civil Procedure Code, it was intended by the Legislature that a decree-holder seeking to execute a decree passed more than twelve years before should have one opportunity to execute that decree, and that if he fails to satisfy it on that application, any further application becomes barred. SREENATH GOOHO *v.* YUSOOF KHAN
[I. L. R., 7 Calc., 556: 9 C. L. R., 334

24. ——— **Finality of order made in execution proceedings.**—*Decree payable by instalments.*—In 1868 a decree was obtained for R1,100, which provided that the amount should be paid in instalments, the first instalment being R200, to be paid at the end of the first year, and that the other instalments should be R100 at the end of each subsequent year, and that in the event of failure to carry this out, and 2½ months after the falling due of the instalment, the whole amount should be exigible in a lump sum with interest at 8 annas per cent. per mensem. In 1877 the decree-holder applied for execution of the decree, asserting that R600 had been paid up to that time by five instalments, one of R200 and four of R100 each, and that default had been made in payment of the fifth instalment of R100, and he asked to recover the whole amount due on the decree. No order was passed on this application, and eventually the case was struck off. In 1880 the decree-holder again applied for execution of the decree, upon the same grounds as those upon which the previous application was based. Notice was issued and served, and a warrant issued for the arrest of the judgment-debtor, but eventually the case was struck off. In 1883 the decree-holder on the same grounds made another application for execution. It was contended by the judgment-debtor that execution was barred by section 230 of the Civil Procedure Code, inasmuch as no instalments had been paid, and even if they had been paid, they could not be recognised, not having been certified. *Held*, that the proper time from which to reckon the limitation of twelve years was the fifth year from the date of the bond, the whole claim from the beginning and the order passed in 1880 having gone upon that basis, that the Court could not go behind that order, and that consequently the decree-holder was within time and might take out execution. KANJI MAL *v.* KANHIA LAL . . . . I. L. R., 7 All., 873

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), ss. 230 & 231 (1859, s. 207).—Finality of order made in execution proceedings—*continued.*

25. ——— *Interlocutory decree.*—A decree for possession and wasilat having been made in 1854, it was, by an order in January 1881, directed upon the report of an Ameen that the decree-holder should recover a particular sum for wasilat. On the 14th March 1881 the decree-holder filed a petition praying that certain properties of the debtor might be attached and sold and the proceeds applied in payment of the wasilat. *Held* that, under section 230 of Act X of 1877, the application of 14th March 1881 was not barred. The decree of 1854, so far as the wasilat was concerned, might be taken to be merely interlocutory, and did not become final until January 1881. BARODA SUNDARI DABIA *v.* FERGUSSON.
[11 C. L. R., 17

26. ——— **Order directing payment of money at a certain date.**—*Decree payable by instalments.—Execution of decree.*—The parties to a decree presented a petition to the Court executing the decree, stating that it had been agreed between them that the amount of the decree should be paid by ten monthly instalments of R500 each. The Court made an order directing that such petition should be filed. *Held*, that this order did not amount to one directing payment of money to be made at a certain date, which would give a fresh period of limitation under section 230 (*b*) of the Civil Procedure Code. BAL CHAND *v.* RAGHUNATH DAS
[I. L. R., 4 All., 155

27. ——— **Obstruction to execution of decree.**—*Fraud.*—The respondent, as plaintiff in a Small Cause suit in 1867, obtained a decree against the husband of the petitioner, since deceased. The decree was kept alive till 13th December 1876, when the decree-holder brought a suit to set aside certain alienations made by the judgment-debtor and alleged to be fictitious and fraudulent. Having succeeded in the suit and in rendering the property alienated available for attachment under his decree, the respondent again applied for execution in 1879, but not against the property fictitiously alienated. Lastly, the respondent applied, on September 28th, 1880—more than twelve years after decree—for execution against certain immoveable property of the judgment-debtor, other than the property fictitiously alienated, in the petitioner's possession. *Held* that, having regard to the fraud of the judgment-debtor, the application was not barred by section 230 of the Code of Civil Procedure. VISALATCHI AMMAL *v.* SIVASANKARA TAKER . . I. L. R., 4 Mad., 292

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), ss. 230 & 231 (1859, s. 207)—*continued.*

28. ——— **Evading service of warrants.**—*Staying execution.—Fraud.*—A judgment-debtor who, though able to pay his judgment-debt, dishonestly evades payment for more than twelve years by eluding service of warrants and making applications to the Court (which had the effect for the time of staying execution), is guilty of fraud within the meaning of section 230 of the Code of Civil Procedure. PATTAKARA ANNAMALAI GOUNDAN *v.* RANGASAMI CHETTI . I. L. R., 6 Mad., 365

29. ——— *Decree, Prevention of execution of, by fraud.*—A judgment debtor, on seeing the Court's bailiff approach his house to attach his property, left the verandah, went inside the house, chained the door, and refused to open it when called on to do so by the bailiff. *Held*, that the conduct of the judgment-debtor amounted to a prevention, by fraud, of the execution of the decree within the meaning of section 230 of the Civil Procedure Code, 1882. BHAGU JETHA *v.* MALEK BAWASAHEB [I. L. R., 9 Bom., 318

——— **s. 232 (1859, s. 208).**

See APPEAL—DECREES. [I. L. R., 3 Calc., 708, 709, note

See CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE, &c., WITHOUT CERTIFICATE . . I. L. R., 1 All., 686

See EXECUTION OF DECREE—EXECUTION BY AND AGAINST REPRESENTATIVES. [I. L. R., 2 Calc., 327 I. L. R., 3 Calc., 371 20 W. R., 51

1. ——— **Assignment of decree.**—Section 208, Act VIII of 1859, put a party, to whom a decree is transferred, into the position of the original decree-holder, and entitled him to have the decree executed, as if application were made by the original decree-holder. SHAMANUND SURMA *v.* SHUMBHOO CHUNDER DASS . . . . 7 W. R., 205

2. ——— *Certificate, Necessity of.*—Under section 208, Act VIII of 1859, it was not essential that a certificate should in every instance be obtained by a representative before he can be allowed to apply for execution. GOPAL SINGH DEB *v.* GOPALCHUNDER CHUCKERBUTTY . 7 W. R., 393

3. ——— *Power of Court to which decree has been transmitted.*—The assignee of a decree should apply to the Court which passed the decree, and not to the Court to which the decree had been forwarded under section 285, Act VIII of 1859, for execution, for the purpose of being substituted in the place of the original decree-holder. The word "Court" in section 208, Act VIII of 1859, did not include the Court to which a decree has been transferred for execution. SHEO NARAYAN SING *v.* HARBANS LAL . 5 B. L. R., 497: 14 W. R., 65

4. ——— *Appeal.—Assignee of decree.*—Under section 11, Act XXIII of 1861, no appeal lay from an order passed under section 208, Act VIII of 1859, substituting the assignee of a decree in place of the original decree-holder. MEGH NARAYAN SING *v.* RADHA PRASAD SING [4 B. L. R., A. C., 200: 13 W. R., 224

See contra, FRAMJI RUSTAMJI *v.* RATANSHA PESTANJI . . 9 Bom., 49

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 232 (1859, s. 208).—Assignment of decree—*continued.*

5. ——— *Right of assignee.*—A person claiming to be the assignee of a decree should apply for recognition of his title to the Court which pronounced the decree, and for leave under section 208 of the Civil Procedure Code to have his name substituted in lieu of that of the plaintiff. ISMAIL VALAD AHMED BARUCHA *v.* KASSAM VALAD AZAM DUPLI . . . . 9 Bom., 46

FRAMJI RUSTAMJI *v.* RATANSHA PESTANJI [9 Bom., 49

BALKISHOON *v.* MAHOMED TAZAM ALLEE [4 N. W., 90

6. ——— *Right of assignee.*—Where *S.* obtained a decree for possession against *D. P.*, the person in possession, and subsequently in a suit brought by *J. P.* claiming the property against *S.*, a decree was passed in the terms of a compromise, whereby *S.* consented that *J. P.* should execute his decree,—*Held* that *J. P.* was entitled, under section 208, Civil Procedure Code, to recover possession in execution of *S.'s* decree from *D. P.*, although *D. P.* had not been made a party to the second suit. DOORGA PERSHAD SINGH *v.* LALLA JUGGUNNATH PERSHAD [1 N. W., 34: Ed. 1873, 31

7. ——— *Cross-decrees.*—Where a party who assigned over a decree was liable under a cross-decree for a considerable sum to the judgment-debtor,—*Held* that, until the respective liabilities of the two parties had been settled, the Court was justified in refusing to allow one of them to assign the decree to a third party. JODOONATH ROY *v.* RAM BUKSH CHULUNGEE . 8 W. R., 202

8. ——— *Recognition of transfer by Court.*—A Court charged with the execution of a decree has no other discretion with regard to noticing a transfer thereof than that which is given to it by section 208, which only applies to cases where the transferee can and does come forward to claim execution for himself, instead of the original decree-holder. BHARUT CHUNDER ROY *v.* NAZIR ALY KHAN . . . . 10 W. R., 354

9. ——— *Recognition of transfer by Court.*—A party to a suit can enforce any decree he may get as a matter of right; but an assignee of such decree can only do so after obtaining the Court's permission, which depends entirely on the Court's discretion. An assignee, therefore, is not in the same position as the original decree-holder, and is not entitled to have the same privileges. SHAMA PUDDO DUTT *v.* NOBIN CHUNDER BOSE [15 W. R., 283

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 232 (1859, s. 208).—Assignment of decree—*continued.*

10. ——————— *Purchasers of share in decree.—Quære,*—Can the purchasers of a share in a decree be added upon the record under Act VIII of 1859, section 208, as co-decree-holders? SEETAPUT ROY *v.* ALI HOSSEIN . **24 W. R., 11**

11. ——————— *Execution of decree by assignee of decree-holder.—Execution of mortgage decree by purchaser of portion of mortgaged property.*—A decree having been obtained upon a mortgage, against two judgment-debtors the joint owners of a certain mehal which was subject to the mortgage, and which was declared by the Court to be subject to the decree, in the event of default being made in payment of the mortgage-money, the 8-anna share of one of the debtors was, before execution had been taken out, sold at auction under Bengal Act VII of 1868 and purchased by the appellant. Subsequently, the decree-holder having attempted to execute the decree against the share so purchased, the appellant, in order to protect the share which he had bought, purchased the decree himself and proceeded to execute it against the remaining share in the hands of the judgment-debtors. *Held* that the appellant, as the transferee of the original decree-holder, was entitled to execute the decree personally against the judgment-debtors, and also, in the event of their making default in paying the amount due under the decree, to proceed against the share of the mehal still in their hands; and, further, that if by reason of it being necessary to sell the remaining share of the judgment-debtors any equity should arise between them and the appellant to have the decretal money distributed over the whole property mentioned by the decree, that equity must be enforced by an independent suit. NAFER CHUNDER MUNDUL *v.* BAIKANTO NATH ROY **[4 C. L. R., 156**

12. ——————— *Execution of mortgage decree by assignee.—Separate suit.*—By a deed, dated 2nd July 1876, *Y.* mortgaged properties Nos. 1 and 2 to *A.*, and subsequently by separate deeds he again mortgaged the same properties respectively to *B.* and *C.* *C.* afterwards purchased *Y.'s* equity of redemption in property No. 2, and on the 19th November 1880 *A.* obtained a mortgage decree against *Y.* which he sold to *B.*, who now sought to execute it. *C.* was merely benamidar for *B.* *Held*, that on *B.* consenting to allow property No. 2 to be first sold free of all incumbrances, it was necessary for *B.* to proceed by regular suit. YAKOOB ALI CHOWDHRY *v.* RAM DOOLAL . **13 C. L. R., 272**

13. ——————— *Application of transferee of decree for execution disallowed.—Suit by transferee for decretal amount.—Declaratory decree.*—The transferee of a decree for costs, associating with him the transferor, made an application under section 232 of the Civil Procedure Code to be allowed to execute the decree. The application was opposed by the judgment-debtor and was rejected, and the Court referred the transferee to a regular suit. After taking various proceedings ineffectually, he instituted a suit for the recovery of the sum to which he was entitled as costs under the decree transferred to him. *Held* that the plaintiff, as the holder of the decree by assignment, could only recover the amount under it by executing the decree, and not by a separate suit; but that he was entitled to have a decree declaring that the assignment to him of the decree-holder's rights under the decree was valid, and gave him a right to execute it, and that the Court's order under section 232 which disallowed the execution was an improper one, a suit for this relief being maintainable; for, there being no appeal from orders under section 232, there would otherwise be no remedy; and that, looking at the plaint and the issues on which the parties were divided, and the fact that the Court which refused the plaintiff's application for execution, referred him to a regular suit, this relief might properly be given in the present suit. *Per* MAHMOOD, *J.*, that the suit was maintainable, inasmuch as the present plaintiff never having been accepted on the record as holder of the decree, the questions which were disposed of by the Court executing the decree, as between the plaintiff and the judgment-debtor, could not be regarded as questions within section 244 of the Civil Procedure Code. RAM BAKHSH *v.* PANNA LAL . **I. L. R., 7 All., 457**

14. ——————— *Transfer in writing.—Right to execution of decree.*—The transferee of a decree is not entitled to have execution as of right like the original decree-holder; if, however, the transfer be by assignment, and in writing, section 232 of the Code of Civil Procedure, Act XIV of 1882, enables the transferee to apply for, and the Court to proceed to, execution in the manner therein provided. JAVERMAL HIRACHAND *v.* UMAJI HAYABATI **[I. L. R., 9 Bom., 179**

15. ——————— *Joint decree.—Purchase of decree by creditor of one of several judgment-debtors.—Probability of decree being executed against another judgment-debtor.—Ground for refusing execution to purchaser.*—A decree for damages and costs having been obtained against *P.* and *C.*, *A.*, to whom *P.* was indebted and was about to assign property as security, in order to prevent *P.* being adjudicated an insolvent, and with a view to execute the decree against *C.* if possible, purchased the decree. *A.* applied, under section 232 of the Code of Civil Procedure, for leave to execute the decree. This application was rejected by KERNAN, *J.*, on the ground that the decree was certain to be executed against *C.* and not against *P.*, under whose orders and for whose benefit *C.* acted when he infringed the right of, and became liable in damages to, the plaintiff in the suit. *Held*, on appeal, that the benefit likely to be gained by *P.* by this transaction was no sufficient ground for refusing leave to *A.* to execute the decree. AGRA BANK *v.* CRIPPS **[I. L. R., 8 Mad., 455**

16. ——————— *Joint decree.—Transfer of a money decree to one of several co-judgment-debtors.*—Certain property was mortgaged

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 232 (1859, s. 208).—Assignment of decree—*continued.*

by *A.* to *B.* Subsequently, this property was purchased by *C.* at a sale held in execution of a decree obtained by a third person against *A.*; *B.* then brought a suit on his mortgage-bond against *A.* and *C.*, and obtained a decree for the sale of the mortgaged properties, and also a personal decree against *A. B.*; assigned his rights under this decree to *C.*, who applied for execution under section 232 of the Code. *A.* objected to execution issuing, relying on provision (*b*) to section 232. *Held*, that provision (*b*) to section 232 applies only to decrees for money personally due by two or more persons; and that the decree obtained by *B.* against *A.* and *C.*, not being a personal decree against *C.* (he having been made a defendant only by reason that he had purchased the mortgaged property subject to the mortgage debt), *C.* as assignee of *B.* was entitled to take out execution. LALLA BHAGUN PERSHAD *v.* HOLLOWAY [I. L. R., 11 Calc., 393

——— s. 234 (1859, s. 210).

See APPEAL—DECREES. [I. L. R., 3 Calc., 708, 709, note

See COSTS—ABATED SUIT. [Bourke, O. C., 154

See EXECUTION OF DECREE—EXECUTION BY AND AGAINST REPRESENTATIVES. [8 Bom., A. C., 37; 15 W. R., 476; 20 W. R., 422; 21 W. R., 31

See HINDU LAW—WIDOW—DECREES AGAINST WIDOW, &c. [I. L. R., 6 Calc., 479

1. ——— **Execution of decree against representative.**—*Claim by personal representative of judgment-debtor.*—Where it was sought to execute a decree obtained against a person who had died since the date of the decree, by attaching certain immoveable property in the possession of the personal representative of the deceased judgment-debtor, and such personal representative claimed to hold the property not in her representative character, but in her own right,—*Held*, that her claim was not a claim under section 246, Act VIII of 1859, but that the case came under sections 210 and 211. AMEERUNNISSA KHATOON *v.* MOZUFFER HOSSEIN CHOWDHRY . . . . 12 B. L. R., 65

S. C. AND MAHOMED MOZUFFER HOSSEIN CHOWDHRY *v.* AMEERUNNISSA KHATOON [20 W. R., 280

2. ——— Where, during proceedings in execution of a decree, the judgment-debtor dies, the transferee of his property should be put on the record in place of the deceased, or a regular suit should be brought against him. He should not be treated as a claimant under section 246, Act VIII of 1859. SHURFUN BIBEE *v.* COLLECTOR OF SARUN [12 B. L. R., 66, note: 10 W. R., 199

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 234 (1859, s. 210).—Execution of decree against representative—*continued.*

3. ——— *Execution of decree passed against deceased person.*—When a decree has been passed against a deceased person, execution of such decree cannot be had under the Civil Procedure Code against his legal representative. IN THE MATTER OF THE PETITION OF GIRENDRONATH TAGORE . . . 14 B. L. R., 334, note

S. C. GIRENDRONATH TAGORE *v.* HURONATH ROY [10 W. R., 455

4. ——— *Property of deceased debtor claimed by heir as self-acquired.*—Where an application is made and granted under section 210, Act VIII of 1859, and property is attached which is claimed by the heir as his self-acquired property, the Court should proceed under section 203, without requiring any fresh application to be made under that section. RAM CHAND CHUCKERBUTTY *v.* MADHUB NARAIN ROY. 1 C. L. R., 359

5. ——— *Liability of son as representative of father for his debts.*—As the entire interest in an impartible zemindari passes upon the death of the father to the son, there is nothing in the estate itself which can be attached as assets of the father under a decree against him, or which can be made available in execution of the decree against his son as his representative. Though a son is bound under Hindu law to pay his father's just debts from any property he may possess, yet, when he is made a party to a decree as representative of his deceased father for the purpose of executing it, his liability is limited to the amount of assets of the deceased which may have come to his hands and have not been duly disposed of. ZEMINDAR OF SIVAGIRI *v.* ALWAR AYYANGAR. SANGILI VIRAPANDIA CHUNNIA THAMBIAR *v.* ALWAR AYYANGAR . I. L. R., 3 Mad., 42

6. ——— *Decree against karnavan.—Tarwad property in hands of successors.—Share of deceased father of joint family.—Assets.*—In a suit by the trustees to remove the defendant from the management of certain temples, a decree for mesne profits was passed against the defendant, who was the karnavan of a Malabar tarwad. *Held*, that the tarwad property in the hands of the deceased defendant's successor was not assets of the deceased in the hands of his successor liable to satisfy the decree under section 234 of the Code of Civil Procedure, 1877. The share of a deceased father in an undivided Hindu family passes by survivorship to the sons, and is not assets in their hands to satisfy a decree against the father under section 234 of the Code of Civil Procedure, 1877. RAVI VARMA *v.* KOMAN [I. L. R., 5 Mad., 223

7. ——— *Decree obtained against father executed against his sons as his representatives.*—In an undivided Hindu family, although the interests of the sons in the ancestral estate are liable to satisfy the father's debt, the holder of a money-decree against the father who has not attached the ancestral estate before the death of

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 234 (1859, s. 210).—Execution of decree against representative—*continued.*

the father cannot execute the decree against the ancestral property as assets in the hands of the representatives of the judgment-debtor under section 234 of the Code of Civil Procedure, 1877. *Zemindar of Sivagiri* v. *Alwar Ayyangar, I. L. R., 3 Mad., 42,* followed. HANUMANTHA *v.* HANUMAYYA
[I. L. R., 5 Mad., 232

8. ——————— *Decree for maintenance obtained against father.*—A decree for maintenance against a Hindu directing an annual payment to be made by him to the decree-holder during her lifetime can be executed after the death of the judgment-debtor against his sons to the extent of the assets of the deceased taken by them, but such assets do not include the share of the father in the family property. KARPAKAMBAL *v.* SUBBAYYAN
[I. L. R., 5 Mad., 234

9. ——————— *Liability of son for father's debt.—Decree against zemindari directing sale of land.—Execution against son of zemindar.* — A suit having been brought against the holder of an impartible zemindari upon a promissory note, a decree was passed by consent, whereby certain land was directed to be sold in the event of the debt not being paid in a certain way. After the death of the zemindar, execution proceedings were taken against his son to obtain a sale of the said land. *Held*, that the decree could be executed against the son. ZEMINDAR OF SIVAGIRI *v.* TIRUVENGADA
[I. L. R., 7 Mad., 339

——————— **s. 235 (1859, s. 212).**

See BENGAL RENT ACT, 1869, s. 58.
[I. L. R., 12 Calc., 161

See EXECUTION OF DECREE—MODE OF EXECUTION—GENERALLY.
[1 Hyde, 158
1 Ind. Jur., O. S., 125

See EXECUTION OF DECREE—EXECUTION ON OR AFTER AGREEMENTS OR COMPROMISES . . I. L. R., 2 Mad., 216

See EXECUTION OF DECREE—MODE OF EXECUTION—REMOVAL OF BUILDINGS.
[I. L. R., 8 Calc., 174

See LIMITATION ACT, 1877, ART. 179 (1871, ART. 167)—NOTICE OF EXECUTION.
[I. L. R., 1 All., 675

See PRACTICE—CIVIL CASES—EXECUTION OF DECREE, APPLICATION FOR.
[9 W. R., 362
11 W. R., 271
16 W. R., 25

——————— *Application for execution of decree.—Adjustment of decree.*—Under section 235 of the Code of Civil Procedure, 1882, the decree-holder, or the party who applies for execution, is bound to state in his application any adjustment between the

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 235 (1859, s. 212)—*continued.*

parties after decree, whether such adjustment has or has not been previously certified to the Court. *Panpayya* v. *Narasannah, I. L. R., 3 Mad., 216,* followed. QUEEN-EMPRESS *v.* BAPUJI DAYARAM
[I. L. R., 10 Bom., 288

——————— **s. 236 (1859, s. 214).**—*Investigation of title.—Execution of decree.*—Neither section 214, Act VIII of 1859, nor section 15, Act XXIII of 1861, contemplated any enquiry before the Court, whether the property belongs to the judgment-debtor or not. SUBJAN BIBEE *v.* SARIUTULLA
[3 B. L. R., A. C., 413 : 12 W. R., 329

——————— **ss. 237, 238 (1859, s. 213).**

See ATTACHMENT—MODE OF ATTACHMENT AND IRREGULARITIES, &c.
[11 W. R., 175
12 W. R., 488
18 W. R., 411

See BENGAL RENT ACT, 1869, s. 58
[I. L. R., 12 Calc., 161

See BOMBAY ACT V OF 1862, s. 3.
[I. L. R., 1 Bom., 601

——————— **s. 239 (1859, s. 290).**

See EXECUTION OF DECREE—TRANSFER OF DECREE FOR EXECUTION.
[I. L. R., 5 Calc., 736
21 W. R., 141, 219
I. L. R., 8 Calc., 916 : 11 C. L. R., 348
I. L. R., 10 Bom., 65

See EXECUTION OF DECREE—STAY OF EXECUTION . I. L. R., 7 All., 330
[8 W. R., 202

——————— **s. 242 (1859, s. 292).**

See EXECUTION OF DECREE—TRANSFER OF DECREE FOR EXECUTION.
[11 W. R., 230

——————— **s. 243 (1859, s. 209).**

See APPEAL—ORDERS . 11 Bom., 151
[I. L. R., 9 Calc., 214 : 12 C. L. R., 53

See EXECUTION OF DECREE—STAY OF EXECUTION . I. L. R., 7 All., 73
[6 N. W., 181

——————— **s. 244 (Act XXIII of 1861, s. 11).**

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See CIVIL PROCEDURE CODE, 1882, ss. 257, 258 . . . 3 Mad., 188
[I. L. R., 1 Mad., 203
8 W. R., 449
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1 N. W., 155
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[I. L. R., 2 Calc., 327
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[I. L. R., 4 Bom., 247

See RES JUDICATA—PARTIES—SAME PARTIES OR THEIR REPRESENTATIVES.
[I. L. R., 6 Calc., 777
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[I. L. R., 1 All., 374

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[13 B. L. R., 489

See SPECIAL APPEAL—ORDERS SUBJECT TO APPEAL . I. L. R., 1 Mad., 401

1. QUESTIONS IN EXECUTION OF DECREE.

1. ——— **Question raised for first time in execution.**—*Held*, that a question raised for the first time between the parties to a decree at the time of its execution, although not expressly reserved in that decree for determination at the time of its execution, may be enquired into and determined by the Court executing the decree under section 11 of Act XXIII of 1861. JANOJI BANAJI *v.* VYANKATESH SHRINIVAS
[2 Bom., 393: 2nd Ed., 371

2. ——— **Decree subsequently modified, Question as to execution of.**—Where it is contended that the decree that has been executed is not the decree that was passed between the parties, but a decree modified by a subsequent decretal order, section 11, Act XXIII of 1861, does not apply, the question not being one relating to the execution of the decree and between the parties to the suit. UMBIKA CHURN CHUCKERBUTTY *v.* DWARKANATH GHOSE . . . . . 8 W. R., 506

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 244 (Act XXIII of 1861, s. 11)—*continued.*

1. QUESTIONS IN EXECUTION OF DECREE—*continued.*

3. ——— **Suit to enforce liability imposed by decree of Civil Court in mofussil.**—A suit does not lie to enforce a liability specifically imposed by the decree of a Civil Court in the mofussil, the right of suit in such case being taken away by section 11 of Act XXIII of 1861. SANJEEVIYAH *v.* NANJIYAH . . . . 4 Mad., 453

4. ——— **Transfer of decree for execution.**—*Procedure of Court passing and Court executing transferred decree.—Civil Procedure Code, ss. 243, 545.*—The provisions of section 244 of the Civil Procedure Code govern equally the procedure of the Court which passed the decree, when executing such decree, and the Court to which the decree is sent for execution. *Cooke* v. *Hiseeba Beebee, 6 N. W., 181,* referred to. GHAZIDIN *v.* FAKIR BAKSH
[I. L. R., 7 All., 73

5. ——— **Question after Court has executed decree and become functus officio.**—*Review.*—Where a judgment-debtor, pending the execution proceedings, was granted permission to examine the state of the accounts, but failed to do so, and then made a fresh application to the Court for the same purpose after the execution proceedings had been struck off, and the decree declared to be satisfied,—*Held*, that the question must be determined with reference to the provisions of section 647 of the Civil Procedure Code, and the only course open to the judgment-debtor would have been to apply for a review of the order which declared the decree to be satisfied and struck off the execution proceedings. *Held*, also, that the words, "the following questions shall be determined by order of the Court executing the decree," of section 244 of the Code of Civil Procedure, must be interpreted to mean the Court executing the decree at the time when the application is made, and that they do not include the Court which has executed the decree, and has, therefore, become *functus officio.* FAKARUDDIN MAHOMED AHSAN *v.* THE OFFICIAL TRUSTEE OF BENGAL
[I. L. R., 10 Calc., 538

6. ——— **Loss or destruction of decree.**—*Regular suit.*—A decree passed for money was lost or destroyed: the decree-holder on suing out execution was referred to a regular suit. *Held*, that the existence of the decree and of its terms might have been enquired into in the execution department, and that the order of the Court, to which application for execution was made, could not confer jurisdiction on a Court to entertain such a suit. RANJEET *v.* CHOONEE LALL . . . . . 1 Agra, 78

7. ——— **Suit to remove buildings found on land for which decree is given.**—Where in execution of a decree for land the plaintiff found that buildings had been erected by the defendant on the land alleged by him to be comprised in the decree, and an application to the Court executing the decree was refused on the ground that the

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 244 (Act XXIII of 1861, s. 11)—*continued.*

1. QUESTIONS IN EXECUTION OF DECREE —*continued.*

Suit to remove buildings found on land for which decree is given—*continued.*

decree was silent as to the demolition of the buildings,—*Held*, that his remedy was an appeal against that order, and not a fresh suit to get the buildings removed. RADHA GOBIND SHAHA *v.* BROJENDER COOMAR ROY CHOWDHRY . **7 W. R., 372**

8. ——— **Question of title between decree-holder and third person.**—*Separate suit.*—The plaintiffs in a suit for money obtained a decree against all the defendants except *P.*, and among them *K.* On appeal, the Court of first appeal gave them a decree against *P.* In execution of this decree they attached and were paid, as belonging to *P.*, certain money deposited in the Government Treasury in *K.'s* name. On appeal by *P.*, the Court of second appeal reversed this decree, and restored the decree of the first Court dismissing the suit as regards *P.* *P.* thereupon applied in execution of his decree for a refund of the money. The plaintiffs objected on the ground that the money belonged to *K.* *Held*, that the Court executing *P.'s* decree was not competent to decide the question whether the money belonged to *P.* or to *K.*, such question not being one between *P.* and them only, but involving and raising a question of title between him and *K.* as to their conflicting claims, *inter se*, to the money. PUSAI *v.* MAHADEO PRASAD . **I. L. R., 6 All., 12**

9. ——— **Alleged fraudulent execution of decree.**—*Separate suit.*—Certain property in the 24-Pergunnahs having been seized and sold in execution of a decree of the High Court, application was successfully made to the District Judge to set aside the proceedings, on the ground that the execution was fraudulent and not warranted by the decree. *Held*, that the Judge had no right to entertain such an application, or to reopen, at the instance of a third party, execution proceedings which had come to an end. The question could only be determined in a regular suit. LUCHMEEPUT SINGH *v.* ADOYTO CHUBN MULLICK . . **24 W. R., 452**

See JOGENARAIN SINGH *v.* BHUGBANO. **[2 W. R., Mis., 13**

10. ——— **Question as to whether purchase-money has been paid within time.** *Conditional decree.*—The plaintiff in a suit to enforce a right of pre-emption obtained a decree to the effect mentioned in section 214 of the Civil Procedure Code. On payment by him of the purchase-money into Court, the defendants objected, in the execution department, to such payment, on the ground that it had not been made within time. The Court which made the decree disallowed the objection. The defendants appealed from the order disallowing the objection: they had previously appealed from the decree. The Appellate Court heard both appeals together, and holding that the purchase-money had not been paid into Court within time, reversed the

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 244 (Act XXIII of 1861, s. 11)—*continued.*

1. QUESTIONS IN EXECUTION OF DECREE —*continued.*

Question as to whether purchase-money has been paid within time—*continued.*

decree and allowed the objection. The plaintiff preferred a second appeal to the High Court from the Appellate Court's decree, which was admitted. He also preferred an appeal from the appellate order allowing the objection, but this appeal was rejected as being beyond time, and such order became final. *Held* that, inasmuch as the question whether the plaintiff had paid the purchase-money into Court within time was not one relating to the execution of the decree within the meaning of section 244 of the Civil Procedure Code, but was one which should be decided in the suit itself, and therefore the proceedings in the execution department touching that question were ill-founded, such order was not a bar to the hearing of the second appeal preferred by the plaintiff. MUHAMMAD ALI *v.* DEBI DIN RAI **[I. L. R., 4 All., 420**

11. ——— **Suit to set aside order in execution of decree.**—Where the object of the suit was to set aside orders passed in the miscellaneous department relating to execution of decree,—*Held*, that such suit was untenable; section 11, Act XIII of 1861, having distinctly prohibited all remedy by separate suit, and the remedy provided being an appeal from the order complained of. AMBIT KOONWAR *v.* LUCHMEE NARAIN **[1 Agra, 93**

12. ——— **Regular suit to set aside summary order.**—*Application in summary suit.*—A person who, in the course of executing a decree, had been turned out of possession by an order under section 269, Act VIII of 1859, and who was compelled to pay the costs of that order, brought a regular suit for its reversal and obtained a decree which was silent as to the costs of the summary order in consequence of the plaintiff not having demanded them: subsequently the plaintiff made an application in the summary suit that the costs of the summary order should be repaid to her. *Held*, that the Court had no power to entertain it under section 11, Act XXIII of 1861. TOYBOON *v.* MAHOMED WAJID **[2 C. L. R., 504**

13. ——— **Resistance to execution as being cultivators.**—*Decree for limited possession.*—*Separate suit.*—In a suit to recover possession of land, the defendants resisted execution on the ground that they were cultivators, and that the decree only authorised the plaintiff to recover possession as proprietor. The objection was overruled, and the defendants were ejected. They then sued to set aside the order made in the execution proceedings and to recover possession. *Held*, that the suit was barred under section 244, clause (*c*) of the Civil Procedure Code. NAJHAN *v.* MAHOMED TAKI KHAN *alias* PEER BUX KHAN **[I. L. R., 9 Calc., 872 : 12 C. L. R., 571**

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 244 (Act XXIII of 1861, s. 11)—*continued.*

1. QUESTIONS IN EXECUTION OF DECREE —*continued.*

14. ——— **Liability of property for debts.**—*Separate suit.—Debts of father.*—Whether property seized by a judgment-creditor in the hands of his deceased judgment-creditor's son is held by the son under such circumstances as render him liable for his father's debts, is a question which cannot be tried in execution proceedings, but must form the subject of an independent suit. RAMANOOGRO SINGH *v.* KISHEN KISHORE NARAIN SINGH [23 W. R., 265

15. ——— *Liability of son for father's debt.—Suit against son to enforce decree against father.—Limitation.—Suit to recover money charged on land by decree.*—A suit for money having been brought against the holder of an impartible zemindari, a decree was passed in 1867 by consent to the effect that the zemindar undertook to pay a certain sum by yearly instalments and hypothecated certain lands as security. A memorandum of this decree was registered under section 42 of Act XX of 1866. The last instalment fell due in February 1870. The decree was kept alive against the zemindar up to his death in 1873. Upon the death of the zemindar, proceedings in execution were taken against his son, who succeeded to the zemindari, but were set aside on appeal. In January 1882 a suit was brought against the son to recover the amount of the last instalment due by his father under the decree of 1867. *Held,* that the suit was neither barred by the provisions of section 244 of the Code of Civil Procedure, nor by limitation. ARUNACHALA *v.* ZEMINDAR OF SIVAGIRI . . . I. L. R., 7 Mad., 328

16. ——— **Mode of redeeming mortgaged lands in execution of former decree.**—A mortgagee was put into possession of the mortgaged property, under a decree obtained by him against the mortgagor, to the effect that the mortgagee should remain in possession until the mortgage debt was paid. The mortgagor subsequently paid into Court the money due under the mortgage decree, and applied to be restored to the possession of the mortgaged property. Both the lower Courts granted the mortgagor's application. On special appeal,—*Held* (following the decision of the Full Bench in *Ravji Shivram Joshi* v. *Kaluram Kalukchand, 12 Bom., 161*), that such an application was not the proper mode for the mortgagor to redeem the property and to recover possession from the mortgagee, the previous decree for possession having been fully executed when the mortgagee was put into possession. RAMCHANDRA BALLAL *v.* BABA ESGONDA . . 12 Bom., 163

17. ——— *Application for further execution by taking an account.*—An application to the Court passing a decree for possession in favour of the heirs of a mortgagee, for further execution thereof, by taking an account, is not the proper mode for the mortgagor to redeem the mortgaged lands and to recover possession thereof. The proper course for a mortgagor who seeks for an

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 244 (Act XXIII of 1861, s. 11)—*continued.*

1. QUESTIONS IN EXECUTION OF DECREE —*continued.*

Mode of redeeming mortgaged lands in execution of former decree—*continued.*

account and redemption, or for redemption alone, is to bring an independent suit for that purpose. *Janoji v. Vyankatesh, 2 Bom., 371,* overruled. RAVJI SHIVRAM JOSHI *v.* KALURAM . 12 Bom., 160

18. ——— **Question of amount received under mortgage.**—*Usufructuary mortgage.*—In a suit for possession under an usufructuary mortgage, plaintiff obtained a decree which was afterwards authoritatively interpreted to mean that he was to get possession of the property in order to repay himself out of the profits, keeping the usual accounts, and, after satisfaction of his claim, restore the property,—*Held* that, under the terms of the decree, he was in effect required to certify, for the information both of the Court and of the judgment-debtors, the amounts received and outstanding; and that the Court executing the decree was bound to require from him, from time to time, a statement of the amount received, and could deal with the matter under Act XXIII of 1861, section 11. GOLAM RUSSOOL KHAN *v.* KISHEN MOHUN SHAHA [23 W. R., 156

19. ——— **Property attached in execution, after satisfaction of decree from other sources.**—*Separate suit.*—An elephant having been attached in execution, it was released on the claim of one *P.*, upon *S.* standing surety. It was finally declared to be the property of the judgment-debtors; but the decree having been satisfied from other sources, it was ordered that the elephant be returned to the judgment-debtors. It was then demanded from the surety; but he objecting, the claimant (*P.*) was served with notice to produce it. This not having been done within the period fixed, the Munsif ordered that it should be demanded from the surety, and (on his failure to produce its stipulated price) should be realised by attachment and sale of his property. *Held* that, the decree having been executed, the Munsif's subsequent proceedings as to the elephant were illegal, and that the right to it was open to a suit. JUGGUT CHUNDER BHADOORE *v.* SHIB CHUNDRA BHADOORE . . 16 W. R., 269

20. ——— **Execution of pottah by decree-holder in favour of judgment-debtor.**—*Limiting decree for possession.*—Where a decree-holder, declared to be entitled to possession of certain land, subsequently to decree executed a pottah in favour of his judgment-debtor, who was then in possession, and afterwards took out execution under his decree,—*Held*—on an objection by the judgment-debtor that, under these circumstances, he was not entitled to possession—that satisfaction of the decree not having been entered up, such objection could not be dealt with under section 244 of the Civil Procedure Code. BABA MAHOMED *v.* WEBB. [I. L. R., 6 Calc., 786: 8 C. L. R., 36

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 244 (Act XXIII of 1861, s. 11)—*continued.*

1. QUESTIONS IN EXECUTION OF DECREE —*continued.*

21. ——— **Question as to whether debt was properly contracted.**—*Execution of decree against endowed property.*—*B.* obtained a decree on a settlement of accounts made with *V.* as trustee of a muth. *V.'s* title as trustee having subsequently been negatived by decree and the title of *S.* declared, *B.* applied to execute his decree against the property of the muth and to have *S.* substituted as party to the suit in place of *V.* The application was rejected by the Munsif, but on appeal the District Judge made *S.* a party and reserved for determination in execution proceedings the question whether the debt was contracted for the benefit of the muth. *Held*, that *S.* was properly made a party, but that it was not open to him to raise this question in execution proceedings. SUDINDRA *v.* BUDAN [I. L. R., 9 Mad., 80

22. ——— **Right to maintenance.**—*Maintenance payable by instalments under decree.*—Where the holder of a decree for maintenance is opposed in execution by the heirs of her judgment-debtors, the questions arising between them cannot be determined in execution, but must be tried in a regular suit. *Quære*,—If the original judgment-debtor were alive, could the decree-holder enforce her claim for maintenance by execution without a fresh suit for each instalment unpaid? PREMOO BIBEE *v.* DASSOO DEBIA . . . . . 10 W. R., 93

23. ——— **Monthly allowance payable under decree.**—*Cause of action.*—*Separate suit on failure to pay.*—Where by a decree the plaintiff's right to a monthly allowance was declared,—*Held*, that any failure on the part of the person bound to pay by the terms of the decree would constitute a good cause of action; and a fresh suit brought on the assertion of payment being withheld would not be affected by the provisions of section 11, Act XXIII of 1861. NAWAZISH ALY BEG *v.* VILAYTEE KHANUM [2 Agra, 23

24. ——— **Claim for damages for injury to goods wrongly attached.**—*Separate suit.*—A claim for damages for injury to certain goods belonging to plaintiff, but attached by the defendant in execution of a decree held by him against the plaintiff, pending such attachment, through the alleged negligence of the defendant, is a matter which should be determined by a separate suit, and not by the Court executing the decree under which the goods are attached. LUCHMAN DASS *v.* HEERA LAL . . . . . 3 N. W., 187

25. ——— **Question of liability for wrongful execution.**—*Separate suit.*—Where property attached in execution of a decree is found by the Court executing the decree to have been wrongly seized, the question of the legal liability of the plaintiff for the loss sustained can only be determined by a separate suit, and an order adjudging such liability passed in execution of the decree will be set aside as illegal. WRIGHT *v.* SEETA RAM [2 Agra, 105

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 244 (Act XXIII of 1861, s. 11)—*continued.*

1. QUESTIONS IN EXECUTION OF DECREE —*continued.*

26. ——— **Damages for injury to goods under attachment.**—*Separate suit.*—A claim for damages in respect of injury sustained by goods while under attachment in execution of a decree which was afterwards set aside, is not a matter to be disposed of under section 11, Act XXIII of 1861, but must be made the subject of a separate suit. KASHEE KISHORE ROY CHOWDHRY *v.* NOOR KHAN [7 W. R., 45

27. ——— **Damage done by removal of crops for possession of which decree had been obtained.**—By the terms of a decree passed by the District Munsif, the plaintiff was declared entitled to the possession of certain land, together with the crops upon it. The plaintiff asked for execution of the decree in respect of the land and the crops, which he alleged had been unlawfully taken away by the defendants, and possession of the land was given to the plaintiff, but he was referred to a separate suit for the damage sustained by him by reason of the removal of the crop. *Held*, that no separate suit could be maintained, but the plaintiff's remedy was by a proceeding in execution under section 11 of Act XXIII of 1861 (Civil Procedure Code). SUNGARA NARAYANA PILLAY *v.* SANDIRA PILLAY [6 Mad., 13

28. ——— **Land wrongly given to defendant in another suit.**—*Separate suit.*—The plaintiff sued to recover certain land of which the defendant obtained possession in execution of a decree in a former suit, in which the plaintiff was a defendant, although it was not part of the land mentioned in the plaint or decree in the former suit. *Held*, that the plaintiff's suit could not be maintained, and that his only remedy for the wrongful dispossession was a proceeding under section 11, Act XXIII of 1861. MUTTUVELU PILLAI *v.* VYTHILINGA PILLAI [5 Mad., 185

29. ——— **Objection to claim to portion of the land.**—*Decree altering possession of land.*—Where a decree directed certain land to be taken from first defendant and put into plaintiff's possession for a term, and a claim was put in by second defendant's assignees to part of the land,—*Held*, that an objection by first defendant to the claim was a matter to be determined in execution proceedings and not by separate suit. RAHIMAN KHAN SAMOJI SAHIB *v.* PATCHA MIYAH [I. L. R., 4 Mad., 285

30. ——— **Land taken in excess of decree.**—*Separate suit.*—*Cause of action.*—Where a party who has obtained a decree for land takes possession by his own act, and not by the act of the officer of Court, of more land than the decree gives him,—*Held*, that a suit will lie to recover back possession of any land taken in excess of the decree. MUDUN MOHUN SINGH *v.* KANYEE DOSS CHUCKERBUTTY [12 B. L. R., 201

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 244 (Act XXIII of 1861, s. 11)—*continued.*

1. QUESTIONS IN EXECUTION OF DECREE —*continued.*

Land taken in excess of decree—*continued.*

SHURUT SOONDUREE DABEE *v.* PURESH NARAIN ROY . . . . . 12 W. R., 85

31. ——— **Land taken in excess.**—*Cause of dispossession.*—It should be distinctly found in such a case how the dispossession occurred, whether through the Court or by the act of the defendant himself. SUROT SOONDERY DABEE *v.* ONWAR NARAIN PERSHAD DEY . . 12 B. L. R., 207, note

S. C. SHURUT SOONDUREE DEBEE *v.* PURESH NARAIN ROY . . . . 12 W. R., 85

32. ——— **Land taken in excess of decree.**—*Separate suit.*—In execution of a decree for the recovery of certain lands from the plaintiff within specified boundaries, the defendant took possession of land as being covered by the decree, the possession being given him by an officer of Court. Thereafter the plaintiff preferred a complaint that the defendant had taken illegal possession, as the land was not covered by the decree; but the Court rejected his application. The plaintiff then brought a suit to recover possession of the lands which he alleged had been wrongfully taken under the defendant's decree. *Held*, that the suit would not lie. The matter was a question arising between the parties relating to the execution of the decree, under section 11, Act XXIII of 1861, and should therefore have been the subject of an application to the Court which made the decree. JOGENDRO NARAIN COOMAR *v.* SURNOMOYEE [12 B. L. R., 203, note: 14 W. R., 39

See KISHEN SOONDER ROY *v.* PROSUNNO-NATH BHUTTAHARJEE. [W. R., 1864, 208

And MAHOMED IBRAHIM *v.* LALLA JUSSO-DALAL . . W. R., 1864, 247

33. ——— **Decree wrongly executed.**—*Trespass, Suit for.*—Where, in execution of a decree, something is done which is not ordered by the decree, as making breaches in a bund which were thought by the nazir necessary for the protection of the bund, a suit will lie for trespass committed thereby. It is not a question arising in execution of a decree under section 11, Act XXIII of 1861. RASH BEHARY LALL *v.* WAJAN [12 B. L. R., 208, note: 11 W. R., 516

See also SUBJAN BIBI *v.* SARIATULLA [3 B. L. R., A. C. 413: 12 W. R., 329

34. ——— *Suit by judgment-debtor to set aside sale.—Fresh suit.—Civil Procedure Code, s. 244.*—A judgment-debtor sued the decree-holder for recovery of possession of certain land which had been sold in execution of the decree and to set aside the sale, on the ground that the land was not liable, under section 9 of the N.-W. P. Rent Act, to sale in execution of decree. *Held*, that the question at issue between the parties was clearly one relating to the execution and satisfaction of the decree, and that the suit was therefore barred by the provisions of section 244 of the Civil Procedure Code. JANKI SINGH *v.* ABLAK SINGH . I. L. R., 6 All., 393

35. ——— **Crops misappropriated while in possession under decree afterwards set aside on appeal.**—*Separate suit for value of crops.*—The defendant obtained a decree in a suit brought against the plaintiff, for arrears of rent and for ejectment, in execution of which he evicted the plaintiff from his holding; and after getting possession thereof carried away certain crops which were then standing on the land. The plaintiff appealed from the decree obtained by the defendant, and on appeal it was set aside on the plaintiff depositing the rent due, and the plaintiff recovered possession of his tenure. *Held*, that a suit for the value of the crops carried away by the defendant, while in possession under his decree, was not barred by section 11 of Act XXIII of 1861. SHURNOMOYEE *v.* PATARRI SIRKAR . . . I. L. R., 4 Calc., 625

36. ——— **Suit for restoration of property where decree is reversed.**—Where a person obtains possession of property under a decree which is subsequently reversed, a claim for the restoration of the property need not, under Act XXIII of 1861, section 11, be the subject of a separate suit, but may be enforced in a miscellaneous proceeding. NAGINDAS DEVCHAND *v.* NATHA PITAMBER [10 Bom., 297

37. ——— **Failure to execute decree.**—*Suit after omission to execute decree.*—Plaintiff's father purchased a house on the 11th June 1854 at a sale made under a decree against *G. D.*, but was not put into possession of it; accordingly in 1866 he obtained a decree for possession, which, however, was never executed. The defendant in 1870 obtained possession of the house by another sale made in execution of another decree against *G. D.* The present suit was instituted by plaintiff in 1871. *Held*, that not only was the remedy on the cause of action, which accrued in 1854, and the decree of 1866, barred, but also that Act XXIII of 1861, section 11, prevented the plaintiff from bringing a new suit on the fresh cause of action accruing to him under the decree of 1866, as that section "took away from the parties to the suit the right to raise by a fresh suit any question as to their rights and liabilities under the decree." *Runganasary* v. *Shappani*, 5 *Mad.*, 375, followed. KISAN NANDRAM *v.* ANANDARAM BACHAJI [10 Bom., 433

38. ——— **Suit for possession after failure of attempt to execute decree giving possession.**—*Separate suit.*—The ancestors of the plaintiff brought a suit in 1821 before the Registrar of the Adawlut Court to eject the defendant's grandfather from a piece of ground. The Registar found

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 244 (Act XXIII of 1861, s. 11)—*continued.*

1. QUESTIONS IN EXECUTION OF DECREE —*continued.*

Suit for possession after failure of attempt to execute decree giving possession—*continued.*

that the defendant was a tenant under the plaintiff at a monthly rent, and the Court decreed that defendant should remain in possession so long as he should continue to pay the rent regularly, and that in default of payment the plaintiff should be placed in possession. An attempt to obtain possession in execution of that decree in 1861 failed, and the plaintiff brought a suit to recover possession with arrears of rent. *Held*, that section 11 of Act XXIII of 1861 precluded the plaintiff from maintaining the suit. RUNGUNSARY *v.* SHAPPANI ASARY . . . . **5 Mad., 375**

39. ——— **Suit for possession which might have been had under decree.**—*Separate suit.*—A suit will not lie for possession of land of which the plaintiff should have been, but was not, put in substantial possession in execution of a decree. His remedy is to further execute his decree. KISTO GOBIND KUR *v.* GUNGA PERSHAD SURMAH **[25 W. R., 372**

LOLIT COOMAR BOSE *v.* ISHAN CHUNDER CHUCKERBUTTY . . . **10 C. L. R., 258**

40. ——— *Separate suit.*—*New cause of action.*—A plaintiff who has obtained a decree declaring him entitled to the possession of immoveable property must, under section 11 of Act XXIII of 1861, proceed by execution of the said decree, and not otherwise; if he neglect to do so till he is time-barred, he cannot any the more on that account bring another suit for possession of the same property, whether founded on the old decree in his favour, or on the continued occupation of the said property by the defendant. NASRUDIN *v.* VENKATESH PRABHU . . **I. L. R., 5 Bom., 382**

41. ——— **Formal possession under decree.**—*Separate suit for actual possession.*—*Cause of action.*—*Execution of decree.*—*Civil Procedure Code, Act XIV of 1882, ss. 244, cl. (c), 263, 264.*—In 1877 the plaintiff sued the defendant for possession of certain properties and obtained a decree; in execution of this decree the plaintiff, on 12th of July 1879, obtained formal possession of the properties sued for. The defendant continued to remain in actual possession and occupation of a portion of the premises, and refused to give up possession of the same to the plaintiff, who served him with a two months' notice to quit in June 1881. The plaintiff did not evict the defendant in execution of the decree obtained by him against the defendant, but instituted a fresh suit for that purpose. *Held*, that such a suit would lie. *Semble*,—That the delivery of formal possession in execution of a decree for possession gives a cause of action, against a defendant who remains in occupation of the premises, which may be enforced in a regular suit. SHAMA CHARAN CHATTERJI *v.* MADHUB CHUNDRA MOOKERJEE **[I. L. R., 11 Calc., 93**

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 244 (Act XXIII of 1861, s. 11)—*continued.*

1. QUESTIONS IN EXECUTION OF DECREE —*continued.*

42. ——— **Question as to title raised and decided in execution proceedings.**—*Omission to appeal.*—*Fresh suit brought to establish title.*—The defendant obtained a decree against the plaintiff as representative of his (the plaintiff's) deceased uncle, and in execution he attached the property in dispute. The plaintiff objected to the attachment, but his objection was disallowed, and the property was sold. The plaintiff did not appeal against the order disallowing his objection, but filed the present suit to establish his right. Both the lower Courts allowed the plaintiff's claim. On appeal by the defendant to the High Court,—*Held*, reversing the decree of the Courts below, that the plaintiff's suit was not maintainable. The question raised in the present suit was one which ought to have been taken in the execution proceedings in the former suit under section 244 of the Civil Procedure Code (Act XIV of 1882); and having been, as a fact, raised and decided against the plaintiff, he could not bring a separate suit. NIMBA HARISHET *v.* SITARAM PARJI **[I. L. R., 9 Bom., 458**

43. ——— **Omission to oppose execution of decree.**—*Suit to set aside illegal sale.*—A suit will lie to set aside a sale made in contravention of the terms of section 64, Bengal Act VIII of 1869, the judgment-debtor not being bound to oppose the sale in the proceedings in execution. BAMA SOONDUREE DOSSEE *v.* MUDHOO SOODUN BISWAS **[25 W. R., 156**

44. ——— **Claim to have sale set aside as fraudulent.**—*Suit by judgment-debtor against judgment-creditor and purchaser to set aside fraudulent sale.*—A judgment-debtor who claims to have a sale of his land set aside on the ground of fraud committed by the judgment-creditor, who procured a sale without advertisement, and purchased the property without leave of the Court, is debarred from bringing a suit to set aside the sale, inasmuch as the question is one arising between the parties to the suit and relates to the execution of the decree within the meaning of section 244 of the Code of Civil Procedure, 1877. VIRARAGHAVA AYYANGAR *v.* VENKATA CHARYAR . **I. L. R., 5 Mad., 217**

45. ——— *Sale in execution, the judgment-debtor being ignorant of the execution proceedings through the fraud of the decree-holder.*—*Setting aside proceedings in execution.*—*Separate suit.*—In 1879 *D.* obtained a decree against *S.* *S.* gave security for the satisfaction of the decree, whereupon *D.* agreed not to take proceedings in execution. In breach of this agreement, *D.* in the same year applied for execution, and sold certain immoveable property belonging to *S.*, of which *K.* became the purchaser. *K.* did not apply for possession until 1883, in which year he applied for and obtained possession of the property. *S.* alleged that he then for the first time became aware of the sale, and that by the fraud of *D.* and *K.* he had been kept in ignorance

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 244 (Act XXIII of 1861, s. 11)—*continued.*

1. QUESTIONS IN EXECUTION OF DECREE —*continued.*

Claim to have sale set aside as fraudulent—*continued.*

of the execution proceedings taken by *D.* in breach of the above-mentioned agreement, and within thirty days after *K.* obtained possession, he (*S.*) applied for a reversal of the orders which had been passed in the aforesaid fraudulent proceedings. The Subordinate Judge held that the application was barred and referred the applicant to a separate suit to set aside the sale. On application to the High Court,—*Held,* on the authority of *Paranjpe* v. *Kanade, I. L. R., 6 Bom., 148,* that a separate suit would not lie, and that the relief sought by *S.* could only be obtained, at all events as against *D.,* by an application under section 244 of the Civil Procedure Code, 1882. SAKHARAM GOVIND KALE *v.* DAMODAR AKHARAM

[I. L. R., 9 Bom., 468

46. ——— **Claim to have sale set aside as being under barred decree.**—*Separate suit,* —A separate suit will not lie to have set aside a sale made in execution of decree barred at the time of execution; the invalidity should be declared in proceedings in execution as provided in section 11, Act XXIII of 1861. NOJABUT ALI CHOWDHRY *v.* MOHA BUSSEEROOLLAH CHOWDHRY

[11 B. L. R., 42: 20 W. R., 5

See GOLAM ASGAR *v* LAKHMAN DEBI.

[5 B. L. R., 68: 13 W. R., 273

And ZAMEER SIRDAR *v.* ASSESMOODDEEN SIRDAR . . . 23 W. R., 257

URDUB CHURN DEBTA *v.* SOOKDEB DEBTA.

[24 W. R., 45

47. ——— **Claim to set aside sale as wrongly made.**—*Decree for sale of land.—Objections by representative of deceased judgment-debtor in his own right disallowed.—Order reversed on appeal.—Claim under section 278 rejected.*—*S.* mortgaged four parcels of land to *M. M.* obtained a decree against *S.* directing the sale of the lands mortgaged. *S.* died and *K.* was brought in as his represenative under section 234 of the Code of Civil Procedure. *M.* applied for execution against the lands mortgaged as assets of *S. K.* objected to the sale of three parcels, on the ground that one parcel belonged to himself (*K.*) and two to the family to which *S.* belonged, and of which *K.* was the manager. The District Munsif investigated these questions under section 244 of the Code of Civil Procedure, and directed that execution should proceed against all four parcels. The District Court on appeal reversed the order of the Munsif, on the ground that he had no power to decide these questions under section 244, and that the proper course was for *M.* to attach the properties and for *K.* to make a claim. This course was adopted, and *K.'s* claim was rejected and the four parcels were sold and bought by *V. K.* thereupon brought a suit against *M.* and *V.* to cancel the sales to *V. Held* that, by virtue of section 244 of the Code of Civil Procedure, the suit would not lie. KURIYALI *v.* MAYAN . I. L. R., 7 Mad., 255

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 244 (Act XXIII of 1861, s. 11)—*continued.*

1. QUESTIONS IN EXECUTION OF DECREE —*continued.*

48. ——— **Restitution of amount paid under decree.**—*Reversal of decree.—Interest.—Fresh suit.*—In a suit for redemption of a mortgage, a decree was passed for possession by redemption, on the plaintiff paying the sum of R43,625-7-0, the amount of the mortgage-debt. Prior to the institution of the suit, the defendant had taken proceedings in the Judge's Court to foreclose the mortgage, and the plaintiff paid the above-mentioned sum into that Court for the defendant, who took it. The plaintiff appealed to the High Court from the decree directing him to pay R43,625-7-0 as the mortgage-debt, and obtained a decree by which the decree of the first Court was modified, and the amount payable on redemption was reduced to R22,155. The plaintiff then took out execution of the decree to recover from the defendant the difference between the two sums with interest. *Held,* that the effect of the Appellate Court's decree was to direct restitution of any sum paid under the first Court's decree which was disallowed by the Appellate Court's decree, and that the question was clearly one for determination by the Court executing the decree and not by separate suit, being expressly provided for by section 583 of the Civil Procedure Code. *Held,* also, that the decree-holder was entitled to restitution of the amount with interest. *Roger* v. *Comptoir d'Escompte de Paris, L. R., 3 P. C., 465,* referred to. *Ram Ghulam* v. *Dwarka Rai, I. L. R., 7 All., 170,* distinguished by AHMOOD, *J.* JASWANT SINGH *v.* DIP SINGH

[I. L. R., 7 All., 432

49. ——— **Question arising after sale.** —*Question as to interest taken by purchaser.*—*Per* MAHMOOD, *J.*—The scope of section 244 of the Civil Procedure Code is limited to matters connected with the execution of the decree between the decree-holder and the judgment-debtor, and covers all the questions which may arise between the decree-holder and the judgment-debtor relating to the execution, &c., of the decree. Questions that may arise after the sale are not, strictly speaking, questions relating to the execution, discharge, or satisfaction of the decree, within the meaning of clause (3), section 244; but as soon as there has been a sale, the execution of the decree, so far as the decree-holder is concerned, is over, and the question whether the purchaser has purchased anything by the sale is not a question as to the execution of the decree-holder's decree. RAMCHHAIBAR MISR *v.* BECHU BHAGAT . . I. L. R., 7 All., 641

50. ——— **Refund of purchase-money.** —*Separate suit.—Adjudication of judgment-debtor as bankrupt and order not to deal with property.*—A sale on the 4th March 1871, of certain property sold in execution of a decree obtained by *A.,* having been confirmed on the 5th May 1878, notice was on the 31st May received that the judgment-debtor had been adjudicated a bankrupt in London, and an application was made to the Court to abstain from dealing with his property. All proceedings were thereupon stayed, and on the 8th of July 1878 the

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 244 (Act XXIII of 1861, s. 11)—*continued.*

1. QUESTIONS IN EXECUTION OF DECREE —*continued.*

Refund of purchase-money—*continued.*

purchaser applied to the Court for a refund by the present plaintiffs, who were the administrators of *A.*, of his purchase-money, and on the 19th of the same month an order was made for such refund. The amount was refunded without protest by the plaintiffs, who then sued the purchaser and the original judgment-debtor to recover the amount paid by them. *Held*, that the suit would not lie, but that the question was one to be determined under section 244 of the Civil Procedure Code by the Court executing the decree. SOLANO *v.* AHMEIDA

[10 C. L. R., 573

51. ——— **Compromise as to possession after decree.**—*Procedure.*—*B.* sued his brother *C.* for possession of certain lands. *B.* and *C.* came to an amicable settlement, one of the terms of which was that *C.*, during his life, should retain possession of certain of the lands, and that, after his death, they should pass to *B.* A decree was given in accordance with the terms of the compromise. On *C.'s* death, his widow refused to put *B.* in possession of the lands. *B.* sought to obtain possession of the lands with mesne profits by executing the decree under the compromise against *C.'s* widow. *Held*, that he ought to proceed by regular suit. TARA MANI DASI *v.* RADHA JIBAN MUSTAFI

[6 B. L. R., Ap., 142: 14 W. R., 485

52. ——— **Agreement to give time.**—*Suit on agreement.*—The parties to a decree presented a petition to the Court executing the decree, in which they stated that they had agreed that the principal amount of the decree was to be paid within eight years; that a sum of R50 was to be paid annually as interest on the principal amount; and that upon default of payment of the interest the whole amount due should be realised by execution of the decree. On this petition being presented the Court struck the case off its file. *Held* that, upon default being made, the decree-holder's remedy was by execution of the decree, and not by suit to enforce the terms of the agreement. CHAMPAT RAI *v.* PITAMBAR DAS . . I. L. R., 6 All., 16

53. ——— **Contract superseding decree.**—*Separate suit.*—In the course of proceedings in execution of a decree, by which a simple mortgage of immoveable property was enforced, the judgment-debtor made an application to the Court executing the decree, dated in April 1877, stating that the decree had been partially satisfied by the sale of a part of the mortgaged property; that the decree-holder had remitted a portion of the decree; that the balance should be paid by a certain date; and that a certain banker had given a note of hand for the payment of interest on the balance at a certain rate. The judgment-debtor then stated as follows: "So long as the petitioner does not pay the money to the decree-holder,—*i.e.*, during the term fixed above,—the banker shall pay interest to the decree-holder; the decree-holder shall not have power to take out execution within the said term, but after the expiry thereof he shall be at liberty to realise his money together with interest from the petitioner and his property by executing the decree: excepting the property sold, all the property mortgaged and attached under the decree shall continue so mortgaged and attached: the decree-holder's pleader has affixed his signature at the foot of this petition showing that he consents to it: the petitioner therefore prays that the case may be struck off as partially executed." The decree-holder subsequently sued the judgment-debtor to recover the balance of the decree, claiming under the arrangement set forth in the petition of April 1877, as a contract superseding the decree. *Held*, having regard to the terms of that petition, that no new contract superseding the decree was either intended or effected, and the suit was consequently not maintainable. *Billings* v. *Uncovenanted Service Bank, I. L. R., 3 All., 781*, distinguished. *Ganga* v. *Murli Dhar, I. L. R., 4 All., 240: S. A. No. 25 of 1882, Weekly Notes, All., 1883, p. 93*; and *Champat Rai* v. *Pitambar Das, I. L. R., 6 All., 16*, followed. MAKUND RAM *v.* MAKUND RAM

[I. L. R., 6 All., 228

54. ——— **Compromise effected by fraud.**—*Separate suit.*—*Practice.*—*Power of Court to vacate any judgment or order procured by fraud.*—The plaintiff held two decrees against the defendant for R5,490-1-6, and applied for execution. The defendant, by misrepresentation, induced the plaintiff to receive R3,900 only in full satisfaction of those decrees, and to withdraw the application. The plaintiff, on discovering the misrepresentation, brought this suit to recover the difference. *Held*, that the suit was barred by section 11 of Act XXIII of 1861 (which corresponds with section 244 of Act X of 1877), the question between the parties being a question relating to the execution of a decree. It is always competent to any Court to vacate any judgment or order, if it be proved that such judgment or order was obtained by manifest fraud; and in the case of orders made in execution, section 11 of Act XXIII of 1861 excludes all other remedy. PARANJPE *v.* KANADE . . . I. L. R., 6 Bom., 148

55. ——— **Refund of proceeds of sale on ground of compromise.**—Where a refund is claimed of the proceeds of an execution sale on the ground that the decree has been satisfied by compromise, the matter ought to be tried under Act XXIII of 1861, section 11, and not by regular suit. VELAYET HOSSEIN *v.* WULEE AHMED

[23 W. R., 207

56. ——— **Refund of money wrongly realised under decree.**—*Execution of decree.*—*Separate suit.*—Moneys realised as due under a decree, if unduly realised, are recoverable by application

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 244 (Act XXIII of 1861, s. 11)—*continued.*

1. QUESTIONS IN EXECUTION OF DECREE —*continued.*

Refund of money wrongly realised under decree—*continued.*

to the Court executing the decree, and not by separate suit. The opinion of STUART, *C. J.*, in *Agra Savings Bank* v. *Sri Ram Mitter, I. L. R., 1 All., 388*, differed from. *Haromohini Chowdhrain* v. *Dhanmani Chowdhrain, 1 B. L. R., A. C., 138*; and *Ekowri Singh* v. *Bijaynath Chattapadhya, 4 B. L. R., A. C., 111*, distinguished. PARTAP SINGH *v.* BENI RAM [I. L. R., 2 All., 61

TAJ *v.* GUNGAPERSHAD . . . 2 Agra, 45

57. ——— *Decree subsequently reversed or modified.*—When money has been taken in execution of a decree which is subsequently reversed or modified, no fresh suit will lie for its recovery; the matter must be enquired into by the Court which passed the decree as a question arising between the parties relating to the execution of such decree. SALIGRAM SING *v.* GOBIND SAHAI [4 B. L. R., Ap., 64

NURSING CHUNDER SEIN *v.* BIDYA DHUREE DOSSEE . . . . 2 W. R., 275

JADOO NATH GOSSAIN *v.* NOBO KISHEN CHATTERJEE . . . . . 4 W. R., 66

58. ——— **Excess sum retained by decree-holder after satisfying decree.**—*Separate suit.*—Suit brought to recover the amount to which plaintiff was entitled under a decree passed in favour of himself and defendant as co-plaintiffs in a former suit. It appeared that defendant purchased the property sold in execution of the decree, and that the price for which the sale took place was sufficient to satisfy the decree. Instead of paying the purchase-money into Court, defendant, with the knowledge and assent of plaintiff, retained the whole sum upon the understanding that he should give the Court a receipt for himself and on behalf of plaintiff, and afterwards pay to plaintiff his portion of the amount decreed. Accordingly, defendant presented a petition to that effect and obtained a certificate confirming the sale. Defendant having failed to pay plaintiff his portion, the present suit was brought. Upon these facts it was held, in special appeal, that the decree was satisfied by sale of the judgment-debtor's property, and that the execution proceedings were completely at an end, the defendant having been, by the assent of the plaintiff, made his agent for the acknowledgment of the satisfaction of the decree. No subsequent application under the decree could have been entertained by the Court which executed it. Therefore plaintiff's claim was not a matter determinable under section 11 of Act XXIII of 1861. RAMANADAN CHETTI *v.* KUNNAPPU CHETTI . . . 6 Mad., 304

KRISTO CHUNDER GOOPTO *v.* RAMSOONDUR SEIN [17 W. R., 14

59. ——— **Suit to recover sum paid in excess under decree.**—*Separate suit.*—Sums

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 244 (Act XXIII of 1861, s. 11)—*continued.*

1. QUESTIONS IN EXECUTION OF DECREE —*continued.*

Suit to recover sum paid in excess under decree—*continued.*

paid in execution in excess of what was due under the decree can only be recovered by application to the Court which executed the decree, not by a separate suit. KASHEE KISHORE ROY CHOWDHRY *v.* KISHEN CHUNDER SANDYAL . . . 15 W. R., 160

60. ——— **Money paid in excess under decree.**—*Decree reduced on appeal.—Separate suit.*—A judgment-creditor having caused certain property of his judgment-debtor to be sold in execution, the proceeds realised did not amount to the full judgment-debt. Afterwards the judgment-debt was reduced in appeal to a sum far below the amount realised in execution, and the judgment-debtor brought a suit to recover the excess moneys. *Held*, with reference to Act XXIII of 1861, section 11, that the suit did not lie, but that the Court which was charged with the execution of the decree had full jurisdiction to determine the question and order a refund. MOTHOORA PERSHAD SINGH *v.* SHAMBHOO GEER [19 W. R., 413

61. ——— *Separate suit.—Limitation.*—In execution of a decree the property of the judgment-debtor was sold, and on an account being taken, a certain sum therein appearing to be due was paid in December 1868 to the decree-holders. Subsequently, on the application of the judgment-debtor, the account was reopened, and had been overdrawn by the decree-holders. In 1876 the judgment-debtor applied to the Court which executed the decree for an order for the repayment of the amount overdrawn. *Held* that, while the application was not barred by any provisions of the Limitation Act, IX of 1871, the English doctrine of laches did not apply in this country; and, further, that the application had been presented in the proper Court, as required by section 11 of Act XXIII of 1861 (corresponding with section 244 of Act X of 1877). ALLIJ HOSSEIN *v.* MUZHUR HOSSEIN . . . 4 C. L. R., 577

62. ——— **Money paid in excess by mistake.**—*Satisfaction of decree of Small Cause Court.—Damages, Suit for.*—Where the plaintiff sued defendant in a Civil Court for recovery of a sum alleged to have been paid by plaintiff to defendant under a mistake, in excess of the sum due in satisfaction of a decree of the Small Cause Court,—*Held* by STUART, *C. J.*, PEARSON, *J.*, dissenting, that such a suit was in the nature of one for damages cognizable by the Court of Small Causes, and was not barred by the terms of section 11 of Act XXIII of 1861, the question involved in the claim not being one which could properly arise in execution proceedings, which must be confined to matters embraced in the decree passed between the parties to the suit. AGRA SAVINGS BANK *v.* SRI RAM MITTER [I. L. R., 1 All., 388

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 244 (Act XXIII of 1861, s. 11)—*continued.*

1. QUESTIONS IN EXECUTION OF DECREE —*continued.*

63. ——— **Value of elephant accepted in satisfaction of decree but not delivered.** —*Separate suit.*—The plaintiff held a decree against the defendants, and agreed to take an elephant in satisfaction, the defendants promising, if satisfaction were entered up, to be responsible for the value of the elephant, should it be claimed and recovered by any other person. It was so claimed and recovered, and the plaintiff sued for its value. *Held*, that the suit was not barred by section 11 of Act XXIII of 1861. MUTHRA CHOWDRY *v.* SHEORUTTUN MULL [6 N. W., 126

64. ——— **Part satisfaction of decree not certified to the Court.**—*Suit to recover money so paid after execution of entire decree.—Civil Procedure Code, 1859, s. 206.*—*A.*, a judgment-debtor, paid to *B.*, the decree-holder, a sum of money by way of compromise, in full satisfaction of the decree. *B.* failed to certify this payment to the Court, and afterwards executed her decree for the full amount. In a suit by *A.* against *B.*, for recovery of the amount previously paid out of Court, in satisfaction of the decree,—*Held* that, notwithstanding section 11 of Act XXIII of 1861, the suit was maintainable. GUNAMANI DASI *v.* PRANKISHORI DASI [5 B. L. R., 223: 13 W. R., F. B., 69

Overruling ALUNGA BEEBEE *v.* GOOROO CHURN ROY . . . . 3 W. R., S. C. C. Ref., 3

65. ——— **Money paid in satisfaction of decree out of Court.**—*Civil Procedure Code (VIII of 1859), s. 206.*—*N.* having obtained a decree in a suit against *K.*, requested him to discharge certain sums due on outstanding bonds which *N.* had given to third parties, promising to credit the sums so paid to the amount due under the aforesaid decree. *K.* paid as requested, but *N.* took out execution in full of the decree; and the Court refused to recognise the payments made by *K.* out of Court. In a suit by *K.* for the money paid as aforesaid,—*Held*, that the payments not having been made directly in adjustment of a decree, the suit was not barred within the rule laid down in *Arunachella Pillai* v. *Appavu Pillai, 3 Mad., 188.* KUNHI MOIDIN KUTTI *v.* RAMEN UNNI [I. L. R., I Mad., 203

66. ——— **Satisfaction or part satisfaction out of Court, but not certified.**—*Subsequent execution of decree for full amount.—Suit for money previously paid.—Civil Procedure Code (X of 1877), s. 258.—Limitation Act (XV of 1877), sch. II, art. 161.*—A suit for the recovery of money paid to a judgment-creditor out of Court in satisfaction of a decree, but not certified, is barred by section 244 (*c*) of Act X of 1877, and by the last paragraph of section 258 as amended by Act XII of 1879. PATANKAR *v.* DEVJI [I. L. R., 6 Bom., 146

67. ——— **Part satisfaction of decree out of Court.**—*Separate suit.*—Questions as to part satisfaction of a decree cannot, according to section 244, clause (*c*) of Act X of 1877, be raised in a separate suit. That section alludes to parties to the decree or their representatives, but it is not on that account open to a plaintiff to evade the section by adding an unnecessary party to the suit. KRISTO MOHINEE DOSSEE *v.* KALIPROSONNO GHOSE [I. L. R., 8 Calc., 402

68. ——— **Satisfaction of decree out of Court.**—*Suit for damages against decree-holder for execution of decree after satisfaction.—Civil Procedure Code, 1882, s. 258.*—A decree-holder who, although he has settled with his judgment-debtor out of Court, yet nevertheless sues out execution against him, will be liable to an action for damages at the hands of the judgment-debtor. Sections 244 and 258 of Act X of 1877 have made no change in the law in this respect. GUNI KHAN *v.* KOONJO BEHARY SEIN [3 C. L. R., 414

69. ——— *Remedy of judgment-debtor, on creditor failing to certify.—Civil Procedure Code, 1882, s. 258.*—In 1878 a decree-holder having received certain grain from the judgment-debtor in satisfaction of the decree, failed to certify satisfaction of the decree to the Court in accordance with the provisions of section 258 of the Code of Civil Procedure, 1877, and executed the decree nevertheless. In a suit for damages against the decree-holder,—*Held*, that the judgment-debtor's remedy for the wrong suffered was not taken away by the provisions of sections 244 and 258 of the Code. VIRARAGHAVA *v.* SUBBAKKA [I. L. R., 5 Mad., 397

70. ——— *Suit to recover money paid.—Civil Procedure Code, 1882, s. 258.*—In 1879 a judgment-debtor paid R100 to *S.*, who promised to pay the same to the judgment-creditor and to get the latter to certify satisfaction of the decree to the Court. The money was paid to the judgment-creditor, who not only did not certify satisfaction of the decree, but executed it and again collected the amount from the judgment-debtor. *Held*, following *Viraraghava* v. *Subbakka, I. L. R., 5 Mad., 397*, that the provisions of the Code of Civil Procedure, 1877 (prior to amendment), did not debar the judgment-debtor from suing either *S.* on his express promise or the judgment-creditor to recover the amount paid by *S.* to the latter. MUSUTTI v. SHEKHARAN . . I. L. R., 6 Mad., 41

71. ——— *Separate suit.—Adjustment of decree.—Assignment of decree.—Civil Procedure Code, 1882, s. 258.*—*M.*, who held a decree against *S.* for possession of certain immoveable property and costs, assigned such decree to *S.* by way of sale, agreeing to deliver the same to him on payment of the balance of the purchase-money. He subse-

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 244 (Act XXIII of 1861, s. 11)—*continued.*

1. QUESTIONS IN EXECUTION OF DECREE —*continued.*

Satisfaction of decree out of Court—*continued.*

quently applied for execution of the decree against *S.*, claiming the costs which it awarded. *S.* thereupon paid the amount of such costs into Court, and, having obtained stay of execution, sued *M.* for such decree, claiming by virtue of such assignment. The lower Court held that the suit was barred by the provisions of section 244 of Act X of 1877, and also, treating such assignment as an uncertified adjustment of such decree, that it was barred by the terms of the last paragraph of section 258 of that Act. *Held*, that the suit was not barred by anything in either of those sections. The words "any Court" in the last paragraph of section 258 refer to proceedings in execution and to the Court or Courts executing a decree. SITA RAM *v.* MAHIPAL

[I. L. R., 53 All., 33

72. ——————— *Separate suit.—Adjustment of decree.—Civil Procedure Code, 1882, s. 258.—S.*, alleging that a money-decree against him held by *G.* had been adjusted out of Court by a payment in cash and the delivery of certain property, and that *M.* had notwithstanding such adjustment applied for execution of such decree and recovered the amount thereof, as the Court executing such decree had refused to determine whether it had been satisfied, on the ground that such adjustment had not been certified, sued *M.* for the money which he had paid him out of Court. *Held*, that the suit was not barred by the provisions of section 244 of Act X of 1877, or of section 258 of that Act. The last paragraph of section 258 means that the Court executing the decree shall not recognise an uncertified payment or adjustment out of Court. It does not prohibit a suit for money paid to a decree-holder out of Court, and the payment of which, not being certified, could not be recognised, and which the decree-holder had not returned, but had misappropriated by taking out execution of the decree a second time and securing the amount in full through the Court. SHADI *v.* GANGA SAHAI . . . I. L. R., 3 All., 538

73. ——————— *Question as to adjustment between decree-holder and third party.*—Certain immoveable property having been attached in execution of a decree for money, dated in 1879, directing the sale of such property, *T.*, who had purchased such property in 1880, objected to the attachment. His objection having been disallowed, he sued to establish his right to the property and for the removal of the attachment. He claimed on the ground, amongst others, that the decree of 1879 had been wholly adjusted. The alleged adjustment had not been certified under section 258 of the Civil Procedure Code. *Held*, that the provisions of that section did not debar the Courts trying the suit from determining, as between *T.* and the decree-holder, whether the decree of 1879 had been adjusted or not. *Sita Ram* v. *Mahipal, I. L. R., 3 All., 533*; and *Shadi* v. *Ganga Sahai, I. L. R., 3 All., 538*, followed. TEGH SINGH *v.* AMIN CHAND

[I. L. R., 5 All., 269

74. ——————— *Fraud.—Setting aside sale in execution of decree.—Cause of action.—Right of suit.—A.* obtained a money-decree against *B.* and others jointly for R112, and, in consideration of a payment of R25 made by *B.*, agreed to release *B.* from all liability under the decree. This payment was not certified to the Court, and *A.* afterwards in execution of the decree had certain immovable property belonging to *B.* put up for sale, and this property he purchased himself. *Held*, that a suit would lie by *B.* to set aside the sale and to recover the property from *A.* ISHAN CHUNDER BANDOPADHYA *v.* INDRONARAIN GOSSAMI

[I. L. R., 9 Calc., 788: 12 C. L. R., 391

75. ——————— *Fraud.—Cause of action.—Regular suit.—Code of Civil Procedure (Act XIV of 1882), s. 258.*—The holder of a money decree agreed to accept, in satisfaction of the amount thereof, a part payment in cash, and a lease of certain lands for five years, rent-free. The judgment-debtor made the payment, and gave the lease agreed on. Afterwards the decree-holder executed the decree against the judgment-debtor, and then the judgment-debtor brought the present suit for a declaration that the money decree was satisfied, and for damages against the decree-holder. *Held* that such a suit would lie. *Gunamani Dasi* v. *Prankishori Dasi, 5 B. L. R., 223*; *Viraraghava Reddi* v. *Subbaka, I. L. R., 5 Mad., 397*; *Musutti* v. *Shekharan, I. L. R., 6 Mad., 41*; *Sita Ram* v. *Mahipal, I. L. R., 3 All., 533*; *Shadi* v. *Ganga Sahai, I. L. R., 3 All., 538*; and *Ishan Chunder Bundopadhya* v. *Indro Narain Gossami, I. L. R., 9 Calc., 788*, followed. *Patankar* v. *Devji, I. L. R., 6 Bom., 146*, not followed. POROMANAND KHASNABISH *v.* KHEPOO PARAMANICK . I. L. R., 10 Calc., 354

76. ——————— *Separate suit to enforce agreement to adjust.—Civil Procedure Code, 1882, s. 258.*—Under sections 244, clause (*c*), and 258 of the Civil Procedure Code (XIV of 1882), no compromise of a decree which has not been duly certified under the provisions of the last-mentioned section can be recognised by any Court, and a separate suit to enforce such compromise is not maintainable. HORMASJI DORABJI VANIA *v.* BURJORJI JAMSETJI VANIA . I. L. R., 10 Bom., 155

ABDUL RAHIMAN *v.* KHAJA KHAKI ARUTH. LONDON, BOMBAY, AND MEDITERRANEAN BANK *v.* PESTANJI DHUNJIBHOY

[I. L. R., 10 Bom., 155

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 244 (Act XXIII of 1861, s. 11)—*continued.*

2. PARTIES TO SUIT.

77. ——— **Representative of decree-holder.**—*"Parties to suit," Meaning of.*—The words in section 11, Act XXIII of 1861, "questions arising between the parties to the suit," cannot be limited to questions arising between those who were parties to the suit at the date of the decree, but after decree the representative of a decree-holder, or the representative of a defendant against whom an execution is sought under sections 210 and 216 of the Code, become parties to the suit for the purpose of execution, and questions arising between the parties to the suit within the meaning of section 11 of the amending Act. BUDDU RAMAIYA *v.* VENKAIYA [3 Mad., 263

78. ——— **Party unnecessarily added to suit.**—*Separate suit.*—Section 244 of the Civil Procedure Code alludes to parties to the decree or their representatives, but it is not on that account open to a plaintiff to evade the section by adding an unnecessary party to the suit. KRISTO MOHINEE DASSEE *v.* KALIPROSONNO GHOSE [I. L. R., 8 Calc., 402

79. ——— **Purchaser of decree.**—*Rights of purchaser.*—The words "party to a suit" in section 11, Act XXIII of 1861, include the heirs, assignees, and representatives of such party, and consequently give the purchaser of a decree all the rights of appeal, &c., which his vendor had. HURO LALL DASS *v.* SOOJAWUT ALI . . 8 W. R., 197

TARA CHAND HAJRAH *v.* DOORGA CHURN HAJRAH [10 W. R., 205

80. ——— **Petitioner, Position of, when petition struck off.**—*Stranger.*—In a suit brought by *M.* against *K.* and others, certain lands belonging to *G.* were included, and *G.* was made a defendant; these lands, however, were released from the claim and *G.* excluded from the decree obtained by plaintiff against the other defendants. In execution, however, *M.* had them measured as a part of the decreed lands; and *G.'s* petition of objection under section 230 of Act VIII of 1859 having been struck off the file, *G.* brought a suit to have his title established. *Held* that, though as a "party to the suit" brought by *M.*, *G.* would have been bound by section 11, Act XXIII of 1861, to seek his remedy in the execution department, yet, as he was released from the operation of the decree, he must be considered a stranger, and permitted to bring his present action. GOUR KISHORE CHOWDHRY *v.* MAHOMED HASSIM CHOWDHRY . . . . . 10 W. R., 191

81. ——— **Party on record though wrongly.**—*Rights of appeal.*—A party who has been put upon the record, whether rightly or wrongly, is so far a party to the suit that he has a right of appeal under Act XXIII of 1861, section 11. BHUGGOBUTTY KOWAR *v.* MONEY . 2 C. L. R., 545

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 244 (Act XXIII of 1861, s. 11)—*continued.*

2. PARTIES TO SUIT—*continued.*

82. ——— **Claimant in execution proceedings.**—*Separate suit.—Suit for damages for tort.—Party to suit.*—*A.* sold to *B.* certain logs of timber, and 95 logs were delivered to *B.* in part performance of the contract. *C.* brought a suit against *A.* and *B.*, claiming the logs under another title. Pending this suit *C.* entered into an agreement with *D.*, selling him the logs in the event of being successful in his suit. The judgment of the Court of first instance was in *C.'s* favour, and under such judgment *D.* obtained possession of the logs in suit. This judgment was on appeal reversed. *B.* then brought a suit in the nature of an action of trover against *C.* and *D.* for the logs and damages. The Court, without entering into the merits, dismissed the suit on the ground that it was not maintainable, as the same relief would have been obtained under the provisions of section 11, Act XXIII of 1861. *Held* by the Judicial Committee, reversing such judgment, that there had been a miscarriage, as that section did not apply, the suit by *B.* against *C.* and *D.* being to recover damages for a tort alleged to have been committed by *C.* and *D.*, and that the latter was not a party to the original suit or bound by the judgment in that suit. AGA SYED ABDOOL HOSSANI *v.* LENAINE [13 Moore's I. A., 69

83. ——— **Transferee of judgment-debtor.**—*Suit brought by decree-holder to question alienation by judgment-debtor.*—*Held*, that section 11, Act XXIII of 1861, does not apply to suits brought by a decree-holder to question an alienation made by the judgment-debtor, inasmuch as the transferee was not a party to the former suit, and only questions between the parties to the suit must of necessity be determined in the execution department. SURUBSOOKH *v.* USGUR ALLY KHAN [2 Agra, Pt. II, 180

84. ——— **Representative of deceased person.**—*Execution of decree.—Party.—Civil Procedure Code, ss. 201, 209.—Representative.*—In a former suit for possession of immoveable property against *J.* and her father, and subsequently revived against *J.* as the representative of her father, possession and mesne profits were decreed against *J.* in her representative capacity; while as against her in her individual capacity the suit was dismissed. The decree-holder, after obtaining possession, attached and sold, in satisfaction of his decree for mesne profits, *J.'s* private property, notwithstanding her objections, and himself became the purchaser, but never obtained possession. This sale, ordered on the 8th October 1863, was confirmed by the Judge on 15th March 1864. The present suit was brought by *J.* for confirmation of her possession of her private property by cancellation of the execution sale. *Held* (MACPHERSON and GLOVER, *JJ.*, dissenting), that such suit was maintainable, and that *J.* in her individual capacity was not a party to the suit in which execution

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 244 (Act XXIII of 1861, s. 11)—*continued.*

2. PARTIES TO SUIT—*continued.*

Representative of deceased person—*contd.*

issued within the meaning of section 11 of Act XXIII of 1861. WAHED ALI *v.* JUMAYEE [2 B. L. R., F. B., 73 S. C., 11 W. R., F. B., 1

POOTEE BEGUM *v.* INDURJEET KOOER [12 W. R., 201

In the same case on appeal the decree of the High Court was affirmed under the circumstances of the case, but held (contrary to the opinion of the majority of the Full Bench),—Where a decree against a person in a representative capacity has been properly passed, and proceedings have been taken under it to obtain execution against the party in his representative character, he is a party to the suit with respect to any question which may arise between him and the other parties relating to the execution of the decree within the meaning of Act XXIII of 1861, section 11. CHOWDRY WAHED ALI *v.* JUMAEE [11 B. L. R., P. C., 149 : 18 W. R., 185

OSEEMUNNISSA KHATOON *v.* AMEEROONNISSA KHATOON . . . . 20 W. R., 162

85. ——— **Assignee of decree.**—*Indirect assignment.*—*A.*, a decree-holder, applied for execution of his decree, but was opposed by *B.*, the judgment-debtor, on the ground that *A.* had sold his decree to a third party, from whom it had passed to *B.'s* son. *Held*, that this was a question arising between the parties to the suit in which the decree was passed, and relating to the execution of the decree, and might be determined by the Court executing the decree, under section 11, Act XXIII of 1861. RAMDHAN RAKHIT *v.* PANCHANAN CHUCKERBUTTY . 1 B. L. R., S. N., 9 : 10 W. R., 144

86. ——— *Separate suit.*—*Questions for Court executing decree.*—Three out of six decree-holders sold their share in the decree to *A.*, who thereafter made an application to the Court under section 232 of the Code of Civil Procedure. This application was dismissed on the ground that *A.'s* purchase was made benami for some of the judgment-debtors. In a subsequent suit brought by *A.* and the persons who were said to be the real purchasers, it was contended that a separate suit was barred under the provisions of section 244, clause (*c*) of the Code of Civil Procedure. *Held*, that *A.* was not a party to the suit in which the decree was passed, nor the representative of any such party, and that the suit was not barred. HALODHAR SHAHA *v.* HAROGOBIND DAS KOIBURTO [I. L. R., 12 Calc., 105

87. ——— **Rival decree-holders.**—*Right of action.*—*Act VIII of 1859, s. 270.*—A regular suit will lie at the instance of one decree-holder against another for a refund of money that has been erroneously paid away to the latter contrary to the provisions of section 270 of Act VIII of 1859. GOGARAM *v.* KARTICK CHUNDER SINGH [B. L. R., Sup. Vol., 1022 : 9 W. R., 515

See GOKOOL DASS *v.* GUNGESHER SINGH. [3 N. W., 164

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 244 (Act XXIII of 1861, s. 11)—*continued.*

2. PARTIES TO SUIT—*continued.*

Rival decree-holders—*continued.*

88. ——— **Claim for rateable distribution by creditor rejected.**—*Sum detained in Court, pending application of High Court.*—*Application rejected.*—*Interest on sum detained claimed in execution.*—*Procedure.*—In execution of a decree by *R. S.*, another creditor claimed a rateable share of the proceeds realised. His claim was rejected. Pending an application to the High Court under section 622 of the Code of Civil Procedure to set aside this order, the share claimed by *S.* was detained in Court at his request. The High Court rejected the application of *S.*, and *R.* took out execution for the costs incurred therein and for interest on the sum detained in Court at the request of *S.* *Held*, that the interest could not be awarded to *R.* in execution of the decree for costs, *S.* and *R.* being rival creditors and *S.* not being a party to the suit. SANJIVI *v.* RAMASAMI . I. L. R., 8 Mad., 494

89. ——— **Co-defendants.**—*Separate suit.*—*Order to refund purchase-money.*—A judgment-debtor, alleging that his right as occupancy tenant of certain land had been sold in execution of the decree, sued the decree-holder and the auction-purchaser to set aside the sale as illegal under section 9 of the North-Western Provinces Rent Act. The Court of first instance decreed the claim, and ordered the defendant decree-holder to refund the purchase-money. *Held* that, as between the defendant decree-holder and the plaintiff, the question at issue was one arising between the parties to the suit in which the decree was passed and relating to the execution, discharge, or satisfaction of the decree, and was therefore, under section 244 of the Civil Procedure Code, to be determined by the Court executing the decree, and not by separate suit. *Janki Singh* v. *Ablakh Singh*, *I. L. R., 6 All., 393*, followed. *Held* also that, apart from this consideration, it was beyond the lower Court's powers to make an order directing the decree-holder to refund the purchase-money, that being a matter between two co-defendants which was not raised, and could not be decided, in the present suit. RAM GOPAL *v.* KHIALI RAM . . . . I. L. R., 6 All., 448

90. ——— **Claimant to attached property.**—*Suit to set aside sale in execution.*—A decree-holder took out execution against *A.* and *B.* When *B.'s* property was attached, his widow, *C.*, came forward and laid claim to it on the part of her minor son, urging that, as *B.* was not liable under the decree, his property could not be sold. The objection was disallowed and the property was sold. *Held* that section 11, Act XXIII of 1861, did not prevent *C.* from suing to set aside that sale and recover *B.'s* property, on the ground that *B.* was not liable under the decree. ISSAN CHUNDER DASS *v.* CHUNDRO BODINEE . . . . . 7 W. R., 361

91. ——— **Attaching creditors.**—*Suit for refund of money wrongly paid to him.*—A suit will lie by a prior attaching creditor to compel a decree-

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 244 (Act XXIII of 1861, s. 11)—*continued.*

2. PARTIES TO SUIT—*continued.*

Attaching creditors—*continued.*

holder, whose attachment is subsequent in date, to refund money obtained by him under an order of the Judge of a Subordinate Court, in contravention of the provisions of section 270, Code of Civil Procedure; but it must be a suit to set aside the Judge's order. WOOMA MOYEE BURMONYA *v.* RAM BUKHSH CHETLANGEE . . . . . **16 W. R., 11**

92. ——— Party wrongly appearing on record.—*Suit for money paid in execution of decree.—Parties appearing on decree not parties to suit.*—*S.* sued *K.* for possession of certain land, and *H.*, claiming to be owner of the property, asked leave to come in and defend the suit; but his application was refused. The suit was dismissed, and *S.* appealed, naming *H.* as a respondent, and a notice in the usual form was served on *H.* He, however, did not appear, and the decree of the first Court being reversed, a decree, in which *H.* was included, was given for possession. *H.* subsequently brought a suit to have his title to the property declared, making *S.* a defendant, and obtained a decree declaring his title. Pending *H.'s* suit, *S.* took proceedings in execution of the decree to recover a sum awarded her either as costs or mesne profits, whereupon *H.*, to prevent a sale of the property, deposited the amount in Court, and *S.* received it on account of her decree. In a suit brought by *H.* against *S.* to recover the amount so paid,—*Held*, the plaintiff was entitled to recover. The judgment in the first suit having been set aside by the proceedings in the second suit, there was no bar to the suit by reason of the money having been paid in execution of the process of the Court. *H.* was not a party to the first suit so as to make the question one between the parties, and relating to the execution of the decree. SHEROKUMARI DEBI *v.* SHITARAM HAYDRA **[13 B. L. R., Ap., 17**

93. ——— Party refusing to compromise.—*Decree on compromise.—Execution against party to suit, not party to compromise.—Resistance to execution.—Procedure.*—In a suit for partition a compromise was entered into by all the parties except *S.*, and a decree obtained on the terms thereof. In execution *S.* was dispossessed and presented a petition to the Court, objecting that the decree was not binding on her. The petition was rejected. *Held*, that the objection raised by *S.* ought to have been investigated under section 244 of the Code of Civil Procedure, and that *S.* was entitled to appeal against the order rejecting the petition. SANKARAVADIVAMMAL *v.* KUMARASAMYA . . **I. L. R., 8 Mad., 473**

94. ——— Plaintiff suing in a character separate from that in which decree was passed against him.—*Separate suit not barred.*—A judgment-debtor, upon the attachment of certain land in execution of decrees passed against him personally by the Revenue Court, instituted a suit for a declaration and establishment of his right to such land, not as his own property but as *wakf*, of which he was mutawalli or trustee. *Held* that, inasmuch as

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 244 (Act XXIII of 1861, s. 11)—*continued.*

2. PARTIES TO SUIT—*continued.*

Plaintiff suing in a character separate from that in which decree was passed against him—*continued.*

the plaintiff was not suing in his own right, but in his capacity as custodian, trustee, or manager of the *wakf* property, and he must therefore be taken to fill a character separate from that in which the decrees were passed against him by the Revenue Court, his suit was not barred by the provisions of section 244 of the Civil Procedure Code. *Madho Prakash Singh* v. *Murli Manohar, I. L. R., 5 All., 406*; and *Shankar Dial* v. *Amir Haidar, I. L. R., 2 All., 752*, referred to. NATH MAL DAS *v.* TAJAMMUL HUSAIN **[I. L. R., 7 All., 36**

95. ——— Auction purchaser at sale in execution.—*Suit to recover purchase money on reversal of decree under which sale in execution took place.—Separate suit.—Party to proceedings in execution.*—*G.* instituted a suit against *H.*, *C.*, and *P.*, which was dismissed with costs, but an appeal was preferred. Pending the appeal, however, *C.* took out execution of the decree for costs, and brought to sale a house belonging to *G.*, of which *H.* became the purchaser, paid the purchase-money, and got possession. Subsequently the decision dismissing the suit was reversed on appeal, and the defendants in that suit were ordered to pay a certain sum to *G.* with costs. *G.* then applied for restitution of her house which had been sold under the decree reversed, and eventually obtained an unconditional order for possession, *H.* being left to any remedy open to him in respect of the purchase-money. *G.* having obtained possession of the house, *H.* brought a suit against her to recover the purchase-money. *Held* that, notwithstanding section 244 of the Civil Procedure Code, he was entitled in this suit to recover the purchase-money, as money received to his use, the consideration for it having failed. *H.* was not, in his character as an auction-purchaser, a party to the execution proceedings, and for the purpose of the suit was to be treated as a third person. HIRA LAL CHATTERJEE *v.* GOURMONEY DEBI. . . **I. L. R., 13 Calc., 326**

96. ——— Purchaser from some of the judgment-debtors of property not affected by decree.—*Representative of judgment-debtor.*—Certain persons, claiming by right of inheritance to *C.*, sued *B.*, *N.*, *A.*, *K.*, and others for possession of certain immoveable property, and obtained a decree dated in August 1876 for possession of the same. In the course of the litigation which ended in that decree, *Z.* purchased certain immoveable property from *B.*, *N.*, *A.*, and *K.* *Z.* was subsequently dispossessed of such property in execution of the decree of August 1876. He thereupon sued the holders of that decree for possession of the same, alleging that his vendors had inherited the same from *D.*, that it was not affected by that decree, and that he had been improperly dispossessed of it in execution of that decree. *Held* by the Court that, the plaintiff not being the representative of any of the parties to the suit in which that

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 244 (Act XXIII of 1861, s. 11)—*continued.*

2. PARTIES TO SUIT—*continued.*

Purchaser from some of the judgment-debtors of property not affected by decree—*continued.*

decree was passed, in the sense of section 244 of the Civil Procedure Code, but being, if his allegations were true, a purchaser from certain of the judgment-debtors of property not affected by that decree, the suit was not barred by the provisions of that section. *Partab Singh* v. *Beni Ram, I. L. R., 2 All., 61,* distinguished. Observations by STUART, *C. J.*, on his judgment in *The Agra Savings Bank* v. *Sri Ram Mitter, I. L. R., 1 All., 388,* and on the judgment of the Full Bench in *Partab Singh* v. *Beni Ram* referring to that judgment. ZANKI LAL *v.* JAWAHIR SINGH . . . . . **I. L. R., 5 All., 94**

97. ——— Party to suit in representative character.—In 1875 a decree was passed against *N.* as representative of *L.*, who died pending the suit, declaring *N.* liable to the extent of the assets of *L.* which might have come to the hands of *N.* In 1879 the decree-holder applied for execution of the decree, and, without proof that any of the assets of *L.* had come to the hands of *N.*, obtained an order and attached lands belonging to *N.* *N.* objected to the attachment, but the Munsif, without investigation, rejected his claim and directed *N.* to bring a regular suit. The land was sold and purchased by *A. B.* *N.*, after an abortive attempt to obtain a review of the Munsif's order from his successor, brought a suit in 1880 against the decree-holder and *A. B.* to recover the land. *Held,* that as *N.* was a party to the former suit of 1875 within the meaning of section 244 of the Civil Procedure Code 1877, the suit would not lie. ARUNDADHI *v.* NATESHA **[I. L. R., 5 Mad., 391**

98. ——— *Sale of property in execution of decree obtained by second mortgagee for sale of property.—Holder of prior decree enforcing first mortgage.—Execution of decree.—Fresh suit.—Meaning of "representative" of judgment-debtor.*—A decree enforcing a first mortgage of certain property not being satisfied, the property was sold in execution of a decree of a later date enforcing a second mortgage of the property. *Per* STUART, *C. J.*, that the decree enforcing the first mortgage could not be executed against the property, but the holder of such decree was bound to bring a fresh suit against the purchaser of the property to enforce his decree. *Per* STRAIGHT, BRODHURST, and TYRRELL, *JJ.*, that a fresh suit was the most convenient and expeditious remedy. *Per* OLDFIELD, *J.*, that the purchaser not being the "representative" of the judgment-debtor, within the meaning of section 244 (*c*) of the Civil Procedure Code, the holder of such decree must bring a fresh suit to enforce it. JAGAT NARAIN *v.* JAG RUP . . . . . **I. L. R., 5 All., 452**

99. ——— *Transfer of interest pending suit.—Lis pendens.—Application to bring transferee upon the record.*—A decree of the High Court, giving possession of certain shares in a

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 244 (Act XXIII of 1861, s. 11)—*continued.*

2. PARTIES TO SUIT—*continued.*

Party to suit in representative character—*continued.*

bank to the plaintiff, *R.*, was reversed on appeal by the Privy Council. The defendant then applied to the Court of first instance to order restitution of the shares, which had been realised by the plaintiff. Upon being ordered to produce the shares, *R.* made an application to the Court, professedly under section 244 of the Civil Procedure Code, in which he alleged that, pending the appeal to the Privy Council, he had transferred the shares to *G.*, his counsel in the case, who had failed to restore them, and he prayed "that the said person might be brought upon the record, and that, execution for recovery of the said shares might be given against him." The Court passed an order upon this application, calling on *G.* to show cause why he should not be called upon to restore the shares made over to him by *R.*, and he thereupon filed an answer denying that he was the custodian of the shares, and alleging that he was their purchaser for value. The Court passed an order directing that *G.'s* name should be placed on the record, so that the decree might be executed against him. *Held,* that the question being one between two judgment-debtors *inter se,* and not between the parties arrayed against each other as decree-holders of the one part, and judgment-debtors or their representatives on the other, the provisions of section 244 of the Civil Procedure Code were not applicable to the case; that *G.* could not be regarded as a "representative" of *R.* within the meaning of that section. RAYNOR *v.* THE MUSSOORIE BANK **[I. L. R., 7 All., 681**

100. ——— *Decree on bond against representatives of obligor.*—Where certain property was attached in execution of a decree passed upon a bond against the legal representatives of the obligor, and the judgment-debtors objected to the attachment on the ground that the property was not part of the obligor's estate and liable to be taken in execution of the decree, but was property which they could claim in their own right,—*Held,* that the matter in dispute was one between the parties to the suit in which the decree was passed, and relating to the execution, discharge, or satisfaction of the decree within the meaning of section 244 of the Civil Procedure Code, and was therefore to be determined in the execution department and not by regular suit. *Chowdry Wahed Ali* v. *Jumaee, 11 B. L. R., 149; Shankar Dial* v. *Amir Haidar, I. L. R., 2 All., 752,* and *Nath Mal Das* v. *Tajammul Husain, I. L. R., 7 All., 36,* referred to. *Per* MAHMOOD, *J.*—That the turning-point upon which the application of the rule contained in section 244 of the Civil Procedure Code barring adjudication in a regular suit depends, is whether the judgment-debtor, in raising objections to execution of decree against any property, pleads what may analogically be called a *jus tertii,* or a right which, although he represents it, belongs to a title totally separate from that which he personally holds in such property. *Kanai Lall Khan* v. *Sashi*

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 244 (Act XXIII of 1861, s. 11)—*continued.*

2. PARTIES TO SUIT—*continued.*

Party to suit in representative character—*continued.*

Bhuson Biswas, I. L. R., 6 Calc., 777, dissented from. RAM GHULAM *v.* HAZARU KOER [I. L. R., 7 All., 547

101. ——————— *Party to suit.—Representative.*—Where, certain property having been attached in execution of a decree, the representative of the judgment-debtor objected that the property had been acquired by himself and not inherited from the judgment-debtor, and was therefore not liable in execution,—*Held*, that the question was one which must be decided in the execution department, under section 244 of the Civil Procedure Code. *Ram Ghulam* v. *Hazaru Koer, I. L. R., 7 All., 547*, referred to. SITA RAM *v.* BHAGWAN DAS [I. L. R., 7 All., 783

102. ——————— *Official Assignee.—Attachment of property.—Judgment-debtor declared an insolvent.—Claim by Official Assignee to attached property.—Appeal from order disallowing claim.—Stat. 11 & 12 Vic., c. 21, ss. 7, 49.—"Representative" of judgment-debtor.*—A decree-holder, having attached the property of his judgment-debtors in execution of the decree, obtained an order for sale of the attached property. Prior to sale, the judgment-debtors made an application to be declared insolvents, and obtained an order under Statute 11 and 12 Victoria, Cap. 21, section 7, by which their property was vested in the Official Assignee. An application was then made by the Official Assignee to the Court in which the execution of the decree was pending, for the release of the property from attachment and that the property might be made over to him. The Court dismissed the application. On appeal, the District Judge reversed the first Court's order. *Held*, that the matter did not come before the Court of first instance under section 49 of Statute 11 and 12 Victoria, Cap. 21, inasmuch as that section refers to cases where the insolvent's schedule has been filed, and to debts or demands admitted therein, and, in the present case, no schedule had been filed at the time of the Official Assignee's application; and the Court could therefore only entertain the application under the provisions of the Civil Procedure Code relating to the execution of decrees. *Held*, that the Official Assignee could not be held to be a representative of the judgment-debtors within the meaning of section 244 of the Civil Procedure Code, and his application was not one relating to the execution, discharge, or satisfaction of the decree. *Held*, that the Court of first instance had only jurisdiction in the matter under section 278 of the Code, and disposed of it under that section, and that the District Judge had no jurisdiction to entertain the appeal. KASHI PRASAD *v.* MILLER . . . . . I. L. R., 7 All., 752

103. ——————— *Execution of decree.—"Representative" of judgment-debtor.*—The word "representative" as used in clause (*c*), section 244 of the Code of Civil Procedure, means any person who succeeds to the right of any of the parties to the suit after the decree is passed. A Hindu widow mortgaged certain properties, and afterwards by an ikrarnamah made them over to *B.*, the next heir. The ikrarnamah contained a condition that *B.* was to be liable for the widow's debts. Subsequently the mortgagee brought a suit against the widow on the mortgage and joined *B.* as a party, on the ground that he was in possession of the mortgaged properties. That suit resulted in a money decree being passed on appeal by the High Court against the widow personally, the property in the hands of *B.* being held not to be liable. The case was taken on appeal to the Privy Council, and pending the hearing of that appeal the widow died, and *B.* was brought on the record as her legal representative. The decree of the High Court was ultimately confirmed by the Privy Council. In execution of the decree it was sought to make *B.* liable to satisfy the amount out of the properties which he had obtained under the ikrarnamah, the mortgagee not having been aware of the conditions of that document before the decree of the High Court. *Held* that, so far as these properties were concerned, he was not the legal representative of the widow, as he inherited them as heir-at-law of her husband, and that his title to them under the ikrarnamah was not that of a "representative" within the meaning of clause (*c*) of section 244. *Held*, further, that the question of *B.'s* liability under the ikrarnamah did not fall within the scope of the provisions of clause (*c*) of section 244, as being a question to be decided between the "parties" to the suit, as although *B.* was a party to the suit, the only claim against him was that the property in his hands was liable, as having been previously hypothecated; and as the suit was dismissed so far as that claim was concerned, it was not a question relating to the execution of the decree. KAMESHWAR PERSHAD *v.* RUN BAHADUR SINGH [I. L. R., 12 Calc., 458

104. ——————— *Civil Procedure Code, ss. 278-283.—Question for Court executing decree.—Separate suit.—"Representative" of judgment-debtor.*—The decree-holder under a decree for enforcement of lien against the zemindari rights and interests of *K.*, applied for execution by attachment and sale of certain shares, one of which was recorded in the khewat in the name of *K.*, and two others in the name of *B.*, his brother's widow. The shares having been attached, the judgment-debtor died, and *J.*, his brother, and *L.*, his son, were substituted as his representatives. In execution of the decree, only the share which had stood recorded in the name of the deceased judgment-debtor, and which was in possession of *J.* and *L.* as his representatives, was sold; and the decree-holder then applied for sale of the other shares which had been attached. To this *B.* objected under section 281 of the Civil Procedure Code, claiming to be the owner of the shares in question. Before the hearing of her objection she

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 244 (Act XXIII of 1861, s. 11)—*continued.*

2. PARTIES TO SUIT—*continued.*

Party to suit in representative character—*continued.*

died, and *L.* applied to have his name brought upon the record in her place for the purpose of supporting the objections. An order having been passed disallowing the objections which had been filed by *B.*, *L.* appealed to the High Court. A preliminary objection was taken on behalf of the decree-holder to the hearing of the appeal on the ground that as the first Court's order related to *L.'s* claim as the heir of *B.* to have the shares entered in her name released from attachment, it must be regarded as passed under section 281 of the Civil Procedure Code, and as conclusive, subject to *L.'s* bringing a suit to establish his right. On the other side it was contended that *L.* being the representative of the deceased judgment-debtor *K.*, the first Court's order must be regarded as passed under section 244 of the Code, and the appeal would therefore lie. *Held*, that the preliminary objection must prevail, and the first Court's order must be regarded as passed under section 281 and not under section 244 of the Code, inasmuch as *L.'s* claim which was rejected by it was nothing more than to come in as *B.'s* representative for the purpose of supporting her objections; and it was in right of a third person, whose interest he asserted to have passed to him, that he prayed admission to the proceedings, and this character was wholly distinct from that he filled as the legal representative of his deceased father. Because *L.* happened, for the purpose of the execution proceeding, to be his father's legal representative, and to be liable to satisfy the decree to the extent of any assets which might have come to his hands, it did not follow that any rights claimed by him through a third person must be dealt with, and could only be dealt with, between him and the decree-holder in the execution proceedings. *Wahed Ali* v. *Jumaee, 11 B. L. R., 149; Ram Ghulam* v. *Hazaru Kuar, I. L. R., 7 All., 547; Sita Ram* v. *Bhagwan Das, I. L. R., 7 All., 733; Shankar Dial* v. *Amir Haidar, I. L. R., 2 All., 752; Nath Mal Das* v. *Tajammul Husain, I. L. R., 7 All., 36;* and *Kanai Lal Khan* v. *Sashi Bhuson Biswas, I. L. R., 6 Calc., 777,* referred to. BAHORI LAL *v.* GAURI SAHAI . . . . **I. L. R., 8 All., 626**

105. ——— *Suit by representative against purchaser.—Separate suit.—Civil Procedure Code, ss. 266, 316.*—The provisions of section 244 (c) of the Civil Procedure Code prohibit not only a suit between parties and their representatives, but also a suit by a party or his representatives, against a purchaser at a sale in execution of the decree, the object of which is to determine a question which properly arises between the parties or their representatives, and relates to the execution, discharge, or satisfaction of the decree. A judgment-debtor, whose occupancy tenure had been sold in execution of a decree for money, sued the purchaser for recovery of the property, on the ground that the sale of occupancy rights in execution of

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 244 (Act XXIII of 1861, s. 11)—*continued.*

2. PARTIES TO SUIT—*continued.*

Party to suit in representative character—*continued.*

decree was illegal and void, being in contravention of the provisions of section 9 of Act XII of 1881 (North-Western Provinces Rent Act). *Held*, by the Full Bench, that the question involved in the suit was one of the nature referred to in section 244 (c) of the Civil Procedure Code as determinable only by order of the Court executing the decree, and that the suit was therefore not maintainable. *Narain* v. *Puran, Weekly Notes, All., 1888, p. 218,* referred to. BASTI RAM *v.* FATTU . **I. L. R., 8 All., 146**

——— **s. 245 (Act XXIII of 1861, s. 15).**

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWERS OF COURT, &c. . **I. L. R., 8 Calc., 479**

1. ——— **Investigation of title.**—*Execution of decree.—Act VIII of 1859, s. 214.*—Neither section 214, Act VIII of 1859, nor section 15, Act XXIII of 1861, contemplated any enquiry before the Court, whether the property belongs to the judgment-debtor or not. SUBJAN BIBI *v.* SARIATULLA **[3 B. L. R., A. C., 413: 12 W. R., 329**

2. ——— **Filing decree.**—*Civil Procedure Code, 1859, s. 215.*—Section 15, Act XXIII of 1861 (Act VIII of 1859, section 215), did not make it essential that the decree itself should be filed, but only required certain particulars specified in section 212, Act VIII of 1859, on which the Judge is empowered to pass orders for execution. SUFUR ALI *v.* MOHESH CHUNDER KAUG **[4 W. R., Mis., 16**

3. ——— **Irregularity in application for execution.**—*Procedure.*—Section 15, Act XXIII of 1861, did not authorise a Judge to reject an application for the execution of a decree on the ground of an irregularity in form. Where the application is irregular, the Judge should either return it immediately to the applicant for correction, or with his consent cause the necessary correction to be made. CHOWDHRY PURLADH MAHAPATTAR *v.* CHOWDHRY JONARDON MAHAPATTAR . **6 W. R., Mis., 15**

4. ——— **Application in terms of decree.**—*Decree needing correction.*—Under section 15, Act XXIII of 1861, if an application for execution corresponds with the terms of a decree, it should be admitted. If the decree needs correction, the Court executing cannot correct it; but it is for the defendant to apply to the Court which made the decree. BISHESHUR ROY CHOWDHRY *v.* BISHESHUR BOSE . . . . **8 W. R., 277**

——— **s. 246 (1859, s. 209).**

See CASES UNDER SET-OFF—CROSS-DECREES.

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), ss. 246, 247.

See CASES UNDER SET-OFF—CROSS-DECREES.

——— s. 248 (1859, s. 216).

See CASES UNDER EXECUTION OF DECREE—NOTICE OF EXECUTION.

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY. [I. L. R., 3 All., 424

See CASES UNDER LIMITATION ACT, 1877, ART. 179 (1871, ART. 167; AND 1859, s. 20)—NOTICE OF EXECUTION.

——— s. 251.

See WARRANT OF EXECUTION. [I. L. R., 7 All., 506

1. ——— s. 249 (1859, s. 217).—*Dismissal for non-appearance when no day was fixed for hearing.*—Against an application for execution of a decree after notice under section 216, Act VIII of 1859, the judgment-debtor presented by his pleader certain grounds of objection, and the petition was ordered to be placed on the record. No day for hearing was fixed, but the case was called on, and on account of the absence of his pleader, the objections of the judgment-debtor were disallowed. *Held* that, notwithstanding the absence of the pleader, the Judge should have taken the objections into consideration and passed an order under section 217. RAJBALLAB SHAHA *v.* RAMSADAY GHOSE [5 B. L. R., Ap., 65 : 14 W. R., 155

2. ——— *Petition under section, Requisites of.*—A petition, under section 217, Act VIII of 1859, is not required to be verified. GOPAL CHUNDER *v.* JUGUT INDUR BUNWAREE GOBIND . . . . . 8 W. R., 200

——— s. 250 (1859, s. 221).

See ATTACHMENT—ATTACHMENT OF PERSON . 8 B. L. R., 255, 258, note

——— s. 251 (1859, s. 222).

See WARRANT OF EXECUTION. [I. L. R., 7 All., 506

——— s. 252 (1859, s. 203).

See ATTACHMENT—MODE OF ATTACHMENT AND IRREGULARITIES IN ATTACHMENT. [1 Hyde, 158 : 1 Ind. Jur., O. S., 125

See EXECUTION OF DECREE—EXECUTION BY AND AGAINST REPRESENTATIVES. [8 Bom., A. C., 37

See REPRESENTATIVE OF DECEASED PERSON . . 6 B. L. R., Ap., 100 [14 W. R., 431 I. L. R., 4 Calc., 142

——— s. 253 (1859, s. 204).

See APPEAL—EXECUTION OF DECREE—PARTIES TO SUIT . 4 Bom., A. C., 119 [8 W. R., 24

See CASES UNDER SURETY.

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 254 (1859, ss. 201, 254).

See ATTACHMENT—ATTACHMENT OF PERSON . . I. L. R., 4 Calc., 583 [8 W. R., 282

——— ss. 257, 258 (1859, s. 206).

See CASES UNDER S. 244 (ACT XXIII OF 1861, s. 11)—QUESTIONS IN EXECUTION OF DECREE.

See s. 643 . . . 7 W. R., 482 [I. L. R., 4 Mad., 325

See CONSIDERATION. [I. L. R., 7 All., 124

See LIMITATION ACT, 1877, ART. 84 (1871, ART. 85) . I. L. R., 1 Bom., 505

See LIMITATION ACT, 1877, ART. 179 (1871, ART. 167)—ORDER FOR PAYMENT AT SPECIFIED DATE. [I. L. R., 2 All., 291 I. L. R., 4 All., 316 I. L. R., 7 All., 327

1. ——— Adjustment of decree.—*Beng. Reg. VII of 1799, Decrees under.*—Section 206 of Act VIII of 1859 did not apply to decrees under Regulation VII of 1799. GOPAL CHANDRA DEY *v.* PEMU BIBI . . 1 B. L. R., A. C., 76

2. ——— Enquiry by Court as to satisfaction out of Court.—*Proceedings in execution of decree.*—Act VIII of 1859, section 206, applied only to proceedings which were taken while the decree was in execution, and did not preclude the Court, before putting the decree in execution, from enquiring if it has been satisfied out of Court. OBHOY CHURN MOOKERJEE *v.* PEAREE DOSSIA . . . . . 22 W. R., 270

3. ——— "*Decree-holder.*"—*Execution of decree.—General Clauses Consolidation Act.*—Regard being had to the General Clauses Consolidation Act (I of 1868), the word "decree-holder" in section 258 of the Civil Procedure Code, 1882, should be read in the plural. TARRUCK CHUNDER BHUTTACHARJEE *v.* DINENDRO NATH SANYAL . . I. L. R., 9 Calc., 831 [12 C. L. R., 566

4. ——— *Money decree.*—Section 258 of the Civil Procedure Code deals with the adjustment of any decree, and not merely with the adjustment of a money decree. BABA MOHAMED *v.* WEBB I. L. R., 6 Calc., 786 : 8 C. L. R., 36

5. ——— *Adjustment out of Court.*—According to section 206, Act VIII of 1859, no adjustments made out of Court were admissible by the Court in execution. MOTEE LALL *v.* RAM DASS . . . . W. R., 1864, Mis., 38

BHYA BHOOPNATH SAHEE *v.* KUNWAN. [7 W. R., 134

GUNGA GOBIND GOOPTOO *v.* MAKHUN LALL HATTER . . . . . 9 W. R., 362

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), ss. 257, 258 (1859, s. 206).—Adjustment of decree—*continued.*

6. ——————— *Letter from decree-holder to vakeel.*—A letter from a decree-holder to his vakeel to put in an acknowledgment into Court, is not a settlement out of Court certified to the Court in the manner required by section 206, Act VIII of 1859, to warrant further investigation in the matter. THAKOOR LALL MISSREE *v.* KANYE LALL TEWAREE . . . . . **7 W. R., 510**

7. ——————— *Voluntary adjustments.*—Where a judgment-debtor pays the amount decreed to the officer of the Court under the authority and pressure of the Court's process, he is entitled to protection; the latter clause of section 206, Act VIII of 1859, relating not to such payments, but to voluntary adjustment. BIDHOO BEEBEE *v.* KESHUB CHUNDER . . . . **9 W. R., 482**

8. ——————— *Adjustment out of Court.*—Where several of the acts required to be done in execution of a decree are such as can be done through a Court, and where all of them are acts the doing of which may be certified to the Court by the person in whose favour the decree was made, the policy of section 206 of the Code of Civil Procedure is to exclude the reception of evidence upon the point, or any question arising out of evidence before the Court. No adjustment can be recognised unless made through the Court or certified by the person in whose favour the decree was made. DWARKANATH DASS BISWAS *v.* UNNODACHURN DASS **[8 W. R., 319**

9. ——————— *Adjustment out of Court.—Decree-holder becoming purchaser.*—A decree-holder who was not barred by lapse of time in seeking to execute his decree, was opposed by the judgment-debtor, on the ground that the decree had been seized and sold by the Deputy Collector in execution of a decree of that functionary's Court, and that he himself (the judgment-debtor) had become the purchaser thereof. *Held*, that these proceedings amounted to an adjustment out of Court, which, under section 206, Act VIII of 1859, could not be recognised by the Court, unless certified to by the judgment-creditor himself. BHARUT CHUNDER ROY *v.* NAZIR ALI KHAN . . . . . **10 W. R., 354**

10. ——————— *Adjustment out of Court.—Sufficiency of certificate of payment.*—A petition signed and filed in Court by a judgment-creditor certifying payment of the amount due to him by his judgment-debtor, is a sufficient certificate of payment under the decree in the terms of section 206, Code of Civil Procedure. SAADOOLLAH SHAIKH *v.* KALEECHURN . . . **12 W. R., 358**

11. ——————— *Adjustment out of Court.—Duty of execution-creditor.—Presumption.*—*K.*, an execution-creditor of *C.*, applied to the Court by which the decree was passed, and caused *C.* to be imprisoned under it. *C.* then entered into a compromise upon certain terms with *K.* for the adjustment of the decree, and *K.* thereupon, but without certifying the terms of such adjustment to the Court, petitioned for the release of *C.*, who was accordingly released. Subsequently *K.* again applied to the Court to compel satisfaction of the whole amount of the decree against *C.* This application was opposed by *C.*, on the ground that an adjustment of the decree had taken place between him and *K.* The Judge, however, refused to enter into the question of the adjustment, as the terms of it had not been certified to the Court under section 206 of the Civil Procedure Code. *Held*, that the Judge was in error; that it was the duty of *K.*, on applying for the release of *C.*, to certify the adjustment to the Court; that it would be unjust to allow him to take advantage of his own omission to do so; and that, not having done so, the presumption against him was that the decree had been satisfied in full; but that, under the circumstances, it would be the most equitable course to direct the Judge to enquire into the terms of the adjustment. Case remanded for that purpose. CHANGO DALAD DUVHA MAHAJAN *v.* KALURAM NARAYANDAS . . . . **4 Bom., A. C., 120**

12. ——————— *Adjustment out of Court.—Compromise.*—*H.* sued *B.* to recover possession of a certain house. *B.* answered that the house was his own; that *H.* having fraudulently got possession of it, he (*B.*) had filed a suit to recover possession; that a decree was passed in his favour in the lower Court, which, however, was reversed on appeal; that, pending a special appeal, a compromise had been entered into between him and *H.*, in pursuance of which he (*B.*) was put in possession of the house. The terms of this compromise were not certified to the Court under section 206 of the Civil Procedure Code. *Held*, that this compromise, having been effected after the decree in favour of *B.* had been reversed, did not come within the meaning of section 206, and was, therefore, a good defence to the suit of *H.* HARI SADASHIV DIKSHIT *v.* BAPU BULVANT . . . . . **5 Bom., A. C., 78**

13. ——————— *Adjustment made out of Court.—Payment into Court.*—Under the Civil Procedure section 206, a debtor under a money decree can at any time bring the amount of his debt into Court to be paid to the judgment-creditor; and by analogy any other person against whom a decree is made for the delivery of moveable or immoveable property, has an equal right to relieve himself from further vexation by making satisfaction with the knowledge of the Court in such mode as the circumstances of the special case admit of. By the same section all adjustments of decrees, whatever be the nature of the subject of those decrees, must be made with the knowledge of the Court. *Quære* (by MARKBY, *J.*),—Where a party simply acts in obedience to a decree, is he debarred from showing that he has done so by the words "no adjustment of a decree, in part or in whole," shall be recognised by the Court, unless such adjustment be made through the Court, or be certified to the Court by the person in whose favour the decree has been made or to whom it has been transferred? RAJ LUCKHEE CHOWDHRAIN *v.* TEWAREE CHOWDHRY . . **18 W. R., 520**

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), ss. 257, 258 (1859, s. 206),—Adjustment of decree—*continued.*

14. ——————— *Splitting decree into shares.—Payments by judgment-debtor.*—Payments by a judgment-debtor in satisfaction of a decree which is afterwards split up into shares, if made through the Court, and while the decree is entire, ought to be taken into account and set off as in satisfaction of the whole decree. BHYRUBNATH SHAHA *v.* KUNHYA LALL ROY [20 W. R., 131

15. ——————— *Suit on kistbundi.—Adjustment through Court.*—The suing on a kistbundi in Court does not necessarily make it the instrument of a public adjustment through the Court, within the meaning of section 206, Act VIII of 1859. MUDDON MOHUN MITTER *v.* PEER BUKSHUN . . . . . 7 W. R., 485

16. ——————— *Part payments not certified to Court.—Quære,*—Whether part payments under a decree may not be proved although they have not been made through the Court, or certified to the Court under section 206 of Act VIII of 1859. BHUBONESWARI DEBI *v.* DINANATH SANDYAL [2 B. L. R., A. C., 320: 11 W. R., 232

17. ——————— *Bond payable by instalments.—Execution of decree.—Limitation.*—A judgment-creditor is entitled to prove payments made according to the terms of a kistbundi, for the purpose of showing that his right to sue out execution under the kistbundi was not barred by limitation. BHUBONESWARI DEBI *v.* DINANATH SANDYAL [2 B. L. R., A. C., 320: 11 W. R., 232

BISHTO CHUNDER CHUCKERBUTTY *v.* WOOMANATH ROY CHOWDHRY . 15 W. R., 459

18. ——————— *Decree payable by instalments.—Execution of decree.—Limitation.*—Where a creditor has obtained a decree for money payable by instalments, the whole amount to become due on failure by the debtor to pay one of the instalments, he is, upon failure, entitled, notwithstanding section 206 of Act VIII of 1859, to come into Court and certify to the Court, and prove payment of the earlier instalments, to show that execution of his decree is not barred. FAKIR CHAND BOSE *v.* MADAN MOHUN GHOSE [4 B. L. R., F. B., 130: 13 W. R., F. B., 40

JUGGUT MOHINEE DOSSEE *v.* MADHUB CHUNDER KUR . . . . . 15 W. R., 66

19. ——————— *Limitation.*—The Court cannot recognise any arrangement between the parties enlarging the period of limitation allowed by law for the execution of decrees, or which alters the terms of the decree. KRISHNA KAMAL SING *v.* HIRU SIRDAR . . 4 B. L. R., F. B., 101

S. C. KISTO KOMUL SINGH *v.* HUREE SIRDAR [13 W. R., F. B., 44

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), ss, 257, 258 (1859, s. 206).—Adjustment of decree—*continued.*

MEHEROONNISSA *v.* ROUSHAN JEHAN [17 W. R., 396

RAM RUNJUN CHUCKERBUTTY *v.* JOWHURU-JUMAH KHAN . . . . 23 W. R., 129

20. ——————— *Kistbundi.—Execution of decree.*—Where a decree had been obtained for a certain sum of money without interest and afterwards a kistbundi was filed, by which the decree-holder and the judgment-debtor agreed that the amount of the decree should be paid by instalments with interest, and the judgment-debtor had, by his conduct for several years, treated the kistbundi as if it were a decree,—*Held* that, under the circumstances of the case, the judgment-debtor could not afterwards object that the kistbundi could not be executed as a decree, and that a fresh suit should be brought upon the kistbundi; but the decree-holder was entitled to take proceedings on the kistbundi as if it were part of the original decree. DINONATH SEN *v.* GURUCHURN PAL [14 B. L. R., 287: 21 W. R., 310

JANKEE *v.* SREENATH ROY CHOWDHRY [5 W. R., Mis., 19

21. ——————— *Kistbundi.*—There is no procedure under Act VIII of 1859 under which execution can be taken out upon a kistbundi filed in Court after decree, which has not been incorporated with the decree. MADHUB CHUNDER DHUNPUT *v.* MADHUB LALL KHAN [14 B. L. R., 288 note: 15 W. R., 542

22. ——————— *Kisthundi.*—Where a decree was obtained for a sum of money, and afterwards by an arrangement between the judgment-debtor and the decree-holder it was agreed that the decree should be payable by instalments with interest at a very high rate, and payments had subsequently been made of large sums of money in the terms of the arrangement, and a balance remained due, it was held that the decree-holder could not recover in execution of the decree any sum beyond what was stated in the decree. KANHYALAL PUNDIT *v.* COLLECTOR OF CUTTACK [14 B. L. R., 291, note: 16 W. R., 275

DWARKNATH SADHOO KHAN *v.* DOORGA CHURN SAHA . . 6 W. R., S. C. C. Ref., 1

23. ——————— *Bond given in satisfaction.—Default in paying.*—Where a judgment-debtor executed a kistbundi or instalment bond, providing for the satisfaction of the decree which had been obtained against him, and subsequently failed to pay according to the terms of the kistbundi,—*Held*, that the decree-holder could enforce his claim under the terms of the kistbundi by proceeding in execution, and need not file a fresh suit. TARIF BISWAS *v.* KALIDASS BANERJEE [2 B. L. R., A. C., 223: 11 W. R., 86

24. ——————— *Release without consideration.—Adjustment otherwise than through*

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), ss. 257, 258 (1859, s. 206)—Adjustment of decree—*continued.*

the Court.—*A.* had obtained a decree against *B.*, *C.*, and *D.*, in execution of which the sheriff attached certain property belonging to *B.*, *C.*, and *D.*, who were carrying on business in partnership. The property was sold, and the proceeds paid into Court, and by order of Court *A.* received a sum in part satisfaction of his decree. Subsequently *A.*, at the request of *B.*, and without receiving any consideration, gave him a letter in Bengali, purporting to be a release to him of the remainder of his decree, but such adjustment was not made through the Court. *A.* afterwards applied for execution of his decree against *B.*, *C.*, and *D.*, but his application was refused, the Court treating the letter as a release. *A.* appealed. *Held*, on appeal, that the letter was not a release; there was no consideration for it. The adjustment of the decree should have been made through the Court or certified to it in accordance with section 206, Act VIII of 1859. BHUBUN MOHAN BONNERJEE *v.* SADU CHARAN SARKAR [6 B. L. R., 339 : 15 W. R., O. C., 5

25. ——————— *Agreement between parties for payment of decree by instalments.—Subsequent application for execution.*—*C.* obtained a decree against *N.* for payment of a certain sum of money. Various applications were made to execute the decree, and on one of them, in September 1869, the sum of R1,000 was paid. Subsequently, on December 16th, 1870, it was arranged, upon a petition of *N.* and the consent of *A.*, that a further payment of R1,000 should be made, and that the balance of the debt should be paid with interest at the rate of 1 per cent. per month by monthly instalments of R125. In May 1872, *C.* applied for execution for recovery of the balance due on the decree, deducting the amount received under the arrangement. *Held*, he was not entitled to execution in supersession of the agreement. CHUNDER NATH MISSER *v.* GOUREE KOMUL BHUTTACHARJEE [10 B. L. R., Ap., 28 : 19 W. R., 155

26. ——————— *Kistbundi, Effect of, on decree.*—A kistbundi, or arrangement to pay by instalments the amount of a decree obtained upon a bond, does not effect an extinction of the original debt or the mortgagee's lien upon property mortgaged to him by the bond. RAMCHURN LALL *v.* KOONDUN KOOMAREE . 14 B. L. R., 423, note

S. C. RAM CHURN LALL *v.* RUGHOOBEER SINGH. [11 W. R., 481

27. ——————— *Kistbundi.—Postpone-petition.—Execution of decree.* Plaintiff sued in the Munsif's Court of Ellore for recovery of certain moneys claimed as due under a "postpone-petition." In execution of a decree in a former suit between the same parties a petition was presented by them to the Munsif's Court stating an arrangement between them for the payment of the amount decreed by instalments, with a provision that, in default of payment, "the Court may, on the application of the plaintiff, issue a warrant and collect the amount, with costs of the petition, from the produce of my share of the agraharam lands . . . . which are held liable by the razinama decree of this suit, from the said lands, from my other property and from myself, and pay the same to plaintiff." The petition concluded thus: "We, both the parties, present this postpone-petition with our free will and consent, and pray for its being enforced according to its terms." *Held*, on second appeal, by the Full Court, affirming the decree of both the lower Courts, that, as it was clear that no intention existed between the parties to create new rights enforcible by suit in supersession of those acquired or declared by the decree, a suit on the "postpone-petition" was not maintainable. DARBHA VENKAMMA *v.* RAMA SUBBARAYADU [I. L. R., 1 Mad., 387

See DEBI RAI *v.* GOKUL PRASAD [I. L. R., 3 All., 585

and GANGA *v.* MURLI DHAR [I. L. R., 4 All., 240

28. ——————— *Kistbundi, Substitution of, for decree.—Consent of parties.—Execution of decree.*—The consent of parties cannot give jurisdiction, nor can it alter the nature of the decree. An agreement introducing fresh parties cannot be substituted for the decree or become capable of execution as if it was the original decree. BHOOPENDRONATH CHOWDHRY *v.* KALEE PROSUNNO GHOSE . . . . . 24 W. R., 205

29. ——————— *Instalment bond intended to revive barred decree.*—An instalment bond by a judgment-debtor acknowledging a balance to be due under the decree, but executed without consideration, and after the decree is barred by limitation, cannot either revive a decree or be legally binding on his representatives. HEERA LALL MOOKERJEE *v.* ROY DHUNPUT SINGH . 24 W. R., 282

30. ——————— *Agreement to pay by instalments.—Enforcing kistbundi or instalment-bond by execution.*—An agreement between the parties to a decree to reduce its amount or to give time for its payment, or that the amount shall be paid by instalments, does not amount to a varying of the decree itself. *A.* having obtained against *B.* a decree for the payment of money, a kistbundi was inserted in the decree, by which it was arranged that the amount of the decree should be paid by instalments of R5,000. A considerable remission was allowed to the judgment-debtor, and some reduction was made in the amount of interest payable. The kistbundi contained an express proviso that in default of payment of three consecutive kists, the whole amount due under the bond was to become at once realisable; and it also provided that in case of default the amounts due were to be recovered by execution to which the judgment-debtor was to make no objection. Certain instalments having fallen due, the judgment-creditor sought to enforce the kistbundi by execution. *Held*, that he was entitled to do so; that he was not bound

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), ss. 257, 258 (1859, s. 206).—Adjustment of decree— *continued.*

to bring a regular suit; and that a provision in the bond by which payment might be enforced against property which could not have been attached and sold in execution of the decree, did not prevent the decree-holder from proceeding by execution so long as he did not seek to enforce that provision. AMEERUNNISSA KHATOON *v.* MEER MAHOMED HOSSEIN [2 C. L. R., 143

31. ——————— *Agreement to pay by instalments.—Civil Procedure Code, 1882, s. 258.*—A decree passed against the defendant in a suit, dated the 13th March 1877, directed "that the plaintiff should recover the decree-money by instalments, agreeably to the terms of the deed of compromise, and he, in case of default, should recover in a lump sum." The compromise mentioned in the decree provided that the amount in dispute should be paid in ten instalments, from 1284 to 1294 Fusli, the first to be paid on the 27th May 1877 (1284 Fusli), and the remaining nine instalments on Jaith Puranmashi of each succeeding Fusli year. On the 1st September 1883, the decree-holders applied for execution of the decree, alleging that the first four instalments had been paid, but not any of the succeeding instalments, and they claimed to recover, under the terms of the decree, the fifth and all the remaining instalments in a lump sum. The judgment-debtors contended that the application was barred by limitation, as they had not paid a single instalment, and more than three years had elapsed from the date of the first default; and that, even if the first four instalments had been paid, such payments could not be recognised by the Court as they had not been certified. *Held*, that recognition of such instalments was not barred by the terms of section 258 of the Civil Procedure Code. *Sham Lal* v. *Kankia Lal, I. L. R., 4 All., 316*; and *Fakir Chand Bose* v. *Madan Mohun Ghose, 4 B. L. R., F. B., 130*, followed. ZAHUR KHAN *v.* BAKHTAWAR . I. L. R., 7 All., 327

32. ——————— *Contract superseding decree.—Civil Procedure Code, s. 258.—Certification.*—In the course of proceedings in execution of a decree, dated the 14th June 1878, the parties, on the 11th January 1881, entered into an agreement, which was registered, and filed in the Court executing the decree. The deed recited that the decree was under execution, and that a mortgage bond, dated the 1st December 1873, in favour of the judgment-debtor by a third party, had been attached and advertised for sale, and that the decree-holder and judgment-debtor had arranged the following method of satisfying the decree: that the judgment-debtor should make over the said bond to the decree-holder, in order that he might bring a suit thereon at his own expense against the obligor, and realise the amount secured by the bond, and out of the amount realised satisfy the decree under execution with costs and future interest, together with all costs of the suit to be brought against the obligor, and together with a sum due by the judgment-debtor to the decree-holder under a note of hand for R250 with interest; and other details which need not be stated. On the same day that this deed was executed, the decree-holder filed a petition in the Court, to the effect that under the agreement an arrangement had been made for payment of the judgment-debt, by which the judgment-debtor made over to him the bond advertised for sale in order that the petitioner should file a suit under it at his own cost against the obligor, and realise the debt due under the decree in execution with interest and costs; and he prayed that the sale to be held that day might be postponed, and the application for execution struck off for the present, and the previous attachment maintained, and stating that after realisation of the amount entered in the bond advertised for sale, an application for execution would be duly filed. On this the order was that the execution case be struck off the file, and the attachment maintained. On the 24th December 1883, the decree-holder applied for execution of the decree, alleging that the judgment-debtor had failed to make over the bond to him according to the agreement. The judgment-debtor objected that the decree was no longer capable of execution, having been superseded by the agreement of the 11th January 1881, and that the application was barred by limitation, the previous application being dated the 9th November 1880. *Per* OLDFIELD, *J.*—That the agreement of the 11th January 1881 did not contemplate, and had not the effect of, cancelling the decree and substituting for it a new contract, inasmuch as the deed contained nothing to the effect that the decree was superseded, and all it did was to provide means by which the decree, together with another small sum due by the judgment-debtor to the decree-holder, might be satisfied without having recourse to the sale of the bond attached, and the effect would be that, on realisation, satisfaction would be certified in whole or in part to the Court executing the decree. Further, if the arrangement was to be regarded as within the meaning of an adjustment of the decree under section 258 of the Civil Procedure Code, it could only be recognised by the Court when certified by the decree-holder or judgment-debtor; and in this case the only certification which was made was by the decree-holder, by his petition of the 11th January 1881, which was in respect of a temporary arrangement under which the decree remained in force. *Per* MAHMOOD, *J.*—That the agreement of the 11th January 1881 was intended by the parties as a performance of the obligation created by the decree, by substituting a fresh obligation founded upon contract, but that the deed could not be regarded as such an adjustment of the decree as satisfied the requirements of section 258 of the Civil Procedure Code, because the creditors, whilst admitting the creation of a separate contract, took care to say that the decree was to be kept alive, and the attachment thereunder was to subsist; and that, therefore, the certification of the adjustment was inadequate and could not be recognised in executing the decree. FATEH MUHAMMAD *v.* GOPAL DAS [I. L. R., 7 All., 424

33. ——————— *Adjustment by parties out of Court.—Subsequent application for*

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), ss. 257, 258 (1859, s. 206).—Adjustment of decree— *continued.*

execution of decree.—Refusal to certify payment to Court.—When a decree has been adjusted between the parties by a contract binding upon them, a Court is not bound to issue process of execution on the original decree in violation of the terms of the contract, although the decree-holder refuses to certify the adjustment of the decree under section 206 of the Procedure Code, especially where the Court executing the decree is the Court to which the parties would go for the purpose of enforcing the contract. KRISHNAJI KESAVA PUNDIT *v.* SUBBARAYA TAKKER [7 Mad., 387

34. ——————— *Certifying part payment of decree.—"To show cause," Meaning of.*—In determining, under section 258 of Act XIV of 1882, whether or no the cause shown by the decree-holder is sufficient, it is incumbent upon the Court to investigate and decide any questions of fact upon which the parties may not be agreed. In such an investigation the evidence may be given either orally or by affidavit. The term "to show cause" does not mean merely to allege causes, nor even to make out that there is room for argument, but both to allege cause and to prove it to the satisfaction of the Court. RUNG LALL *v.* HEM NARAIN GIR [I. L. R., 11 Calc., 166

35. ——————— *Power of Court to examine parties as to satisfaction of decree made out of Court.*—A Court executing decrees, whilst giving effect to section 206 of Act VIII of 1859, should also take reasonable care that its process is not about to be abused for fraudulent purposes. It may, by examining the judgment-debtor and others having knowledge, inform itself of the position of the decree, and whether it has or has not been satisfied. This, however, is merely an enquiry to inform the Court, and it need not frame and decide an issue. PAREKCHUT *v.* RUGHO GOORDEO . . 2 N. W., 48

36. ——————— *Payment out of Court.—Power of Court to go into question of satisfaction of decree.*—If a judgment-debtor, after receiving notice that the right, title, and interest of the decree-holders in the decree has been attached, pays the decree-holders the money due under the decree, the payment is not a valid payment, and the Court whose duty it is to execute the decree is competent to enter into that question, and to determine whether the alleged satisfaction is binding upon the auction purchaser of the attached right, title, and interest above mentioned. BYJNATH SAHOO *v.* DOOLAR CHAND SAHOO . . . . . 24 W. R., 245

37. ——————— *Injunction to restrain execution after agreement out of Court not to execute.*—Where a decree-holder agrees for a good consideration not to enforce his decree, the Court may legitimately, on the suit of the opposite party, issue an injunction against the former not to do what he has agreed not to do, Act VIII of 1859, section 206, notwithstanding. NUBO KISHEN MOOKERJEE *v.* DEBNATH ROY CHOWDHRY . . 22 W. R., 194

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), ss. 257, 258 (1859, s. 206).—Adjustment of decree— *continued.*

38. ——————— *Refusal to certify to Court.*—Where a payment alleged to have been made in satisfaction of a decree is not certified to the Court executing the decree, the Court is bound to proceed as if such payment had never been made. If such payment has in fact been made to the judgment-creditor and he dishonestly refuses to certify it to the Court when called upon to do so, he can be made liable to refund it in an action. MAHOMED KAZEM JOWHURRY *v.* KHETOO BEBEE [20 W. R., 150

39. ——————— *Contract to certify satisfaction of decree, Breach of.—Suit for damages.*—The provision in section 258 of the Code of Civil Procedure, 1882, which forbids any Court to recognise a payment under, or an adjustment of, a decree, unless certified to the Court executing the decree, does not debar a suit for damages for a breach of a contract to certify. MALLAMA *v.* VENKAPPA [I. L. R., 8 Mad., 277

40. ——————— *Act XII of 1879, s. 36.—Suit to recover money paid out of Court in satisfaction of decree.*—The provisions of section 206 of the Civil Procedure Code (Act VIII) of 1859 only prevent the Court executing the decree from recognising a payment made out of Court, and do not bar a suit for the refund of such payment. *G.* held a decree against *D.* who satisfied it out of Court, and obtained a receipt from *G.* to the effect that it was satisfied. Notwithstanding this, *G.* executed the decree and recovered the amount of it through the Court, although *D.* pleaded satisfaction in the execution proceedings and produced the receipt. In a suit brought by *D.* against *G.* for refund of the money received by *G.* out of Court, the defendant contended that the suit was not maintainable. *Held*, that it was maintainable according to the law as it stood before the passing of Act XII of 1879. *Gunamani* v. *Pran Kishore, 5 B. L. R., 223;* and *Gulawad* v. *Rahimtulla, 4 Bom., A. C., 76,* followed. *Quære,*—Whether such a suit is maintainable under section 36 of Act XII of 1879, which has been substituted for section 258 of the Civil Procedure Code (Act X) of 1877. DAVLATA *v.* GANESH SHASTRI [I. L. R., 4 Bom., 295

41. ——————— *Suit for money paid in execution of decree after payment not through the Court.*—Plaintiff owed defendant a judgment-debt. He paid the debt, but not through the Court. Defendant then fraudulently applied to the Court to execute the decree, and the Court being debarred by section 206 of the Code of Civil Procedure from recognising payments made otherwise than through it, executed the decree by making the plaintiff pay again the sum decreed. Plaintiff sued to recover the amount overpaid. *Held*, by the majority of the Court (SCOTLAND, *C. J.*, and INNES, *J.*, dissenting), that such a suit is not maintainable. ANUNACHELLA PILLAI *v.* APPAVA PILLAI . . 3 Mad., 188

KUNHI MOIDIN KUTTI *v.* RAMEN UNNI [I. L. R., 1 Mad., 203

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), ss. 257, 258 (1859, s. 206).—Adjustment of decree— *continued.*

42. ——————— *Payments made into Court in execution of decree.*—Section 206, Act VIII of 1859, does not bar a suit brought to recover money paid into the Collectorate as Government revenue, although the person on whose behalf the money was paid had an Act X decree against the person paying the money, as the entire amount of the decree was eventually recovered by taking out execution of the whole decree. MOHIMA CHUNDER GHOSE *v.* NOBINCHUNDER ADHIKAREE . **8 W. R., 449**

43. ——————— *Part satisfaction of decree not certified to the Court.—Suit to recover money so paid after execution of entire decree.—Act XXIII of 1861, s. 11.*—*A.*, a judgment-debtor, paid to *B.*, the decree-holder, a sum of money by way of compromise in full satisfaction of the decree. *B.* failed to certify this payment to the Court, and afterwards executed her decree for the full amount. In a suit by *A.* against *B.* for recovery of the amount previously paid out of Court in satisfaction of the decree,—*Held* that, notwithstanding section 11 of Act XXIII of 1861, the suit was maintainable. GUNAMANI DASI *v.* PRANKISHORE DASI

[5 B. L. R., 223: 13 W. R., F. B., 69

Overruling ALUNGA BEBEE *v.* GOOROO CHURN ROY **[3 W. R., S. C. C. Ref., 3**

BHUGOBAN TANTEE *v.* GOBIND CHUNDER ROY **[9 W. R., 210**

where it was held that a suit would lie for damages for breach of contract in not certifying the payments.

44. ——————— *Suit to enforce adjustment under contract.*—A suit to enforce a contract by which a dispute was adjusted between a decree-holder and judgment-debtor is not barred by Act VIII of 1859, section 206. NUJEENI MULLICK *v.* ERFAN MOLLAH . . . **22 W. R., 298**

45. ——————— *Rejection of objection that decree had been satisfied out of Court.—Suit to recover thing given in satisfaction.—Held,* that the rejection, under section 206 of Act VIII of 1859, of a defendant's objection, in a mofussil Small Cause Court, to the execution of a decree, on the ground that it had been adjusted out of Court, did not bar his right to bring a suit against the execution-creditor to recover the thing alleged to have been given in satisfaction of the decree. GULAWAD CHANDABHAI *v.* RAHIMTULLA JAMALBHAI

[4 Bom., A. C., 76

46. ——————— *Suit for breach of contract in not certifying payment to Court.*—A suit will, notwithstanding section 206 of Act VIII of 1859, lie for damages for an alleged breach of contract in not certifying to the Court a payment of money in satisfaction of a decree, made out of and not through the Court, in consequence of which the same was fraudulently recovered a second time by the person omitting to certify the said payment. MOTHE LALL MOOKERJEE *v.* KANDHAI LALL

[1 N. W., 155: Ed. 1873, 237
S. C. Agra, F. B., Ed. 1874, 185

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), ss. 257, 258 (1859, s. 206).—Adjustment of decree— *continued.*

47. ——————— *Satisfaction of decree not certified.—Fraudulent execution.—Charge under Penal Code, s. 210.—Proof of payment.*—Section 258 of the Code of Civil Procedure, which provides that no payment or adjustment of a decree not certified to the Court, as in the said section provided, shall be recognised by any Court, does not debar a Criminal Court from recognising such payment where the decree-holder is charged with fraudulently executing a satisfied decree. QUEEN-EMPRESS *v.* PILLALA . . . . **I. L. R., 9 Mad., 101**

48. ——————— *Fraudulent execution of decree.—Duty of the decree-holder to inform the Court of private adjustment or satisfaction of a decree.—Construction of Penal Code, ss. 193, 210, 406.*—The rule of Civil Procedure contained in the last clause of section 258 of the Civil Procedure Code (Act XIV of 1882)—that uncertified adjustments of a decree are not to be recognised by "any Court"—does not affect the substantive criminal law. The words "any Court" in that clause have no application to a Criminal Court investigating a charge of fraudulently executing a decree under section 210 of the Penal Code (XLV of 1860). Those words do not bar any criminal remedy which an injured judgment-debtor may have against a fraudulent decree-holder, whether by a prosecution under sections 193, 210, 406, or any other section of the Penal Code. In section 210 of the Penal Code the word "satisfied" is to be understood in its ordinary meaning, and not as referring to decrees, the satisfaction of which has been certified to the Court. QUEEN-EMPRESS *v.* BAPUJI DAYARAM

[I. L. R., 10 Bom., 288

1. ——— **s. 257 (*a*).—Agreement modifying decree.**—*Agreement to pay by instalments.—Guarantee to indemnify surety who pays judgment-debt.*—The provisions of section 257 (*a*) of the Code of Civil Procedure, 1877, apply only as between parties to the decree. YELLA *v.* MUNISAMI

[I. L. R., 6 Mad., 101

2. ——————— *Arrangement to pay decree by instalments.*—The decree-holder and judgment-debtor of a decree filed a petition (sulehnama) in the Court executing the decree, praying that the Court would sanction an arrangement providing for the payment of the decree by instalments, and enhancing the rate of interest made payable by the decree. The Court sanctioned the arrangement. *Held,* that the "sulehnama" was within section 257 (*a*) of the Civil Procedure Code, and the decree might be executed in accordance with its provisions. SITA RAM *v.* DASRATH DAS . . **I. L. R., 5 All., 492**

3. ——————— *Bond for satisfaction of judgment-debt without sanction of Court.*—*G.*, the father of the plaintiff, obtained two decrees: one against the defendant *A.* and his father, and the other against *A.'s* father alone, and in satisfaction of these decrees obtained a bond without the sanction of the Court, and brought a suit to recover the sum due under the said bond. *Held,* that the bond was void under the second clause of section

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 257 (a).—Agreement modifying decree—*continued.*

257 (a) of the Civil Procedure Code (Act XIV of 1862). GANESH SHIVRAM *v.* ABDULA BEG [I. L. R., 8 Bom., 538

4. ——— *Judgment-debt.—Sanction of Court.—Contract void.—Principal.—Surety.*—An agreement entered into to pay interest not awarded by a decree in addition to the sum decreed without the sanction of the Court which passed the decree is void under section 257 (a) of the Code of Civil Procedure, Act XIV of 1882, so far as it operates in satisfaction of the judgment-debt. When the void part of an agreement can be properly separated from the rest, the latter does not become invalid; but where the parties themselves treat debts—void as well as valid—as a lump sum, the Court will regard the contract as an integral one and wholly void, upon which neither the principal nor the sureties can be sued. DAVLATSING *v.* PANDU [I. L. R., 9 Bom., 176

5. ——— *Adjustment of decree out of Court.—Instalment bond.—Consideration.—Execution of decree.*—The provisions of section 257 (a) of Act XIV of 1882 are intended to prevent binding agreements between judgment-debtors and judgment-creditors for extending the time for *enforcing decrees by execution*, without consideration, and without the sanction of the Court; and are not intended to prevent the parties from entering into a fresh contract for the payment of the judgment-debt by instalments or otherwise. JHABAR MAHOMED *v.* MODAN SONAHAR . I. L. R., 11 Calc., 671

6. ——— *Compromise.—Civil Procedure Code, s. 210.*—The parties to a decree for money, dated the 14th July 1871, entered into a compromise whereby, in lieu of a portion of the decretal money, the decree-holder was placed in possession of certain property, and the remainder of the decretal money was to be paid by fixed annual instalments, and, in case of default in the payment of any instalment, it was agreed that the entire amount should become immediately realisable by execution of the decree. On the 11th December 1882, the decree-holder, alleging default in payment of the instalments, applied for the execution of compromise. *Held*, that such an agreement could not be treated as an instalment decree, and, as such, capable of execution. *Debi Rai* v. *Gokal Prasad, I. L. R., 3 All., 585*, followed. RAMLAKHAN RAI *v.* BAKHTAUR RAI [I. L. R., 6 All., 623

——— **ss. 259, 260 (1859, s. 200).**

See RESTITUTION OF CONJUGAL RIGHTS.

[I. L. R., 1 Bom., 164
1 Ind. Jur., N. S., 317
14 B. L. R., 298: 23 W. R., 179
2 Agra, 111, 337
3 Agra, 88
9 Bom., 290
2 N. W., 314
20 W. R., 50, 92
8 W. R., P. C., 3: 11 Moore's I. A., 551
8 W. R., 487

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), ss. 259, 260 (1859, s. 200)—*continued.*

1. ——— **Decree for performance of a particular act.**—A decree had been obtained that "the defendants do, within six weeks after the service upon them of this decree, remove the obstruction and reopen the pathway or lane leading from the north-west end of the plaintiff's house, northwards to a public road, as the same existed before the commencement of the suit and as described in the plaint." *Held*, that this was a decree for the performance of a particular act on the part of the defendants, and must be executed under the provisions of section 200, Act VIII of 1859,—*i.e.*, by imprisonment of the party or attachment of his property, or by both: therefore, an order for execution of the decree by causing the obstruction to be removed was set aside as illegal. BHOOBUN MOHUN MUNDUL *v.* NOBIN CHUNDER BULLUB [10 B. L. R., Ap., 12: 18 W. R., 282

2. ——— *Execution of decree for restitution of conjugal rights.—A.*, who had been directed by a decree to refrain from preventing her daughter returning to her husband, after the date of the decree permitted her daughter, who was of age, to reside in her house. *Held*, that such conduct on the part of *A.* was no such evidence of interference with her daughter's return as would justify the execution of the decree against her, under the provisions of section 200 of Act VIII of 1859. AJNASI KUAR *v.* SURAJ PRASAD . I. L. R., 1 All., 501

3. ——— **Decree for possession of wife.**—*Enforcing execution of decree.*—Where there has been a decree in favour of an applicant for special possession of his wife, and application made for execution, the process under the ordinary sections will not be enforced. AKBARALLY *v.* HOSSAIN ALLY [1 Ind. Jur., N. S., 101: 5 W. R., Mis., 29

4. ——— **Decree ordering wife to return to husband.**—*Enforcing decree under a suit for restitution of conjugal rights against wife.—Quære,*—Whether, under the present procedure, the Court can enforce its order upon a wife to return to her husband's by giving her over bodily into her husband's hands. Such disobedience would seem to fall within section 200 of the Code, and to be enforceable only by imprisonment, or attachment of property, or both. JUDOONATH BOSE *v.* SHUMSOONNISSA BEGUM. BUZLOOR RUHEEM *v.* SHUMSOONNISSA BEGUM [8 W. R., P. C., 3: 11 Moore's I. A., 551

5. ——— **Opportunity of, and refusal to, obey decree.**—*Enforcing execution of decree.*—No order for enforcing a decree by imprisonment under section 200 of the Code of Civil Procedure should be made until the defendant has had an opportunity of obeying the decree, or has contumaciously refused to obey it. UMED KIKA *v.* NAGINDAS NORO-TAMDAS . . . . 7 Bom., O. C., 122

6. ——— **Decree for joint possession and management of property.**—*Attachment for disobedience to decree.—Civil Procedure Code,*

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), ss. 259, 260 (1859, s. 200).—Decree for joint possession and management of property—*continued.*

1877, s. 260.—By a decree relating to certain joint property belonging to the plaintiff and defendant, but which had previously been held in the sole name of the defendant, it was directed that the plaintiff and defendant should jointly manage the property, and that the names of both should appear in all papers connected with such property. The plaintiff subsequently applied to have his name registered in the Collectorate, but was opposed by the defendant, who, it appeared, also allowed the amlahs of the estate to continue to use his sole name. *Held*, that the Court had under the circumstances jurisdiction under section 260 of the Civil Procedure Code to attach the defendant's property until he had obeyed the decree by having the joint names of himself and the plaintiff inserted in all documents belonging to the estate. GOURI PROSAD MOITRA *v.* BHOLA NATH SANYAL . . . . . 8 C. L. R., 487

——— s. 260.

See EXECUTION OF DECREE—MODE OF EXECUTION—REMOVAL OF BUILDINGS.
[I. L. R., 8 Calc., 174

——— s. 261.

See LIMITATION ACT, 1877, ART. 179—NATURE OF APPLICATION—IRREGULAR OR DEFECTIVE APPLICATIONS.
[I. L. R., 10 Bom., 91

——— s. 263 (1859, s. 223).

See EXECUTION OF DECREE—MODE OF EXECUTION—POSSESSION.
[20 W. R., 204

——— s. 264 (1859, s. 224).

See EXECUTION OF DECREE—MODE OF EXECUTION—JOINT PROPERTY.
[B. L. R., Sup. Vol., 172

See POSSESSION—NATURE OF POSSESSION.
[9 W. R., 358
15 W. R., 99
I. L. R., 5 Bom., 206

——— s. 265 (1859, s. 225).

See EXECUTION OF DECREE—MODE OF EXECUTION—PARTITION
[I. L. R., 6 All., 452

See PARTITION—RIGHT TO PARTITION—GENERAL CASES.
[I. L. R., 6 Mad., 97
I. L. R., 8 Bom., 539
I. L. R., 7 Mad., 382
I. L. R., 10 Calc., 435

See PARTITION—RIGHT TO PARTITION—PARTITION OF PORTION OF PROPERTY.
[24 W. R., 242
8 C. L. R., 367

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 266 (1859, s. 205).

See CASES UNDER ATTACHMENT—SUBJECTS OF ATTACHMENT.

See ATTACHMENT, SUBJECTS OF ATTACHMENT—DEBTS.
[I. L. R., 3 All., 12

See SALE IN EXECUTION OF DECREE—DISTRIBUTION OF SALE PROCEEDS.
[I. L. R., 4 Bom., 429

——— s. 268 (1859, ss. 234, 236, 239, 241).

See ATTACHMENT—SUBJECTS OF ATTACHMENT—DEBTS.
[I. L. R., 4 Bom., 323

See ATTACHMENT—SUBJECTS OF ATTACHMENT—SALARY.
[2 B. L. R., A. C., 109

See ATTACHMENT—SUBJECTS OF ATTACHMENT—WAGES.
[1 B. L. R., S. N., 15
10 W. R., 149

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY.
[3 B. L. R., A. C., 320
I. L. R., 4 Bom., 323

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—RECEIVER.
[I. L. R., 2 Bom., 558

——— 268.—*Attachment and sale of bonds.*—Under the provisions of section 268 of the Code of Civil Procedure (Act X of 1877) bonds cannot be sold till the end of six months from the date of attachment. NURSING DAS RAGHUNATH DAS *v.* TULSIRAM BIN DOULATRAM . . I. L. R., 2 Bom., 558

——— s. 269 (1859, s. 233).

See EXECUTION OF DECREE—MODE OF EXECUTION—GENERALLY AND POWERS OF OFFICERS, &c.
[5 B. L. R., Ap., 27: 13 W. R., 339

——— s. 271.

See EXECUTION OF DECREE—MODE OF EXECUTION—GENERALLY AND POWERS OF OFFICERS, &c.
[I. L. R., 3 Bom., 89
5 B. L. R., Ap., 27

——— s. 272 (1859, s. 237).

See ATTACHMENT—SUBJECTS OF ATTACHMENT—PROPERTY AND INTEREST IN PROPERTY OF VARIOUS KINDS.
[8 C. L. R., 17
I. L. R., 3 Calc., 414

See JURISDICTION OF CIVIL COURT—REVENUE COURTS—GENERALLY.
[13 W. R., 301

See SALE IN EXECUTION OF DECREE—DISTRIBUTION OF SALE PROCEEDS.
[I. L. R., 7 Calc., 553

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 272 (1859, s. 237)—*continued.*

1. ——— **Court of Justice.**—*Deputy Collector's Court.*—The Court of a Deputy Collector was a Court of Justice within the meaning of section 237, Act VIII of 1859. COWIE *v.* ELIAS [10 W. R., 43

2. ——— **Application for money deposited in Court.**—*Question for Court executing decree.—Separate suit.*—The plaintiffs having obtained decrees on certain hundis against *K.* and *P.*, applied under Act VIII of 1859, section 237, for payment of certain moneys which had been deposited in Court in a suit in which one *D.* was the plaintiff and which had been attached by them. The ground of their application was, that *D.* had recovered a decree on certain hundis which had been fraudulently transferred to him by *K.* and *P.* The Munsif, holding that the question of the ownership of the decree could not be determined in the miscellaneous department, referred the applicants to regular suits. These were accordingly instituted, and the transfer to *D.* declared to be fraudulent and colourable. *Held*, that the question of the title of the plaintiffs as against *D.* to have their debt paid out of the money in deposit, ought to have been decided in the Court in which the money was in deposit. The Munsif was in error n directing the applicants to a regular suit. DEBEE PERSHAD *v.* GUJADHUR RAM . 20 W. R., 73

——— **s. 273.**

See ATTACHMENT—SUBJECTS OF ATTACHMENT—DECREES.
[I. L. R., 2 All., 290
I. L. R., 6 Mad., 418
I. L. R., 10 Bom., 444

——— **s. 274 (1859, s. 235).**

See ATTACHMENT—MODE OF ATTACHMENT AND IRREGULARITIES IN ATTACHMENT.
[7 W. R., 267
I. L. R., 7 All., 731
I. L. R., 12 Calc., 546

See SERVICE OF PROCESS.
[I B. L. R., S. N., 20
10 W. R., 264
10 B. L. R., Ap., 12

——— **s. 275 (1859, s. 245).**—*Tender of amount of decree.—Stay of execution.*—Under section 245 of Act VIII of 1859, the mere tender of money before the Judge is not sufficient to entitle the judgment-debtor to have the sale of his property stayed, and the law contemplates that payments should be made in accordance with the rules and forms of Courts. HURONAUTH ROY *v.* INDOOROOSHUN DEB ROY . . . . 2 Hay, 302

——— **s. 276 (1859, s. 240).**

See CASES UNDER ATTACHMENT—ALIENATION DURING ATTACHMENT.

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 277 (1859, s. 242).

See JURISDICTION OF CIVIL COURT—REVENUE COURTS—GENERALLY.
[13 W. R., 301

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALES—RIGHTS OF PURCHASERS—RECOVERY OF PURCHASE-MONEY . I. L. R., 1 Calc., 55

——— **s. 278 (1859, s. 246).**

See APPEAL—ORDERS.
[I. L. R., 2 All., 752

See ATTACHMENT—SUBJECTS OF ATTACHMENT—DEBTS . I. L. R., 4 Bom., 323

See CASES UNDER CLAIM TO ATTACHED PROPERTY.

See COURT FEES ACT, s. 7, CL. 8.
[I. L. R., 4 Bom., 515

See COURT FEES ACT, SCH. II, ART. 17, CL. 1 . I. L. R., 4 Bom., 515, 535
[15 B. L. R., Ap., 1
I. L. R., 13 Calc., 162
I. L. R., 2 All., 63
I. L. R., 6 All., 341, 466

See ESTOPPEL—ESTOPPEL BY JUDGMENT.
[I. L. R., 4 Mad., 302
I. L. R., 8 Mad., 506
I. L. R., 11 Calc., 673

See JURISDICTION—SUITS FOR LAND—GENERALLY . . 1 Hyde, 136

See CASES UNDER LIMITATION ACT, 1877, ART. 11.

See CASES UNDER LIMITATION ACT, 1877, ART. 13.

See LIMITATION ACT, 1877, s. 7.
[I. L. R., 1 Calc., 226

See LIMITATION ACT, 1877, ART. 179 (1871, ART. 167; 1859, s. 20)—STEP IN AID OF EXECUTION—SUITS AND OTHER PROCEEDINGS BY DECREE-HOLDER.
[I. L. R., 3 Calc., 716

See CASES UNDER ONUS PROBANDI—CLAIMS TO ATTACHED PROPERTY.

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY.
[I. L. R., 4 Bom., 323

See VALUATION OF SUIT—SUITS—DECLARATORY DECREES, SUITS FOR—
[I. L. R., 1 All., 360

——— **s. 280 (1859, s. 246).**

See CLAIM TO ATTACHED PROPERTY.
[I. L. R., 10 Calc., 1057

See LIMITATION ACT, 1877, ART. 11.
[I. L. R., 12 Calc., 453

See SALE IN EXECUTION OF DECREE—INVALID SALES—SALE PENDING APPEAL.
[I. L. R., 6 Mad., 98

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 280 (1859, s. 246) —*continued.*

See CASES UNDER SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—CLAIMS TO PROPERTY SEIZED IN EXECUTION.

——— **s. 281 (1859, s. 246).**

See CLAIM TO ATTACHED PROPERTY. [I. L. R., 10 Calc., 1057

See LIMITATION ACT, 1877, ART. 11. [I. L. R., 12 Calc., 108

——— **s. 283 (1859, s. 246).**

See APPEAL—ORDERS. [I. L. R., 2 All., 752

See CLAIM TO ATTACHED PROPERTY. [I. L. R., 12 Calc., 696

See ESTOPPEL—ESTOPPEL BY JUDGMENT. [I. L. R., 4 Mad., 302
I. L. R., 11 Calc., 673

See FRAUD—ALLEGING OR PLEADING ONE'S OWN FRAUD. [I. L. R., 10 Bom., 659

See LIMITATION ACT, 1877, ART. 11. [I. L. R., 12 Calc., 108

See RIGHT OF SUIT—EXECUTION OF DECREE . . I. L. R., 3 All., 504
[I. L. R., 7 Calc., 608
I. L. R., 7 Mad., 295
I. L. R., 9 Calc., 888
I. L. R., 9 Bom., 35

See SALE IN EXECUTION OF DECREE—INVALID SALES—SALE PENDING APPEAL. [I. L. R., 6 Mad., 98

See CASES UNDER SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—CLAIMS TO PROPERTY SEIZED IN EXECUTION.

——— **s. 285.**

See SALE IN EXECUTION OF DECREE—INVALID SALES—WANT OF JURISDICTION . . I. L. R., 4 All., 359
[I. L. R., 6 All., 255
I. L. R., 3 All., 356
I. L. R., 5 All., 615
I. L. R., 7 Calc., 410
I. L. R., 7 Mad., 47
I. L. R., 12 Calc., 333

——— **ss. 286 & 296 (1859, s. 248).**

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—IRREGULARITY. [I. L. R., 1 All., 400

——— **(1859, s. 248).**—*Construction of.*—In section 248, Act VIII of 1859, the words "whom the Court may appoint" apply not only to the words "any other person," but also the officers of the Court. In the absence of the Subordinate Judge it is not competent to the Judge, because he is a superior officer,

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), ss. 286 & 296, (1859, s. 248)—*continued.*

to perform the duties required by section 248. JUDOONATH ROY *v.* RAM BUKSH CHATTERJEE [12 W. R., 238

——— **ss. 287, 289, & 290 (1859, s. 249).**

See ATTACHMENT—SUBJECTS OF ATTACHMENT—DEBTS . I. L. R., 4 Bom., 323

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY. [5 N. W., 177
I. L. R., 3 Calc., 542, 544
I. L. R., 4 Bom., 323
I. L. R., 8 Bom., 532

See SALE IN EXECUTION OF DECREE—MORTGAGED PROPERTY. [I. L. R., 10 Calc., 609

1. ——— **(1859, s. 249).**—*Part of an estate.*—The "part of an estate," in section 249, Act VIII of 1859, meant the aliquot part of an estate. KALLYPROSONNO BOSE *v.* DINONATH MULLICK [11 B. L. R., 56: 19 W. R., 434

2. ——— *Proclamation under.*—The object of the proclamation under section 249 is to give notice to intending purchasers, not to the judgment-debtors. LAEK RAM *v.* MOHESH DASS [12 W. R., 488

——— **s. 290 (1859, s. 249, last para.).**

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY. [I. L. R., 5 Calc., 259, 878

——— **s. 293.**

See SALE IN EXECUTION OF DECREE—RE-SALE . . I. L. R., 5 Bom., 575
[I. L. R., 7 Calc., 337

——— **ss. 293, 307, & 308 (1859, s. 254).**

See APPEAL—SALE IN EXECUTION OF DECREE . . I. L. R., 1 All., 181

See CASES UNDER SALE IN EXECUTION OF DECREE—RE-SALE.

——— **s. 294.**

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY. [I. L. R., 5 Calc., 308
I. L. R., 5 Bom., 130, 575
5 C. L. R., 181
I. L. R., 10 Calc., 757
I. L. R., 11 Calc., 731

——— **s. 295 (1859, ss. 270, 271).**

See APPEAL—ORDERS . 7 W. R., 113

See APPEAL—EXECUTION OF DECREE—PARTIES TO SUITS. [B. L. R., Sup. Vol., 1

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 295 (1859, ss. 270, 271)—*continued.*

See ONUS PROBANDI—CLAIMS TO ATTACHED PROPERTY . . 17 W. R., 23

See PAUPER SUIT—SUITS. [I. L. R., 1 All., 596

See RIGHT OF SUIT—SALE IN EXECUTION OF DECREE . W. R., F. B., 180

See CASES UNDER SALE IN EXECUTION OF DECREE—DISTRIBUTION OF SALE PROCEEDS.

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—SALE PROCEEDS. [I. L. R., 9 Mad., 250

——— s. 297 (1859, s. 251).

See SALE IN EXECUTION OF DECREE—RE-SALE . . . 4 N. W., 37

——— s. 298 (1859, s. 252).

See LIMITATION ACT, 1877, ART. 12 (1859, s. 1, CL. 3) . 2 Agra, Pt. II, 175

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY. [6 N. W., 252

——— s. 306 (1859, s. 253).

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY. [I. L. R., 5 All., 316
5 C. L. R., 181

——— ss. 307, 308 (1859, s. 254).

See CASES UNDER SALE IN EXECUTION OF DECREE—RE-SALE.

——— s. 308.

See PAYMENT INTO COURT. [I. L. R., 7 Mad., 211

——— s. 310 (Act XXIII of 1861, s. 14).

See CASES UNDER PRE-EMPTION.

——— ss. 310, 311 (Act XXIII of 1861, s. 4; and 1859, s. 256).

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622. [I. L. R., 5 All., 42

——— s. 311 (1859, s. 256).

See RIGHT OF SUIT—SALE IN EXECUTION OF DECREE . . 3 Agra, 89
[I. L. R., 3 All., 112, 206, 554, 701
I. L. R., 10 Calc., 496

See CASES UNDER SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY.

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s, 622. [I. L. R., 9 Mad., 145

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), ss. 311, 312 (1859, ss. 256, 257).

See s. 244—QUESTION IN EXECUTION OF DECREE . I. L. R., 5 Mad., 217

See RIGHT OF SUIT—SALE IN EXECUTION OF DECREE . I. L. R., 3 All., 554

See RIGHT OF SUIT—ORDERS, SUITS TO SET ASIDE— . . 7 N. W., 183

See CASES UNDER SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY.

——— The word "disallowed" in section 312 of the Civil Procedure Code has no reference to an order passed on an appeal, but refers to the disallowance of the objection by the Court before which the proceedings under section 311 are taken. MAHOMED HOSSEIN *v.* PURUNDUR MAHTO [I. L. R., 11 Calc., 287

——— s. 312 (1859, s. 257).

See RIGHT OF SUIT—SALE IN EXECUTION OF DECREE . . 11 W. R., 297
[12 W. R., 41
I. L. R., 3 All., 112, 206, 554, 701

See CASES UNDER SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY.

See SPECIAL APPEAL—ORDERS SUBJECT TO APPEAL . B. L. R., Sup. Vol., 917

1. ——— s. 257.—*Letters Patent, 1865, ss. 15 and 36.*—Sections 15 and 36 of the Letters Patent of the High Court must be treated as qualifying section 257 of Act VIII of 1859. ROY NANDIPAT MAHATA *v.* URQUHART [4 B. L. R., A. C., 181: 13 W. R., 209

2. ——— *Application of.*—Section 257, Act VIII of 1859, applied only to sales held after that Act came into operation. ABDOOL HYD *v.* LALLA NOWAH ROY . . . 1 W. R., 204

——— s. 313.

See CASES UNDER SALE IN EXECUTION OF DECREE—INVALID SALES—WANT OF SALEABLE INTEREST. [I. L. R., 3 All., 527
I. L. R., 9 Calc., 506
5 C. L. R., 181

——— s. 315 (1859, s. 258).

See CASES UNDER SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—RIGHTS OF PURCHASERS—RECOVERY OF PURCHASE-MONEY . . 1 W. R., 55
[2 B. L. R., A. C., 82
3 B. L. R., A. C., 301
4 B. L. R., F. B., 11
I. L. R., 2 Bom., 258
I. L. R., 2 All., 299, 780

See SALE IN EXECUTION OF DECREE—DISTRIBUTION OF SALE-PROCEEDS. I. L. R., 12 Calc., 252

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 316 (1859, s. 259).

See REGISTRATION ACT, 1877, s. 17 (1866, 1871, s. 17) . I. L. R., 3 Mad., 37
[I. L. R., 5 All., 84, 568
I. L. R., 5 Calc., 226
I. L. R., 9 Calc., 82
12 Bom., 247
I. L. R., 4 Bom., 155

See REGISTRATION ACT, 1877, s. 23.
[I. L. R., 5 All., 84

See SALE IN EXECUTION OF DECREE—INVALID SALES—DECREES BARRED BY LIMITATION . I. L. R., 7 Calc., 91
[I. L. R., 11 Calc., 376

——— **s. 317.**

See CASES UNDER BENAMI TRANSACTION—CERTIFIED PURCHASERS—CIVIL PROCEDURE CODE.

——— **s. 318 (1859, s. 263).**

See LIMITATION ACT, 1877, ART. 178.
[I. L. R., 8 Bom., 257

See RIGHT OF SUIT—FRESH SUITS.
[I. L. R., 12 Calc., 169

——— **ss. 318, 319 (1859, ss. 263, 264).**

See SALE IN EXECUTION OF DECREE—PURCHASERS, TITLE OF—CERTIFICATES OF SALE . I. L. R., 3 Bom., 433

——— **s. 319 (1859, s. 264).**

See APPEAL—ORDERS . 17 W. R., 395

See LIMITATION ACT, 1877, ART. 12 (1859, s. 1, CL. 3) . . . 2 W. R., 55

See POSSESSION—NATURE OF POSSESSION.
[22 W. R., 406

——— **s. 320.**

See APPEAL—ORDERS.
[I. L. R., 5 All., 314

See DECREE—CONSTRUCTION OF DECREE—MONEY . . I. L. R., 4 All., 115

See EXECUTION OF DECREE—TRANSFER OF DECREE FOR EXECUTION AND POWERS OF COURT, &c.
[I. L. R., 7 Bom., 332
I. L. R., 7 All., 407
I. L. R., 8 Bom., 301

See RULES OF LOCAL GOVERNMENT.
[I. L. R., 4 All., 116

——— **s. 322.**

See VALUATION OF SUIT—APPEALS.
[I. L. R., 7 All., 565
I. L. R., 4 Mad., 420

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 326 (1859, s. 244).

See EXECUTION OF DECREE—STAY OF EXECUTION . I. L. R., 2 All., 856
I. L. R., 9 Calc., 290

1. ——— **Act VIII of 1859, s. 244.**—*Arrangement leaving property in execution in possession of judgment-debtor.*—Section 244 of Act VIII of 1859 admits only of a temporary alienation of land, and not of an arrangement by which possession is left with the judgment-debtor, subject to a payment by yearly instalments. KASHEE LAL *v.* AMEER JAN
[2 N. W., 347

2. ——— *Arrangement for instalments extending over twelve years.*—Where a Collector recommended that the lands of a judgment-debtor should be exempted from auction sale, and that the judgment-debt should be satisfied by money instalments extending over a period of twelve years, and the Judge, on the matter being referred to the Civil Courts for sanction and approval, in sending the proceedings to the Munsif, intimated that the arrangement was a proper one, and the Munsif in his order referred to this opinion of the Judge,—*Held*, that the recommendation of the Collector should have been dealt with by the Court executing the decree in the exercise of its own judgment, and not in deference to the opinion expressed by the Judge, who exceeded his jurisdiction in interfering in the matter. The arrangement proposed by the Collector was not one which could be proposed or accepted under the terms of section 244 of the Civil Procedure Code. MUTTRA PERSHAD *v.* RAMPERSHAD
[6 N. W., 39

——— **s. 328 (1859, s. 226).**

See LIMITATION ACT, 1877, ART. 167.
[I. L. R., 5 Mad., 113

See RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE.
[8 W. R., 79, 398
12 W. R., 98
5 Bom., A. C., 39
19 W. R., 62
3 Agra, 162
I. L. R., 8 Bom., 602

——— **s. 329 (1859, s. 227).**

See RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE.
[8 W. R., 79, 398
12 W. R., 98
I. L. R., 3 Mad., 81

——— **s. 331 (1859, s. 229).**

See COURT FEES ACT, SCH. I, ART. 1.
[I. L. R., 10 Bom., 238

See ONUS PROBANDI—POSSESSION AND PROOF OF TITLE.
[I. L. R., 10 Calc., 50

See CASES UNDER RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE.

See RES JUDICATA—ADJUDICATIONS.
[I. L. R., 3 Mad., 104

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 332 (1859, s. 230).

See LIMITATION ACT, 1877, ART. 11.
[I. L. R., 8 Mad., 82

See CASES UNDER ONUS PROBANDI—POSSESSION AND PROOF OF TITLE.

See POSSESSION—NATURE OF POSSESSION.
[22 W. R., 406

See CASES UNDER RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE.

——— s. 332 (1859, s. 230),—Application under—

See STAMP ACT XXVI OF 1867.
[4 B. L. R., F. B., 94

——— Order rejecting application under—

See APPEAL—ORDERS.
[2 B. L. R., A. C., 303, note
W. R., 1864, Mis., 24
1 W. R., 140
5 Mad., 183
13 W. R., 264
21 W. R., 39

——— s. 333 (1859, s. 231).

See s. 2 . . I. L. R., 2 Bom., 553

See CASES UNDER RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE.

——— s. 334 (1859, s. 268).

See RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE.
[I. L. R., 5 Bom., 440
13 W. R., 467

——— s. 335 (1859, s. 269).

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[I. L. R., 3 Calc., 729

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[I. L. R., 6 All., 172

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[I. L. R., 11 Calc., 527
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[I. L. R., 2 Mad., 9

——— s. 339 (1859, s. 276).

See CASES UNDER SUBSISTENCE MONEY.

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 341 (1859, s. 278).

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[I. L. R., 4 Calc., 655

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[I. L. R., 8 Mad., 21, 503
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1. ——— *Release of judgment-debtor.—Confinement in Court-house.*—Where the warrant of committal to jail has been made out, the discharge of the defendant whilst in confinement in the Court-house, for non-payment of the instalment of subsistence allowance, is a discharge from jail within the meaning of section 341 of the Code of Civil Procedure, Act XIV of 1882. TIMAPA SHANBHOG *v.* MANESHVAR KASHI
[I. L. R., 9 Bom., 181

2. ——— *Decree.—Execution.—Arrest.—Non-payment of subsistence-money.—Discharge.—Re-arrest.*—The discharge of a judgment-debtor before imprisonment on account of the non-payment of the subsistence-money for the debtor is no bar to the debtor being re-arrested. SUBBA *v.* VENKATA . . . . I. L. R., 8 Mad., 21

——— s. 342 (1859, s. 278).

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[I. L. R., 4 Calc., 655

See EXECUTION OF DECREE—EFFECT OF REPEAL OF ACT PENDING SUIT.
[I. L. R., 2 Bom., 148

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——— s. 343 (1859, s. 222).

See WARRANT OF ARREST—CIVIL CASES.
[I. L. R., 6 All., 385

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[I. L. R., 7 All., 506

——— s. 344 (1859, ss. 273, 280).

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——— ss. 344, 345, 346 (1859, ss. 273 and 280).

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[I. L. R., 1 All., 377

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[I. L. R., 4 Calc., 94

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See CASES UNDER INSOLVENCY—INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE.

——— ss. 347, 350, 355, 359 (1859, s. 281).

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[I. L. R., 12 Calc., 652
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——— s. 350 (1859, s. 281).

See CASES UNDER INSOLVENCY—INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE.

——— s. 351 (1859, s. 281).

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[I. L. R., 2 Mad., 219
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——— s. 359 (1859, s. 281).

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[I. L. R., 11 Calc., 451

——— s. 360.

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[I. L. R., 9 Mad., 112

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[I. L. R., 2 Bom., 641

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[1 B. L. R., O. C., 42

——— s. 363 (1859, s. 101).

See LIMITATION—QUESTION OF LIMITATION . . I. L. R., 12 Calc., 642

See LIMITATION ACT, 1877, ART. 171.
[I. L. R., 3 Mad., 236
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See PARTIES—ADDING PARTIES TO SUITS—DEFENDANTS.
[I. L. R., 12 Calc., 642

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[I. L. R., 12 Calc., 642

——— s. 365 (1859, s. 102).

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[3 Bom., A. C., 81

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[I. L. R., 3 Mad., 31

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[9 W. R., 271
I. L. R., 2 Calc., 327

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[3 C. L. R., 440
5 C. L. R., 108
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[I. L. R., 3 All., 759

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See ABATEMENT OF SUIT—APPEALS.
[3 Bom., A. C., 81

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[I. L. R., 3 Mad., 31

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[I. L. R., 3 All., 844
I. L. R., 10 Bom., 220

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[I. L. R., 8 Calc., 440

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[9 W. R., 271
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[I. L. R., 3 All., 759

——— s. 367 (1859, s. 103).

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[9 W. R., 271
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——— s. 368 (1859, s. 104).

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[I. L. R., 8 Calc., 837
10 C. L. R., 449

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[8 Bom., A. C., 37

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[I. L. R., 6 Bom., 26
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[I. L. R., 8 Calc., 837

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[I. L. R., 4 Bom., 654
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——— s. 369 (1859, s. 105).

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[9 W. R., 442

——— s. 370 (1859, s. 106).

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[12 Bom., 257
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[I. L. R., 5 Calc., 139
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[I. L. R., 7 Mad., 195

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[I. L. R., 5 Calc., 139: 4 C. L. R., 374

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[I. L. R., 5 All., 209

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[I. L. R., 8 Calc., 837

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[I. L. R., 8 Bom., 323

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[10 C. L. R., 229

——— *Construction of.—Per* PONTIFEX, *J.*—The words "pending the suit," in section 372, relate to a suit in which no final order has been made. GOCOOL CHUNDER GOSSAMEE *v.* THE ADMINISTRATOR GENERAL OF BENGAL
[I. L. R., 5 Calc., 726: 5 C. L. R., 569

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[I. L. R., 8 All., 82

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[I. L. R., 6 All., 211

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[I. L. R., 1 All., 324

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[I. L. R., 5 All., 595

——— s. 374 (1859, s. 97).

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[I. L. R., 6 Bom., 681

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[I. L. R., 6 Bom., 681
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[I. L. R., 1 All., 324

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——— s. 380 (1859, ss. 34 & 35).

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[I. L. R., 8 All., 108

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[I. L. R., 6 Bom., 482

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[I. L. R., 8 All., 108

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[1 Hyde, 68
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[I. L. R., 9 Mad., 256

——— ss. 387, 391 (1859, s. 177).—*Act VIII of 1859, s. 177.—Native Prince or State in alliance.—Kingdom of Ava.*—The kingdom of Ava was not the territory of a Native Prince or State in alliance with the British Government within the meaning of section 177 of Act VIII of 1859. AGA MOHAMMED JAFFER TEHRANI *v.* MIRZA NAZIRULLA
[2 B. L. R., A. C., 73 : 10 W. R., 385

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[2 B. L. R., A. C., 73
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[10 W. R., 385

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[I. L. R., 4 Mad., 399

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[I. L. R., 6 Calc., 754
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[I. L. R., 7 Calc., 654

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[I. L. R., 12 Calc., 209, 273, 275

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——— s. 397 (1859, s. 182).

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[I. L. R., 4 Mad., 399

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[I. L. R., 3 Mad., 249
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——— ss. 401-415 (1859, ss. 297-310).

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——— (1859, ss. 297, 299, 300).

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[I. L. R., 4 Mad., 323

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[I. L. R., 8 Mad., 504

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[15 W. R., 198

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[I. L. R., 7 All., 661
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[I. L. R., 7 All., 661

——— s. 408 (1859, s. 305).

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[2 Ind. Jur., N. S., 121
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——— s. 409 (1859, s. 306).

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[I. L. R., 10 Bom., 207
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[I. L. R., 4 Bom., 414

——— s. 410 (1859, s. 308).

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[I. L. R., 2 Calc., 389
I. L. R., 1 All., 230
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CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 410 (1859, s. 308)—*continued.*

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[I. L. R., 7 Bom., 373

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[I. L. R., 10 Bom., 207
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——— s. 411 (1859, s. 309).

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[I. L. R., 4 Mad., 155

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[I. L. R., 1 Bom., 7
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2 B. L. R., Ap., 22
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——— s. 412 (1859, s. 309).

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[I. L. R., 6 Bom., 590
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2 B. L. R., Ap., 22
10 W. R., 358

——— s. 413 (1859, s. 310).

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——— s. 417 (1859, s. 17).

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——— s. 418 (1859, s. 26).

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——— s. 424.

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——— *Suit against public officer.—Notice of action, Form of.*—In a suit against the Deputy Magistrate of A. and the Deputy Magistrate of B. for damages for having in bad faith and maliciously caused the plaintiff to be confined in hajut, the plaintiff served a notice under section 424 of the Civil Procedure Code on the defendants, to the effect that the Deputy Magistrate, acting in concert with the intention of oppressing the plaintiff, had wilfully, improperly, and illegally kept him in hajut and thereby caused him injury. *Held*, that the notice sufficiently stated the cause of action within the terms of section 424 of the Civil Procedure Code, it not being necessary that a notice under that section should be read with the strictness with which a plaint should be read in regard to the statement of the cause of action. PARBUTTI CHURUN MOZOOMDAR *v.* NOBIN CHUNDER SEN . 13 C. L. R., 195

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 431.

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[I. L. R., 11 Calc., 17

——— s. 432 (1859, s. 17, para. 4).—*Suit by independent Prince in Court in British India.—Recognised agent for institution of suit.*—Section 432 of the Civil Procedure Code does not prevent the institution by an independent prince of a suit in a Court in British India in his own name, and through a recognised agent other than one appointed under that section. BEER CHUNDER MANIKYA *v.* ISHAN CHUNDER BURDHUN
[I. L. R., 10 Calc., 136

——— ss. 432, 433.

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[I. L. R., 8 Bom., 415

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[I. L. R., 9 Calc., 535
3 C. L. R., 417
25 W. R., 404, 407
12 C. L. R., 473
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[I. L. R., 6 Bom., 292

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[I. L. R., 6 Bom., 292

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[I. L. R., 6 Bom., 292

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[I. L. R., 12 Calc., 41

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[I. L. R., 7 All., 490

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[I. L. R., 5 Bom., 306
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——— s. 458.

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[I. L. R., 5 Bom., 306

——— s. 462.

See COMPROMISE—COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE.
[I. L. R., 3 Mad., 103

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[5 B. L. R., 215 : 13 W. R., 278

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[2 Hyde, 183
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1 C. L. R., 336
13 C. L. R., 356
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[7 W. R., 508

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[2 Bom., 142
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[6 Mad., 135
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[3 W. R., Mis., 28
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[5 B. L. R., Ap., 4 : 13 W. R., 305

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[I. L. R., 7 Mad., 241

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[6 C. L. R., 467
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[I. L. R., 10 Bom., 381

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See LIMITATION ACT, 1877, ART. 178. [I. L. R., 7 Bom., 316

See MINOR—CASES UNDER MINOR'S ACT, BOMBAY . . . 9 Bom., 289

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—ARBITRATION. [1 B. L. R., A. C., 43: 10 W. R., 85
10 Bom., 54
5 Mad., 128

——— s. 526 (1859, s. 327).

See s. 2 . . I. L. R., 2 Bom., 553

See CASES UNDER ARBITRATION—PRIVATE ARBITRATION . I. L. R., 6 Bom., 663
[I. L. R., 9 Calc., 557

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 526 (1859, s. 327)—*continued.*

See COSTS . 2 B. L. R., A. C., 249

See LIMITATION ACT, 1877, ART. 178. [I. L. R., 7 Bom., 316

——— s. 531 (1859, s. 331).

See s. 2 . . I. L. R., 2 Bom., 553

——— ss. 532-538 (Act V of 1866).

See NEGOTIABLE INSTRUMENTS, SUMMARY PROCEDURE ON—

——— s. 533 (Act V of 1866, s. 3).

See NEGOTIABLE INSTRUMENTS, SUMMARY PROCEDURE ON—

See PRACTICE—CIVIL CASES—LEAVE TO SUE OR DEFEND I. L. R., 3 Calc., 539

——— s. 534 (Act V of 1866, s. 4).

See APPEAL—EX PARTE CASES. [I. L. R., 2 Bom., 644

See NEGOTIABLE INSTRUMENTS, SUMMARY PROCEDURE ON—

——— s. 539.

See ENDOWMENT. [I. L. R., 5 Mad., 383

See RIGHT OF SUIT—CHARITIES. [I. L. R., 3 Bom., 27
I. L. R., 8 Calc., 32
I. L. R., 5 All., 497
I. L. R., 8 Bom., 365, 432
I. L. R., 8 All., 31
I. L. R., 7 All., 178
I. L. R., 11 Calc., 33

——— s. 540 (Act XXIII of 1861, s. 23; and 1859, s. 332).

See APPEAL — DECREES. . [I. L. R., 2 All., 497
I. L. R., 3 All., 75

See BURMAH COURTS ACT, s. 49. [I. L. R., 13 Calc., 221, 232

See LETTERS PATENT, HIGH COURT, CL. 15. [4 B. L. R., A. C., 181

See RIGHT OF APPEAL . 4 N. W., 120

——— s. 541 (1859, s. 333).

See LIMITATION ACT, 1877, s. 5. [4 B. L. R., Ap., 84

See LIMITATION ACT, 1877, s. 12. [18 W. R., 512

See SPECIAL APPEAL. [I. L. R., 4 Mad., 419

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 542 (1859, s. 334).

See APPEAL — OBJECTIONS BY RESPONDENT . . . 24 W. R., 179

See APPELLATE COURT—OBJECTION TAKEN FOR FIRST TIME ON APPEAL — SPECIAL CASES . . I. L. R., 2 All., 884 [I. L. R., 4 All., 69

See APPELLATE COURT — INTERFERENCE WITH AND POWER TO VARY ORDER OF LOWER COURT . . 24 W. R., 179

——— s. 543 (1859, s. 336).

See APPEAL—ORDERS . 11 W. R., 556

——— Act VIII of 1859, s. 336.—*Time allowed for correction.—Memorandum of appeal.*—Where, under the provisions of section 336, Act VIII of 1859, a memorandum of appeal is returned for the purpose of being corrected, the Appellate Court should specify a time for such correction. JAGANNATH *v.* LALMAN . . . I. L. R., 1 All., 260

——— *Practice.—Rejection of memorandum of appeal.*—Whenever a memorandum of appeal is rejected under the discretionary power vested in the Court, a judicial order to that effect, and the reasons for the same, ought to be recorded. LALLA JUGSEB SAHOY *v.* KASSENAUTH SEIN . . . 1 Ind. Jur., O. S., 121

——— *Rejection of appeal, Time for.*—The time for rejecting an appeal is when it is presented, and not after it has once been admitted. GOOPEE BULLUB ROY *v.* GOLUCK PROSHAD BOSE . . . . W. R., 1864, 135

1. ——— s. 544 (1859, s. 337).—Alteration of decree on appeal by one party.—*Appeal by one party.—Reversal of decree against all.*—Power of the Court of Appeal, under section 337 of Act VIII of 1859, to reverse the whole of the decree of the Court below upon the appeal of one only of the parties against whom the decree was passed. JADUMANI DASI *v.* FADU BIBI [7 B. L. R., Ap., 28

SREEMUNJUREE DOSSEE *v.* POORUSUTTUN DOSS [9 W. R., 499

2. ——— *Decree on ground not common to all parties.*—A decree against several defendants, one of whom alone appeals, cannot be reversed as against the rest when it did not proceed on ground common to all. DOYAMOYEE DOSSEE *v.* ESHUR CHUNDER MUTTYLOLL . 1 W. R., 203

WOOMESH CHUNDER BOSE *v.* MATUNGINEE DEBIA . . . . . 2 W. R., 170

ABDOOL ALI *v.* BANOO . . 2 W. R., 287

BOYDONATH SURMAH *v.* OJAN BIBEE [11 W. R., 238

KOOLADA PERSHAD MISREE *v.* GOURA CHAND MISREE . . . 17 W. R., 353

CHUNDER MONEE DOSSEE *v.* MODHOO DEY [23 W. R., 166

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 544 (1859, s. 337).—Alteration of decree on appeal by one party—*continued.*

Aliter when it does. CHUNDER KULLA DOSSEE *v.* JOTENDRA MOHUN TAGORE 6 W. R., 104

KRITARTHO MOYEE DEBIA *v.* KHETTERNATH SIRCAR . . . . . 9 W. R., 472

BADUL SINGH *v.* CHUTTERDHAREE SINGH [9 W. R., 558

RUNG LALL GOSSAIN *v.* GOWREE MUNDUL [10 W. R., 285

DOORGA CHURN DOSS *v.* MAHOMED ABBAS BHOOYAN . . . . 14 W. R., 121

SREESTEE DHUR CHUCKERBUTTY *v.* SREENATH BISWAS . . . 18 W. R., 332

3. ——— *Appeal by one defendant in respect of portion of decree.*—One of several defendants, who appeals in respect only of the sum decreed against her, is not entitled to take advantage of section 337, Act VIII of 1859, and question the full amount claimed. SHEEROO COOMAREE DABEE *v.* MAHATAB CHUND . W. R., 1864, 380

4. ——— *Right to benefit by decree on appeal by one defendant.—Decree of Privy Council.*—A plaint having been dismissed by the first Court, which decreed that the costs of all the defendants who had filed answers were to be borne by the plaintiff, the plaintiff appealed to the High Court, which reversed the decree. One of the defendants then appealed to the Privy Council, which reversed the decree of the High Court, and restored that of the Zillah Court. *Held*, that the decree of the first Court by being restored as it was made, was reaffirmed in its integrity, and the defendants generally were entitled to execute it, though only one had appealed to the Privy Council. LUCHMEEPUT SINGH *v.* KHOOBUNNISSA . . 14 W. R., 280

5. ——— *Altering decree against defendant on co-defendant's appeal.*—It was considered, under the circumstances of this case, not consistent with the principles of equity and good conscience to refuse a clearly proved right on the technical ground that on one co-defendant's appeal no decision adverse to another co-defendant can be come to. OODOY SINGH *v.* PALUCK SINGH [16 W. R., 271

6. ——— *Pro formâ defendants.—Appeal by pro formâ* defendants, by making the real defendants, who did not appear, respondents as between themselves, cannot open out that portion of the case which, as between the plaintiff and the non-appealing defendants, has not been appealed against. GUDADHUR BANERJEE *v.* MONMOHINEE DOSSEA . . . . . 7 W. R., 366

KHEMUNKUREE DOSSEE *v.* NILAMBUR MUNDUL [2 W. R., 227

7. ——— *Opening whole appeal by one defendant.*—One of two defendants may appeal as respects the whole, and not half, of the property in dispute, in the absence of proof that they

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 544 (1859, s. 337).—Alteration of decree on appeal by one party—*continued.*

owned the property in two equal shares. KATYANEY CHOWDHRAIN *v.* MADHUB NARAIN ROY CHOWDHRY [4 W. R., 68

8. ——————— *Appeal by one defendant.—Reversal of whole decree.*—Where one of several defendants appeals not against the whole decree but only against that portion of it which affects him, and his defence in the lower Court is not a defence common to the other defendants, the decree of the lower Court cannot be reversed in favour of those defendants who have not appealed. RAM CHUNDER PAUL *v.* OMORA CHURN DEB [18 W. R., 26

NAKUR CHUNDER SAHA *v.* JUDOO NATH CHUCKERBUTTY . . . 24 W. R., 389

9. ——————— *Limitation as affecting those who do not appeal.*—Where a decree for possession of certain property is made against three persons jointly, one of whom appeals against the decree only so far as it affects himself and not against the whole decree, and the decree does not relate to property in respect to which the defendants have a common interest and a common defence so that an appeal by one would imperil the whole decree, then the fact of one defendant having appealed will not prevent limitation running in favour of the others, against the execution of the decree. HUR PROSHAD ROY *v.* ENAYET HOSSEIN . 2 C. L. R., 471

10. ——————— *Application of, to ex parte decrees.—Decree on ground common to all parties.*—Section 337, Act VIII of 1859, applies as well to *ex parte* decrees as to other decrees, the only question being whether the decision of the lower Court proceeded on a ground common to all the defendants. SREENATH CHOWDHRY *v.* GREY [13 W. R., 114

11. ——————— *Case disposed of under s. 116, Civil Procedure Code, 1859.—Ex parte decree.—Decree on ground common to all parties.*—Where parties who have been made co-defendants do not appear, and the Court deals with the case under section 116, Civil Procedure Code, the decree given is not in the nature of an *ex parte* decree even as against the absent defendants; and proceeding as it does on a ground common to all the defendants, the decision may, under section 337, be modified in appeal even in favour of defendants not before the Appellate Court. DOORGA CHURN SETT *v.* SHAMANUND GOSSAIN . . . . 12 W. R., 376

12. ——————— *Decree on ground common to all parties.*—Section 337, Civil Procedure Code, does not empower an Appellate Court to exercise the power with which it invests such Court when it finds that the ground on which it proposes to base its own decision is common to all the defendants, but only when it finds that the decision of the lower Court has proceeded on such common ground. PROTAB CHUNDER DUTT *v.* KOORBANISSA BIBEE [14 W. R., 130

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 544 (1859, s. 337).—Alteration of decree on appeal by one party—*continued.*

13. ——————— *Power of Appellate Court to make decree in respect of parties who have not appealed.*—The Court of Appeal has power, under section 337 of Act VIII of 1859 (corresponding with section 544 of Act X of 1877), to draw up what would be a fair decree as regards all the parties to a suit, although some of them may not have appealed. JOYKISTO COWAR *v.* NITTYANUND NUNDY [I. L. R., 3 Calc., 738: 2 C. L. R., 440

14. ——————— *Common defence—Appeal by one defendant.*—In a suit in which the defence of the two defendants was a common one to the extent of denying that the plaintiff had any such mokurari ryoti title as he alleged, and the first Court's decision went on the ground that the plaintiff had a title against both,—*Held*, that Act VIII of 1859, section 337, was applicable, and one defendant alone might appeal. MAHOMED SAEFOOLLAH *v.* ANWAR ALI . . . . 21 W. R., 112

15. ——————— *Reversal in one suit where two suits have been erroneously brought instead of one.—Effect of reversal on other suit on appeal by one defendant.*—Two suits brought by different parties claiming different interests in a certain share to set aside the sale of that share having been dismissed, one of the plaintiffs appealed and the sale was set aside. *Held*, that the decision must be considered as setting the sale aside as to the whole of that share, although the other parties did not appeal. NAGAR *v.* SHURIUTOOLLAH . 20 W. R., 77

16. ——————— *Appeal by alienee of Hindu widow.—Suit by reversioner.*—In a suit by the reversioners against a Hindu widow and her putnidar impuging the act of the widow in granting the putni as an act of waste prejudicial to their interests, and claiming to set aside the putni as invalid and obtain immediate possession, a decree was granted against both defendants. *Held* that, under section 337 of the Civil Procedure Code, the putnidar had such an interest as would entitle him to appeal against that part of the decree which regarded the rights of the widow, as well as that part which affected himself. HURRY KISSEN DOSS *v.* LALL SOONDER DOSS . . . . 1 Ind. Jur., O. S., 32

S.C. LALL SOONDER DOSS *v.* HURRY KISSEN DOSS [Marsh., 113: 1 Hay, 339

17. ——————— *Power of Appellate Court to reverse decision as regards person not party to the appeal.*—In a suit against *A.* and *B.* for the recovery of the possession of property, the Court gave a decree against *A.* and in favour of *B.* The plaintiff appealed from that part of the decision which was in *B.'s* favour. *Held*, that the Judge on appeal had no jurisdiction to reverse the decision of the Court below against *A.*, he being no party to the appeal. HUREO CHUNDER ROY *v.* LALLCHUND BANERJEE . . Marsh., 256: 2 Hay, 48

LALLA RAMSURUN LALL *v.* LOKEDAS KOOER [18 W. R., 39

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 544 (1859, s. 337).—Alteration of decree on appeal by one party—*continued.*

18. ——— *Original decree making liable one defendant out of several.*—In a suit by *A.* against *B.* and *C.* in which a decree was given against *B.* alone,—*Held*, that *C.* could not be made liable, either on the appeal of *B.*, or on the cross-appeal of *A.*, to *B.'s* appeal. GREESH CHUNDER SINGH *v.* GOURMOHUN BANERJEE . **7 W. R., 49**

19. ——— *Reversal of decree on appeal by one defendant.*—*A.* and *B.* were sued on a joint liability to pay rent. *A.* did not defend, *B.* did, and a decree passed against both. *B.* appealed. *Held*, that it was competent to the Judge on appeal to reverse the decree, on the ground that there was no joint liability, but that *B.* occupied a separate estate at a separate rent. LUKHEE KANT SEIN *v.* RAMDEYAL DOSS . . **Marsh., 281: 2 Hay, 288**

20. ——— *Main ground of decree affecting all defendants.*—The plaintiff sued on a mortgage bond executed by the first defendant. The second defendant, who claimed the property under a mortgage from the first defendant, was admitted a defendant on his own application, but afterwards excluded from the suit. Before this was done he had incurred certain costs, which, by the Munsif's decree, he was ordered to bear himself. Upon appeal by the first defendant the Civil Judge found that the mortgage bond sued upon was not proved, dismissed the suit, and ordered the plaintiff to pay all costs, those of the second defendant included. *Held* that, under section 337 of the Civil Procedure Code, it was competent to the Civil Judge so to modify the Munsif's decree, as the main ground of the whole decision—*viz.*, the validity of the mortgage bond—affected all the defendants in common, and the appeal of the first defendant and the decision of the Appellate Court had reference to that common ground. YERRABALU VIRABAGAVA REDDI *v.* ABDUL KHADIR **[4 Mad., 26**

21. ——— *Suit on bond.*—*Appeal by one of several defendants.*—In a suit for recovery of R300 due on a bond, the defendants denied the execution of the bond and the receipt of the consideration. The Court of first instance decreed the suit, which on appeal by one of the defendants was dismissed. *Held* that, under section 337, Act VIII of 1859, the Judge had no power, on appeal by one defendant, to set aside a decree against the other. SHIRAM GHATAK *v.* BRAJAMOHAN GHOSAL **[3 B. L. R., Ap., 41: 11 W. R., 449**

BUGGHOONAUTH NEWGY *v.* SUDHAMOYEE DABEA **[Marsh., 106: 1 Hay, 183**

22. ——— *Intervenor.*—*Parties.*—*Appeal.*—*Decree set aside on appeal by one defendant.*—*D. C. S.*, the zemindar, brought a suit against *B.*, a ryot, for recovery of arrears of rent, valued below R100. *B.* set up in defence that the rent was not payable to *D. C. S.*, but to *N. C. A.*, the mokurraridar. *N. C. A.*, who claimed under a mokurrari title, and alleged that he was in receipt of the rents from the ryots, was made a party under section 73, Act VIII of 1859. The Munsif passed a decree in favour of the plaintiff. On appeal by *N. C. A.*, which was heard and decided by the Subordinate Judge on reference by the District Judge, the decree of the first Court was reversed, and the suit dismissed. On appeal to the High Court,—*Held*, that *N. C. A.* was properly made a defendant to the suit, and that he could prefer an appeal from the decree of the Court of first instance, and that the Court of Appeal could, on his appeal, set aside the whole decree. DAYAL CHAND SAHOY *v.* NABIN CHANDRA ADHIKARI **[8 B. L. R., 180: 16 W. R., 235**

23. ——— *Suit against agent and surety.*—In a suit for collection papers and moneys against a gomastah and his surety, a decree was given against the gomastah, and the surety was absolved from liability. Plaintiff appealed to make the surety liable, and the Judge on appeal dismissed the claim against both defendants. *Held* that, as the decision of the first Court did not proceed on a ground common to the two defendants, the Judge was wrong in reversing it as against the gomastah. RAM MOHINEE DEBIA *v.* JABED SIRCAR **[6 W. R., Act X, 82**

24. ——— *Substantial change in suit.*—*Alteration or reversal of decree where only some defendants are made parties.*—Where a suit at the time of institution within the jurisdiction of the Court in which it is brought has undergone a substantial change, and become a suit which by law requires the order of a superior tribunal for its hearing in the original Court, and such order has not been obtained, plaintiff cannot subsequently on appeal be allowed to revert to the original form of the suit for the purpose of upholding the lower Court's judgment as far as regards the original defendant; so that in an appeal to which only the original defendants were made parties the Court refused to reverse or alter the decree. BULDEO DASS *v.* BULDEO DASS . . . **3 N. W., 199**

——— **s. 545 (1859, s. 338).**

See EXECUTION OF DECREE—STAY OF EXECUTION . . **12 C. L. R., 532**
[I. L. R., 12 Calc., 624
B. L. R., Sup. Vol., 1007
I. L. R., 1 All., 178
10 Bom., 411
13 W. R., 403
1 C. L. R., 368

See SALE IN EXECUTION OF DECREE—INVALID SALES—SALE PENDING APPEAL **[I. L. R., 6 Mad., 98**

See SURETY—LIABILITY OF SURETY **[I. L. R., 2 Bom., 654**
I. L. R., 3 Bom., 204

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 546 (Act XXIII of 1861, s. 36).

See EXECUTION OF DECREE—STAY OF EXECUTION . I. L. R., 11 Calc., 146
[6 W. R., Mis., 15
7 Bom., A. C., 122
17 W. R., 69

See SURETY—LIABILITY OF SURETY
[10 Bom., 1

1. ——— s. 548 (1859, s. 341).—*Registration of petition of appeal.*—The registration of a petition of appeal under section 341, Act VIII of 1859, is a proceeding of a purely ministerial character. JAFFER HOSSEIN *v.* MAHOMED AMIR
[4 B. L. R., Ap., 103: 13 W. R., 351

2. ——— Appeal preferred after time.—*Power of Appellate Court.—Held,* by the majority of the Court (GLOVER, *J.*, dissenting), that an Appellate Court, after admitting and registering an appeal and serving notice on the opposite party, has no power at the hearing to reject the appeal upon the ground that it was not preferred within the prescribed period. BHARUTCHUNDER ROY *v.* ISSURCHUNDER SIRCAR . . . . . 8 W. R., 141

——— s. 549 (1859, s. 342).

See APPEAL—DECREES.
[I. L. R., 5 All., 380

See PAUPER SUIT—APPEALS.
[17 W. R., 68
I. L. R., 3 Mad., 66

See CASES UNDER SECURITY FOR COSTS—APPEALS.

See SURETY—ENFORCEMENT OF SECURITY
[I. L. R., 3 Calc., 318

——— *Restoration of appeal rejected for neglect to give security for costs.*—An appeal, although it may have been rejected by the Appellate Court under section 549 of the Code of Civil Procedure, upon failure by the appellant to furnish security demanded under that section, may be restored, on sufficient grounds, at the Court's discretion. The High Court having apparently treated an appeal as though, after rejection of it under the above section, a petition tendering security to the amount demanded, and asking restoration of the appeal, was not entertainable and could not be considered—*Held,* by the Judicial Committee, that restoration was within the Court's discretion, and that there were grounds for it, upon the appellant's giving approved security within such time as the Court might fix. BALWANT SINGH *v.* DAULAT SINGH . . I. L. R., 8 All., 315

——— s. 551.—*Hearing of appeal ex parte.*—The plaintiff sued to recover possession of certain immoveable property sold to him by the first defendant, a Hindu widow. The second defendant answered that his father and the first defendant's husband were undivided brothers, and that, as a childless widow, she had no right to sell the property. Both the lower Courts upheld the sale as absolute, on the ground that she was competent to make it as widow

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 551—*continued.*

of a separate Hindu. The District Judge heard the appeal *ex parte* under section 551 of the Civil Procedure Code. The High Court, on second appeal, held that the decrees of the lower Courts were unsustainable, as they did not contain the limitation pointed out above, and remanded the case for the trial of the issue whether there were any such special circumstances as would justify the absolute sale by the first defendant to the plaintiff. The High Court were also of opinion that the District Judge ought not to have disposed of the appeal *ex parte* under section 551 of Act X of 1837. GURUNATH NILKANTH *v.* KRISHNAJI . . I. L. R., 4 Bom., 462

——— *Order of adjudication.—Decree.—Judgment.*—The order of adjudication made under section 551 of the Civil Procedure Code is a decree, and the procedure authorized under that section does not dispense with the necessity of drawing up a judgment. ROYAL REDDI *v.* LINGA REDDI
[I. L. R., 3 Mad., 1

——— s. 553 (1859, s. 345).—*Notice of appeal.—Time for deposit of tulubana.*—When a notice of appeal is transmitted by the High Court to a Court below, with instructions to make a return within a specified time, the appellant is entitled to the whole of the time allowed, and may deposit his tulubana and cause service of the notice any time within the period limited. Where the appellant is denied this liberty by the lower Court, he ought to come before the High Court with a substantial application for orders. RUNGO DEBEE BOISTOBEE *v.* HURREE NARAIN OOPADHYA . 11 W. R., 138

——— s. 556 (1859, s. 346).

See s. 3 . . I. L. R., 4 Calc., 825

See APPEAL—DEFAULT IN APPEARANCE.
[I. L. R., 2 All., 616
I. L. R., 3 All., 382, 519
I. L. R., 12 Calc., 605

See SPECIAL APPEAL—ORDERS SUBJECT TO APPEAL . . . 3 Mad., 109
[6 Mad., 1

1. ——— *Dismissal of appeal for non-appearance.*—Where both parties make default in appearing at the hearing of an appeal, the Court must dismiss the appeal and not go into the merits and reverse the decree. MANICKRAM *v.* ROOPNARAIN SINGH
[Marsh., 5: 1 Ind. Jur., O. S., 36

2. ——— *Miscellaneous cases.—Notice of hearing.*—Section 346, Act VIII of 1859 (providing for the dismissal of an appeal for default), even if it applies to miscellaneous cases, does not apply to a case in which it is not shown distinctly that the appellant had any notice that his appeal would be heard on the day to which the case was adjourned, and on which the Judge disposed of it. SHIB CHUNDER GOOPTO *v.* ALLAD MONEE DASSIA
[5 W. R., Mis., 22

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 556 (1859, ss. 346, 347)—*continued.*

3. ——— *Dismissal on non-appearance of appellant.—Application for re-admission.*—Where a Judge on the non-appearance of the appellant in person or by pleader, instead of observing the direction of the law, Act VIII of 1859, section 346, goes into the merits of the case and gives a judgment against the appellant, the appeal must be considered as dismissed for default of the appellant in appearing; and an application for re-admission and re-hearing cannot be treated as one for review, but must be entertained under section 347. MOHESH CHUNDER BOSE *v.* THAKOOR DOSS GOSSAMEE [20 W. R., 425

4. ——— *Appearance of pleader without instructions.*—Where the appellant himself does not appear and the pleader appears and states he is not instructed, a judgment of dismissal for default is a proper judgment. TRILOKE CHUNDER SEN *v.* AUKHIL CHUNDER SEN . 21 W. R., 65

5. ——— s. 556 and s. 558.—*Non-attendance of appellant at hearing of appeal.—Dismissal of appeal on the merits.—Application for re-admission.*—In an appeal before an Appellate Court, the appellant did not attend in person or by pleader, and the Court, instead of dismissing the appeal for default, tried and dismissed it upon the merits. Subsequently, the appellant applied to the Court, under section 558 of the Civil Procedure Code, to re-admit the appeal, explaining her absence when the appeal was called on for hearing. The Court rejected the application, on the ground that the appeal had been decided on the merits, and reasons had been recorded for its dismissal which there were no apparent grounds for setting aside. *Held*, that the Court should have dismissed the appeal for default, and it was illegal to try it on the merits, and the judgment was consequently a nullity, the existence of which was no bar to the re-admission of the appeal. ZAINAB BEGAM *v.* MANAWAR HUSAIN KHAN [I. L. R., 8 All., 277

——— s. 558 (1859, s. 347).

See s. 3 . . I. L. R., 4 Calc., 825

See CASES UNDER APPEAL—DEFAULT IN APPEARANCE . W. R., 1864, 176
[4 Bom., A. C., 92
8 W. R., 361

1. ——— *Re-admission of appeal struck off for default.—Ground for re-admission.*—On an application under section 558 of the Code of Civil Procedure for the re-admission of an appeal which had been decided *ex parte* against the applicant, it appeared that he had been misled by reason of the appeal having been transferred from the file of one Court to another, no notice of the transfer having been given to him by the pleaders in the case. *Held*, that under the circumstances the applicant was entitled to have the appeal re-admitted. NARAIN SINGH *v.* BHURAB CHURN PANDA [8 C. L. R., 350

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 558 (1859, s. 347)—*continued.*

2. ——— *Dismissal of appeal for default.—Pleader present but unprepared to go on with case.—Civil Procedure Code, 1882, ss. 556, 558.*—Where, when an appeal is called on, the pleader is not absent, but is unprepared to go on with the case, the dismissal is a dismissal for default within section 556 of Act XIV of 1882, and the appeal can therefore be re-admitted under section 558. *Buldeo Misser* v. *Ahmed Hossein, 15 W. R., 143*, followed. SHIBENDRA NARAIN CHOWDHURI *v.* KINOO RAM DASS . . . I. L. R., 12 Calc., 605

——— s. 559.

See PARTIES—ADDING PARTIES TO SUITS —RESPONDENTS I. L. R., 9 Calc., 355
[I. L. R., 5 All., 266

1. ——— s. 560.—*Appeal ex parte.—Application for re-hearing.*—An applicant presenting a petition for the re-hearing of an appeal decided *ex parte*, must, at the time of making such application, be prepared to satisfy the Court that the notice of appeal was not duly served upon him, or that he was prevented by sufficient cause from attending when the appeal was called on for hearing. ANUNDA SHAHA BISWAS *alias* NYOMUDDIN SHA BISWAS *v.* KEMA BEBEE . . . I. L. R., 6 Calc., 548

2. ——— *Re-hearing of appeal.—Grounds for re-hearing.*—When an appeal has been heard *ex parte*, a re-hearing cannot be granted by the Court on an application under section 560 of the Civil Procedure Code, except upon legal evidence produced by the respondent of the facts necessary to entitle him to such re-hearing. MAHOMED KALUN *v.* DINOMOYEE DASHYA . . . 8 C. L. R., 112

3. ——— *Re-hearing of appeal ex parte.—Absence of respondent for sufficient cause.*—Section 560 of the Civil Procedure Code applies to a case in which the respondent has been prevented by sufficient cause from attending when the appeal was called on, whether appearance has been entered for him or not. ESAB *v.* KRISHNA NARAIN DEY [11 C. L. R., 164

4. ——— *Non-appearance of respondent on appeal.—Appearance by pleader.*—An appeal from a decree dismissing a suit having been heard and allowed in the absence of the defendant and his pleaders, an application was made under section 560 of Act X of 1877, on the ground that the defendant had engaged pleaders to appear for him, but that they were unavoidably prevented from appearing. The application was granted, and the appeal having been re-heard the original decree was reversed. *Held* that, although the vakalutnamahs had been filed by the defendant's pleaders, the defendant could not be said to have appeared in person or by pleader, and that the order made under section 560 of Act X of 1877 was correct. *Haloo* v. *Atwaro, 7 W. R., 81*, followed. SHEO CHURN LALL *v.* HEERA LALL [11 C. L. R., 537

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 561 (1859, s. 348).

See CASES UNDER APPEAL—OBJECTIONS BY RESPONDENT.

See LIMITATION ACT, 1877, s. 5.
[I. L. R., 4 All., 430
I. L. R., 7 Calc., 654
I. L. R., 9 Calc., 631

See RES JUDICATA—MATTERS IN ISSUE.
[I. L. R., 7 All., 606

——— **s. 562 (1859, s. 351).**

See APPEAL—ORDERS.
[I. L. R., 3 All., 18

See CASES UNDER REMAND.

See SPECIAL APPEAL—PROCEDURE IN SPECIAL APPEAL. I. L. R., 8 Calc., 674

——— **s. 564 (1859, s. 352).**

See REMAND—GROUND OF REMAND.
[2 B. L. R., S. N., 13

——— **s. 565 (1859, s. 353).**

See APPELLATE COURT—EVIDENCE AND ADDITIONAL EVIDENCE ON APPEAL.
[16 W. R., 211

See APPELLATE COURT—INTERFERENCE WITH AND POWER TO VARY ORDER OF LOWER COURT.
[I. L. R., 12 Calc., 239

See SPECIAL APPEAL—PROCEDURE IN SPECIAL APPEAL . I. L. R., 5 All., 14
[I. L. R., 8 All., 172

See SPECIAL APPEAL—GROUNDS OF APPEAL—EVIDENCE, MODE OF DEALING WITH— . . I. L. R., 7 All., 765

——— **ss. 566, 567 (1859, s. 354).**

See DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES—TORTS.
[I. L. R., 5 Calc., 283

See CASES UNDER REMAND.

See SPECIAL APPEAL—GROUNDS OF APPEAL—EVIDENCE, MODE OF DEALING WITH— . . I. L. R., 7 All., 765

——— **s. 567 (1859, s. 354).**

See s. 587 . I. L. R., 7 Mad., 52

——— **s. 568 (1859, s. 355).**

See CASES UNDER APPELLATE COURT—ADDITIONAL EVIDENCE ON APPEAL.

See SPECIAL APPEAL—GROUNDS OF APPEAL—EVIDENCE, MODE OF DEALING WITH— . I. L. R., 7 All., 765

See SPECIAL APPEAL—PROCEDURE ON SPECIAL APPEAL . I. L. R., 12 Calc., 37

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 569 (1859, s. 356).

See APPELLATE COURT—EVIDENCE AND ADDITIONAL EVIDENCE ON APPEAL.
[9 W. R., 128

——— **s. 570 (1859, s. 357).**

See APPELLATE COURT—EVIDENCE AND ADDITIONAL EVIDENCE ON APPEAL.
[9 W. R., 128

——— **s. 574 (1859, s. 359).**

See CASES UNDER JUDGMENT—CIVIL CASES—FORM AND CONTENTS OF JUDGMENT.

See REMAND—OBJECTION TO FINDINGS ON REMAND . I. L. R., 6 All., 383

See SPECIAL APPEAL—GROUNDS OF APPEAL—EVIDENCE, MODE OF DEALING WITH— . . I. L. R., 7 All., 649

——— **s. 575 (Act XXIII of 1861, s. 23).**

See LETTERS PATENT, HIGH COURT, CL. 15.
[4 B. L. R., A. C., 181

See LETTERS PATENT, HIGH COURT, CL. 36.
[I. L. R., 3 Bom., 204

1. ——— **Act XXIII of 1861, s. 23.**—*Judges sitting in appeal from original civil jurisdiction.*—Section 23 of Act XXIII of 1861 referred only to the late Sudder Court, and although this Act formed part of the Code of Civil Procedure, it is clear that section 23 could not apply to Judges sitting in appeal from the original civil jurisdiction, for this reason, that all the Judges of the Court so sitting in appeal are supposed in law to be equal, whereas section 23 of Act XXIII of 1861 only contemplated an appeal from a Court of inferior jurisdiction to the late Sudder Court, and had nothing at all to do with the Court of Appeal from the original civil jurisdiction as that Court is now constituted. GREENWAY *v.* HOGG . . . Bourke, A. O. C., 139

2. ——— *Difference of opinion between two Judges.*—It was held under this section that if the Judges differed in opinion on points of law and did not state the points on which they differed, there was no determination of the case: so that if the case were then referred to other Judges for final determination, they would have jurisdiction to go into the whole case. KHELUT CHUNDER GHOSE *v.* TARACHUREN KOONDOO CHOWDHRY
[6 W. R., 269

3. ——— *Order in execution of decree.—Appeal.—Party to suit.—Semble,*—Section 23 applied to orders made in execution of decrees, but the right of appeal was given only as between the parties to the suit in which the decree or order was made. ANNAMALAI CHETTI *v.* MUTHULINGA PILLAI . . . . 6 Mad., 360

4. ——— **s. 575.**—*Rules made by High Court, N.-W. P.—Reference of appeal to other Judges of same Court.—Composition of Bench hear-*

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 575—*continued.*

ing referred appeal.—Presence of referring Judges necessary.—The only Bench which can legally deal with an appeal which has been referred under the provisions of section 575 of the Civil Procedure Code is one which includes the Judges who first heard the appeal, and whose difference in opinion on a point of law necessitated the reference. *Khelut Chunder Ghose v. Tara Churn Koondoo Chowdhry, 6 W. R., 269; Mahomed Akil v. Asad-un-nissa Bibi, B. L. R., Sup. Vol., 774;* and *Brand v. Hammersmith and City Railway Company, 36 L. J., Q. B., 137,* referred to. The word "judgment" as used in Rule II of the Rules made by the High Court, North-Western Provinces, to regulate references under section 575 of the Civil Procedure Code, must not be understood in its strict sense, but merely as an expression of opinion containing reasons for a contemplated or proposed judgment. ROHILKHAND AND KUMAON BANK *v.* ROW . I. L. R., 6 All., 468

5. ——— ss. 575, 597.—*Decision when appeal heard by two or more Judges.—Letters Patent of 1865, cls. 15, 36.*—Section 575 of Act XIV of 1882 does not take away the right of appeal which is given by clause 15 of the Letters Patent. When the judgment of a lower Court has been confirmed under section 575 of the Code of Civil Procedure, by reason of one of the Judges of the Appeal Court agreeing upon the facts with the Court below, an appeal will lie against such judgment, notwithstanding the terms of section 575. *Appaji Bhivrav v. Shiblal Khubchand, I. L. R., 3 Bom., 204,* approved. GOSSAMI SRI 108 SRI GRIDHARIJI MAHARAJ TICKAIT *v.* PORUSHOTUM GOSSAMI . I. L. R., 10 Calc., 814

——— ss. 577, 578 (1859, s. 350).

See CASES UNDER APPELLATE COURT—REJECTION OR ADMISSION OF EVIDENCE ADMITTED OR REJECTED BY COURT BELOW.

See CASES UNDER APPELLATE COURT—OTHER ERRORS AFFECTING MERITS.

——— ss. 579, 580 (1859, s. 360; Act XXIII of 1861, s. 26).

See DECREE—FORM OF DECREE—COSTS.
[13 W. R., 24
16 W. R., 266
17 W. R., 445
18 W. R., 286
21 W. R., 74
23 W. R., 89

See SPECIAL APPEAL—OTHER ERRORS OF LAW AND PROCEDURE—APPEALS.
[19 W. R., 247

——— s. 582 (Act XXIII of 1861, s. 37).

See ABATEMENT OF SUIT—APPEALS.
[I. L. R., 7 All., 693, 734
3 Bom., A. C., 81
12 C. L. R., 45

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 582 (Act XXIII of 1861, s. 37)—*continued.*

See APPELLATE COURT—EXERCISE OF POWERS IN VARIOUS CASES—SPECIAL CASES—APPEAL.
[1 B. L. R., A. C., 155
10 W. R., 160
4 W. R., 109
14 W. R., O. C., 17

See APPELLATE COURT—EXERCISE OF POWERS IN VARIOUS CASES—SPECIAL CASES—ARBITRATION, REFERENCE TO—
[I. L. R., 12 Calc., 173
12 B. L. R., F. B., 266: 21 W. R., 210
12 B. L. R., 267, note: 17 W. R., 31
7 N. W., 243
19 W. R., 321
I. L. R., 3 Mad., 78

See COMMISSIONER FOR TAKING ACCOUNTS.
[6 Bom., A. C., 149

See COSTS . I. L. R., 8 Calc., 440

See LIMITATION ACT, 1877, s. 22.
[I. L. R., 2 All., 487

See LIMITATION ACT, 1877, ART. 171.
[I. L. R., 12 Calc., 590
I. L. R., 11 Calc., 694
I. L. R., 10 Bom., 663

See PARTIES—ADDING PARTIES TO SUITS—APPELLANTS . I. L. R., 10 Bom., 227

See PARTIES—SUBSTITUTION OF PARTIES—RESPONDENTS.
[I. L. R., 4 Bom., 654
I. L. R., 11 Calc., 694
I. L. R., 9 Bom., 56

See WITHDRAWAL OF SUIT.
[Bourke, A. O. C., 99
14 W. R., O. C., 17
I. L. R., 8 All., 82

——— s. 583 (1859, s. 362).

See s. 244—QUESTIONS IN EXECUTION OF DECREE . . I. L. R., 7 All., 432

See LIMITATION ACT, 1877, ART. 179—PERIOD FROM WHICH LIMITATION RUNS—CONTINUOUS PROCEEDINGS.
[I. L. R., 8 All., 545

See MESNE PROFITS,—ASSESSMENT IN EXECUTION, AND SUITS FOR—
[I. L. R., 7 All., 197

——— (Act VIII of 1859, s. 362).—*Application for execution of decree.*—An application for execution of the decree of an Appellate Court should be made to the Court which passes the first decree in the suit, irrespective of any previous order referring the case for execution. RAM JADUB SIRCAR *v.* AMEEROONISSA BIBEE . . . 13 W. R., 27

——— s. 584 (1859, s. 372).

See CASES UNDER SPECIAL APPEAL.

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 584 (1859, s. 372)—*continued.*

See APPEAL—ORDERS.
[I. L. R., 1 All., 620

See APPELLATE COURT—REJECTION OR ADMISSION OF EVIDENCE ADMITTED OR REJECTED BY COURT BELOW.
[I. L. R., 7 All., 528

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622.
[I. L. R., 8 All., 111

1. ——— (Act VIII of 1859, s. 372).—*Decision, Interpretation of.—Appeal.*—By the word "decision" in section 372 of Act VIII of 1859, was meant the decree and judgment taken together, and not simply the decree unexplained by the judgment. INDRAJIT KOONWARI *v.* CHOKOWRI SAHU
[B. L. R., Sup. Vol., 1

2. ——— *Construction of.*—"*May.*"—The word "may" in Act VIII of 1859, section 372, does not imply "by some possibility," but means "may not improbably." RAM CHUNDER CHOWDHRY *v.* KASHEE MOHUN . . 21 W. R., 57

——— s. 586 (Act XXIII of 1861, s. 27).

See APPEAL—ORDERS.
[I. L. R., 3 All., 18
I. L. R., 7 Bom., 292
I. L. R., 10 Calc., 523

See CASES UNDER SPECIAL APPEALS—SMALL CAUSE COURT SUITS.

See SUPERINTENDENCE OF HIGH COURT—CHARTER ACT, s. 15.
[5 B. L. R., Ap., 91
I. L. R., 1 Calc., 180

——— s. 587 (1859, ss. 373, 374, Act VIII of 1861, s. 25).

See LIMITATION ACT, 1877, ART. 171.
[3 C. L. R., 440

See SPECIAL APPEAL—PROCEDURE IN SPECIAL APPEAL . . 1 Mad., 250
[I. L. R., 4 Mad., 419
Agra, F. B., 100: Ed., 1874, 75

1. ——— s. 587 and s. 567.—*Appeal from appellate decree.—Issue of fact referred to Appellate Court.—Objection.—Finality of finding.*—A District Court on appeal having reversed the decree of a District Munsif's Court and dismissed the suit upon a preliminary point of law, the High Court, on appeal from the District Court's decree, reversed it and directed the District Court to submit its finding to the High Court upon an issue of fact which had been framed and tried by the District Munsif, but had not been decided by the District Court. Upon the return of the finding upon this issue to the High Court, a memorandum of objections to the finding was presented under section 567 of the Code of Civil Procedure. *Held* that, as the words "as far as may be" in section 587 (by which the provisions of Chapter

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 587 and s. 567—*continued.*

XLI are made applicable to appeals from appellate decrees) must be taken to mean "as far as is consistent with the principles on which appeals from appellate decrees are admitted and determined," no objections could be taken to the finding of the District Court under section 567 of the Code of Civil Procedure. HINDE *v.* PONNATH BRAYAN
[I. L. R., 7 Mad., 52

2. ——— Act VIII of 1859, s. 374.—*Ground of appeal not taken in petition.*—Section 374 leaves it in the discretion of the Court to admit any new ground of appeal arising out of the proceedings, though it may have been omitted in the petition of special appeal. JOYKISHEN MOOKERJEE *v.* RAJKISHEN MOOKERJEE . . . 5 W. R., 147

——— s. 588 (1859, ss. 363, 364, 365).

See s. 3 . . I. L. R., 4 Calc., 825

See CASES UNDER APPEAL.

See REMAND—CASES OF APPEAL AFTER REMAND . . I. L. R., 5 Calc., 144
[I. L. R., 7 All., 136
3 B. L. R., O. C., 113: 17 W. R., 370, note

See LETTERS PATENT, HIGH COURT, CL. 15.
[I. L. R., 9 Mad., 447

See CASES UNDER SPECIAL APPEAL—ORDERS SUBJECT TO APPEAL.

——— s. 590.

See INSOLVENT ACT, s. 73.
[I. L. R., 12 Calc., 629

——— s. 591.

See SPECIAL APPEAL—ORDERS SUBJECT TO APPEAL . . I. L. R., 5 Calc., 711
[I. L. R., 7 Calc., 148
I. L. R., 7 Bom., 5

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622.
[I. L. R., 4 All., 91

——— ss. 592, 593 (1859, ss. 367, 370).

See PAUPER SUIT—APPEALS.
[I. L. R., 8 Mad., 504
1 N. W., 167: Ed., 1873, 246
17 W. R., 68

——— s. 595 (Act VI of 1874, s. 4).

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES—APPEALABLE ORDERS . . I. L. R., 6 Bom., 260
[I. L. R., 4 All., 238
1 C. L. R., 354
I. L. R., 8 Bom., 548

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES—VALUATION OF APPEAL . . I. L. R., 3 All., 633
[I. L. R., 11 Calc., 740

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 596 (Act VI of 1874, s. 11).

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES—VALUATION OF APPEAL . . 4 C. L. R., 125
[I. L. R., 8 Calc., 210
I. L. R., 11 Calc., 740

——— ss. 598-600.

See APPEAL TO PRIVY COUNCIL—PRACTICE AND PROCEDURE—TIME FOR APPEALING.
[I. L. R., 12 Calc., 658

——— s. 602 (Act VI of 1874, s. 11).

See APPEAL TO PRIVY COUNCIL—PRACTICE AND PROCEDURE—TIME FOR APPEALING.
[I. L. R., 6 All., 250
I. L. R., 10 Calc., 557: L. R., 11 I. A., 7

——— s. 610.

See EXECUTION OF DECREE—ORDERS AND DECREES OF PRIVY COUNCIL.
[I. L. R., 5 Calc., 329
I. L. R., 9 Calc., 482
I. L. R., 8 All., 650

See SURETY—ENFORCEMENT OF SECURITY.
[I. L. R., 2 All., 604
I. L. R., 12 Calc., 402

——— s. 617 (Act XXIII of 1861, s. 28).

See REFERENCE TO HIGH COURT—CIVIL CASES . I. L. R., 5 Calc., 756
[7 C. L. R., 144
17 W. R., 94, 95

See REVIEW—ORDERS SUBJECT TO REVIEW.
[I. L. R., 10 Bom., 68

——— s. 619.

See REVIEW—ORDERS SUBJECT TO REVIEW.
[I. L. R., 10 Bom., 68

——— s. 622 (Act XXIII of 1861, s. 35).

See CASES UNDER SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622.

——— s. 623 (1859, s. 376).

See DIVORCE ACT, s. 16.
[I. L. R., 6 Bom., 416

See CASES UNDER REVIEW.

See SMALL CAUSE COURT, MOFUSSIL—PRACTICE AND PROCEDURE—NEW TRIALS . . I. L. R., 6 Calc., 236
[I. L. R., 10 Calc., 297
I. L. R., 8 Calc., 287
I. L. R., 5 Calc., 699

——— s. 624.

See REVIEW—REVIEW BY JUDGE OTHER THAN JUDGE IN ORIGINAL CASE.
[I. L. R., 4 All., 278
I. L. R., 8 Mad., 567
I. L. R., 10 Calc., 80
I. L. R., 13 Calc., 231

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 624—*continued.*

See SMALL CAUSE COURT, MOFUSSIL—PRACTICE AND PROCEDURE—NEW TRIALS . . I. L. R., 6 Calc., 236

See SPECIAL APPEAL—ORDERS SUBJECT TO APPEAL . I. L. R., 11 Calc., 296

——— s. 626 (1859, s. 378).

See CASES UNDER REVIEW.

See SPECIAL APPEAL—ORDERS SUBJECT TO APPEAL . I. L. R., 11 Calc., 296

——— s. 629 (1859, s. 378).

See LETTERS PATENT, HIGH COURT, CL. 15.
[I. L. R., 9 Mad., 253

See SPECIAL APPEAL—ORDERS SUBJECT TO APPEAL . I. L. R., 11 Calc., 296

——— s. 630 (1859, s. 380).

See REVIEW—PROCEDURE ON REHEARING OF CASE . I. L. R., 9 Calc., 209

——— s. 638.

See INSOLVENT ACT, s. 86.
[I. L. R., 8 Bom., 511

——— s. 640 (1859, s. 21).

See PARDA-NASHIN WOMEN.
[8 W. R., 282
24 W. R., 375

——— s. 642.

See ARREST—CIVIL ARREST.
[I. L. R., 5 Calc., 106
I. L. R., 4 Mad., 317
I. L. R., 4 All., 27
5 C. L. R., 170

——— s. 643 (Act XXIII of 1861, ss. 16 and 19).

See CRIMINAL PROCEDURE CODE, 1882, s. 476 . . I. L. R., 1 Calc., 450
[7 Bom., Cr., 29

See SANCTION TO PROSECUTION—NATURE, FORM, AND SUFFICIENCY OF SANCTION.
[I. L. R., 7 All., 871

1. ——— Act XXIII of 1861, ss. 16 and 19.—*Power of Civil Court to send case to Magistrate for trial of perjury and forgery.*—Under sections 16 and 19, Act XXIII of 1861, Civil Courts had power to refer to Magistrates, or to make commitments to the Sessions, in cases of perjury or forgery, only when they had come to some conclusion in respect of the guilt of the party concerned, or the truth or otherwise of the document or evidence. IN THE MATTER OF THE PETITION OF HURONATH ROY . . . . . 7 W. R., 482

2. ——— s. 643.—*Fraudulent execution of decree.—Penal Code, s. 210.—Civil Procedure*

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 643—*continued.*

Code, 1877, s. 258.—The fact that the provisions of section 258 of the Code of Civil Procedure have not been complied with, does not render a commitment to a Magistrate, under section 643, for investigation of the offence of fraudulent execution of a decree, illegal. The Civil Court sending up the accused is not debarred from admitting evidence that the decree has been satisfied out of Court. QUEEN *v.* MOTURAMAN CHETTI . . **I. L. R., 4 Mad., 325**

——— **s. 647 (Act XXIII of 1861, s. 38).**

See ss. 98, 99 . . . **4 N. W., 10**

See s. 99 . . **I. L. R., 7 All., 542**

See s. 244 . **I. L. R., 10 Calc., 538**

See APPEAL—REGULATIONS. **[19 W. R., 122**

See APPEAL—SALE IN EXECUTION OF DECREE . **I. L. R., 10 Bom., 433**

See EXECUTION OF DECREE—STAY OF EXECUTION . **I. L. R., 1 All., 178**

See EXECUTION OF DECREE—TRANSFER OF DECREE FOR EXECUTION. **[I. L. R., 1 All., 180 I. L. R., 5 Bom., 680**

See LIMITATION ACT, 1877, ART. 179 — NATURE OF APPLICATION—GENERALLY. **[I. L. R., 7 All., 359**

See MISCELLANEOUS PROCEEDINGS. **[11 W. R., 494**

See RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE. **[I. L. R., 8 Mad., 548**

See REVIEW—ORDERS SUBJECT TO REVIEW. **[I. L. R., 2 Calc., 131**

See TRANSFER OF CIVIL CASE. **[I. L. R., 8 Mad., 548**

——— **s. 648.**

See ATTACHMENT — ATTACHMENT BEFORE JUDGMENT . **I. L. R., 8 Mad., 205**

——— **s. 649 (1859, s. 296).**

See COSTS . . **Bourke, O. C., 154**

See EXECUTION OF DECREE — APPLICATION FOR EXECUTION AND POWERS OF COURT . . **I. L. R., 6 Calc., 513**

See HIGH COURT, JURISDICTION OF—CALCUTTA—CIVIL . **I. L. R., 6 Calc., 201**

See INSOLVENT ACT, s. 86. **[I. L. R., 8 Bom., 511**

——— **s. 651.**

See APPEAL—ORDERS. **[I. L. R., 5 All., 318**

See ESCAPE FROM CUSTODY. **[I. L. R., 4 All., 27 I. L. R., 5 All., 318**

CIVIL PROCEDURE CODE, ACT XIV OF 1882 (Act X of 1877), s. 147, Form 113.

See PLAINT—FORM AND CONTENTS OF PLAINT—SPECIAL CASES. **[I. L. R., 7 Calc., 728**

——— **Forms 192, 193.**

See PARTNERSHIP—PROCEEDINGS. **[I. L. R., 7 Calc., 825**

CLAIM UNDER PENDING AWARD.

See ATTACHMENT—SUBJECT OF ATTACHMENT . **7 B. L. R., 194**

CLAIMS, PROOF OF—

See INSOLVENT ACT, s. 10. **[5 B. L. R., 3, 118 13 B. L. R., App., 2 12 C. L. R., 185**

See INSOLVENT ACT, s. 42. **[6 B. L. R., A. C., 141**

CLAIMS TO ATTACHED PROPERTY.

1. ——— Limitation Act, 1877, s. 7 (1859, s. 11).—*Civil Procedure Code, 1859, ss. 278, 280, 281, 283 (1859, s. 246).*—The provisions of section 11 of the Limitation Act, XIV of 1859 (relating to minority, Limitation Acts, 1871 and 1877, section 7), apply to proceedings under the section. HURO SOONDUREE CHOWDHRAIN *v.* ARUN SUNDUR ROY CHOWDHRY . . . **3 W. R., 8**

2. ——— Act VIII of 1859, s. 246.—*Operation of section.*—The provisions of this section were prospective and did not apply to proceedings in execution under the old procedure. GOKOOL RAM DEB *v.* RAM SOONDUR SURMAH . **9 W. R., 292**

3. ——— Section 246 of Act VIII of 1859 is in effect the same as section 283 of Act X of 1877. BAILUR KRISHNA RAU *v.* LAKSHMANA SHANBHOGUE . **I. L. R., 4 Mad., 302**

4. ——— Subject of claim.—*Money paid to release attachment in execution of decree.*—Money paid to release an attachment in execution of a decree cannot be made the subject of a claim under Act VIII of 1859, section 246. MOHAMED BEG *v.* JUGGERNAUTH DASS; CLAIM OF OMERCHAND **[1 Ind. Jur., N. S., 248**

5. ——— *Money debt.*—*Civil Procedure Code, 1859, s. 246.*—Act VIII of 1859, section 246, only applied to immoveable property, or to specific moveable property, not to a debt due. RAMBUTTY KOOER *v.* KAMESSUR PERSHAD **[22 W. R., 36**

6. ——— Nature of claims.—*Claim under title derived from judgment-debtor.*—There is nothing in section 246, Act VIII of 1859, which restricts claims under it to titles derived from the judgment-debtor, or out of the estate. It comprises all claims or objections to the sale of lands in execution of decrees. HORISH CHUNDER ROY *v.* BROJO SOONDUR MOZOOMDAR . . **6 W. R., 164**

CLAIMS TO ATTACHED PROPERTY —*continued.*

7. ——— Claim by intervenor to moveable property.—A Court is bound to investigate a claim made by an intervenor under section 246, Act VIII of 1859, to a share of moveable property attached in execution of a decree. DEANUTH BISWAS *v.* ISSUR GINE. EX PARTE HUR CHUNDER GINE . . . . . **14 W. R., 52**

ISSUR CHUNDER GANGOOLY *v.* MOHINI MOHUN DOSS . . . . . **17 W. R., 74**

8. ——— Second trial of claim under same attachment.—*Title of objector as against debtor in possession.*—A Judge has no jurisdiction to try the same objector's claim, under section 246, Act VIII of 1859, a second time as against the same attachment, or to reopen a question finally decided on the former occasion. The title of the objector, as compared with that of the debtor in possession, is not a point for adjudication under section 246. KHELAT CHUNDER GHOSE *v.* BHUGGOBUTTY CHURN MOOKERJEE . . . . . **14 W. R., 144**

9. ——— Dismissal of claim without adjudication on the merits.—But where a claim is dismissed or struck off without any adjudication in either of the modes provided by the section, a fresh claim may be entertained, subject to section 247. MOHADEB MUNDUL *v.* MODHOO MUNDUL **[16 W. R., 59**

10. ——— Property seized under decree against person in representative character.—Where property is seized as belonging to *A.*, as representative of *B.*, deceased, and *A.* claims the property as his own and denies that it ever belonged to *B.* or *B.'s* estate, *A.'s* claim is properly dealt with under section 246 of Act VIII of 1859. DHEBAJ MAHATAB CHUND *v.* PEAREE DOSSEE **[6 W. R., Mis., 61**

11. ——— Claim to a portion of property attached.—*Alienees of judgment-debtor.*—*Civil Procedure Code, 1859, ss. 229, 230.*—On the application of a decree-holder of a money decree for the sale of immoveable property belonging to the judgment-debtor, certain parties objected that they had purchased the rights of the judgment-debtor therein. Subsequently some of the objectors who claimed a 14-annas share in the property compromised with the decree-holder, who then applied that the remaining 2 annas in possession of certain specified parties should be sold. The lower Court ordered that the sale of these 2 annas should not proceed if the objectors who claimed them paid to the decree-holder a sum equal, rateably, to that levied from the 14 annas. *Held*, on appeal by the decree-holder against the original judgment-debtor, that the provisions of section 246, and not those of sections 229 and 230, of Act VIII of 1859, applied to the application, which really sought to enforce a particular remedy against a third party named, and not against the original defendant. GOVIND PERSHAD *v.* RAM PURKASH SINGH . . . . . **8 W. R., 378**

CLAIMS TO ATTACHED PROPERTY —*continued.*

12. ——— Intervenor claiming property attached under decree for rent.—*Attachment of crops.*—*Beng. Act VI of 1862, s. 16.*—In a suit by a landlord against his ryot for rent, in which he attached certain growing crops, under section 16, Bengal Act VI of 1862 (the attachment being before judgment), the claim of an intervenor ought, according to section 86, Act VIII of 1859, to be investigated in the same manner as a claim to property attached in execution of a decree. The course to be adopted in such a case is that pointed out in section 246, Act VIII of 1859. KARTICK CHUNDER MOOKERJEE *v.* MOOKTA RAM SIRCAR **[10 W. R., 21**

13. ——— Right of purchaser from debtor.—*Quære,*—Whether a person holding by purchase from the judgment-debtor is in a position to succeed under Act VIII of 1859, section 246. WAJID HOSSEIN *v.* AHMED REZA . **17 W. R., 480**

14. ——— Mortgagee in possession of mortgaged premises attached in execution of decree.—A mortgagee, in possession of mortgaged premises that have been attached by prohibitory order under section 235 of the Code of Civil Procedure, in execution of a decree obtained against his mortgagor, is entitled to come in under section 246 of the Civil Procedure Code and have the attachment raised. KASSIRAV R. SAHEB HOLKAR *v.* VITHALDAS MANGALYI . . . . . **10 Bom., 100**

15. ——— Possession, Right to.—*Question of title.*—*Sale in execution of decree.*—When land is attached for sale in execution of a decree, the point of possession is the one which determines its liability to sale or not under section 246. But in a suit brought to set aside a sale made under that section, it is not the mere possession, but the actual right and title, which determines whether the sale ought or ought not to stand. WOOMA CHURN CHOWDHRY *v.* KURRALEE CHURN CHOWDHRY **[W. R., 1864, 163**

16. ——— Attachment of right, title, and interest.—*Possession.*—*Right to have property released.*—Certain property had been attached in execution of a decree under the 235th section of Act VIII of 1859, which was specified in the schedule annexed to the order of attachment as "the right, title, and interest of *R. H.*, deceased, in the hands of *B. D.* and *W. D.*, his widows." *M. D.* claimed the property under the 246th section of Act VIII of 1859, and proved that the property was in his possession, and not in the possession of *B. D.* or *W. D.* *Held*, that the property must be released from the attachment. BINDOBASEENY DABEE *v.* BISSOMOYE DASSEE **[2 Ind. Jur., N. S., 339**

17. ——— Attachment of fractional share of property.—*Right to have property released.*—*Claim to share of property.*—In execution of a decree against *A.*, "the moiety or half share of *A.*" in certain lands was attached. *M.* filed a petition under section 246 of Act VIII of 1859, in which he admitted that *A.* had a one-eighth share in the lands,

CLAIMS TO ATTACHED PROPERTY. —Attachment of fractional share of property—*continued.*

but alleged that *A.* had only a one-eighth share, and that a two-eighths share belongs to himself, *M.* *Held*, that this was a claim to property attached in execution under section 246 of Act VIII of 1859, which the Court under that section was bound to investigate and adjudicate upon. In execution of a decree against *A.*, the "right, title, and interest of *A.*" in certain lands were attached. *M.* filed a petition under section 246 of Act VIII of 1859, in which he admitted that *A.* had a one-twentieth share, but alleged that *A.* was entitled to no more than a one-twentieth share; and that he, *M.*, has a two-twentieths share. *Held* that, assuming the attachment of *A.'s* eighth title and interest to be an irregular attachment under section 213, *M.*, whose lands were included within such attachment, was entitled to come in and claim his own two-twentieths share, and the Court was bound to investigate his claim under section 246 of Act VIII of 1859. *Held*, also, in both cases, that *M.* was entitled to have the attachment removed so far as his share was concerned. *Held* also (*per* PHEAR, *J.*), that in the first case, *M.* was entitled to have the attachment removed so far as regards the margin in excess of *A.'s* actual share; and that in the second case he was entitled to have the whole attachment discharged. COWAR RAJKUMAR ROY *v.* KADAMBINI DEBI [4 B. L. R., F. B., 175

S.C. RAJCOOMAR ROY *v.* KADUMBINY DEBI [13 W. R., F. B., 63

18. ——— Possession in trust for judgment-debtor.—*Question for decision on claim.*—The only question proper to be decided under section 246, Act VIII of 1859, is whether the property attached is in the possession of the judgment-debtor or some person in trust for him, or whether it is in the possession of a third party not in trust for the judgment-debtor. DHERAJ MAHTAB CHAND BAHADOOR *v.* HURDEO NARAIN SAHOO . . 16 W. R., 119

19. ——— Possession, Question of.—*Question of title to property.—Civil Procedure Code (Act XIV of 1882), ss. 278, 280, 281.—Satisfaction of decree by private sale.—Purchaser.—Subsequent attachment.*—*A.* and *B.* attached, in execution of their decree, property of *C.* and his two brothers, their judgment-debtors. Subsequently *D.* obtained a decree against *C* alone, and on the 11th January 1884 applied for attachment of the one-third share of *C.* in the property attached by *A.* and *B.*, which belonged to *C.* and his two brothers jointly. No order was on that date passed on the application. On the 14th January 1884 *E.* purchased from *C.* his one-third share in the attached properties, and the purchase-money was, by arrangement between the brothers, applied in satisfying the debt due to *A.* and *B.* On the 28th January 1884 an order was passed on the application of the 11th January 1884 granting the attachment asked for by *D.*; and on the 23rd April 1884 *E.* preferred his claim to the one-third share purchased by him, and which had been since the purchase attached by *D.* The claim was disallowed on the ground that *E.* had no title to the property, he having purchased whilst the property was under attachment *Held*, on

CLAIMS TO ATTACHED PROPERTY. —Possession, Question of—*continued.*

appeal, that the Judge should have, in accordance with section 280 of the Code of Civil Procedure, confined himself to determining whether or no the property was in the possession of *E.* on his own account at the time that *D.* attached the property. KOYLASH CHUNDER SEN *v.* KOYLASH CHUNDER CHAKRABARTI [I. L. R., 10 Calc., 1057

20. ——— Procedure.—*Order to release property.*—In disposing of a claim under section 246, Act VIII of 1859, if the Court be of opinion that the property attached ought not to be sold, the proper order for the Court to make is a simple order to release the property from attachment. BHYRUB LALL BHUKUT *v.* ABDOOL HOSSEIN [8 W. R., 93

21. ——— *Claim of purchaser before attachment.*—Where a claim is lodged to attached property on the ground of purchase before attachment, and the decree-holder alleges that the claimant is a benamidar for the judgment-debtor, the Court is bound, under Act VIII of 1859, section 246, to enquire whether the property is or is not in the possession of the party against whom execution is sought, or of some other person in trust for him. IN THE MATTER OF HUREEHUR MOOKERJEE. HUREEHUR MOOKERJEE *v.* NOBIN CHUNDER DOSS [20 W. R., 202

22. ——— *Suit to set aside order allowing claim.—Evidence given on claim.*—In a suit to set aside a summary award under section 246, Civil Procedure Code, a Judge is bound to find facts upon the evidence tendered and taken in the case, and not upon any evidence taken in the summary cause. LEKHRAJ ROY *v.* MUTTY MADHUB SEN [14 W. R., 95

23. ——— Property of different sets of defendants.—*Claim by one set of defendants.*—Where a suit resulted in two distinct orders for the payment of costs, one against the first set of defendants and another against the second, and the property of one of the former set was taken in execution of the order against the latter,—*Held*, that the application of the aggrieved defendant for release of his property fell within the provisions of Act VIII of 1859, section 246. *Held*, also, that the applicant had a right to establish what the law required by any evidence sufficient for the purpose, and that the Court had no power to require from him any particular kind of evidence. BINODE LALL PAKRASHEE *v.* GIREEDHUR CHUCKERBUTTY . 22 W. R., 392

24. ——— Refusal of admissible and proper evidence.—*Invalid order.*—Where a Judge makes an order under Act VIII of 1859, section 246, after refusing to receive evidence which it is his duty to receive, his order is *ultra vires*. BHOIHARINEE DABEE *v.* NILMONEE SINGH DEO BAHADOOR . . . . [24 W. R., 422

25. ——— Order for release from attachment, Nature of.—*Limited effect of order.*—When, under section 246, Act VIII of 1859, property which has been attached is ordered to be

CLAIMS TO ATTACHED PROPERTY. Order for release from attachment, Nature of—*continued.*

released, the order for release is made with reference merely to the particular claimant who has obtained the order. This order is not to be regarded as a general decision (of which all the world can have the benefit) that the property does not belong to the judgment-debtor. IMAM BANDEE BEGUM *v.* MAHOMED TUKEE KHAN . . . **8 W. R., 27**

BOOLIROONNISSA BIBEE *v.* KUREEMOONNISSA KHATOON . . . **21 W. R., 230**

26. ——— Decree against party in representative character.—*Third party.—Execution of decree.—A.* obtained a decree against *B.*, in her representative character, for a debt contracted by her mother. The decree declared that execution should be taken out against the property of the mother, and not against any part of her (the mother's) deceased husband's estate. In execution, *A.* attached and put up to sale certain property as belonging to the mother. *B.* objected to the sale, alleging that the property was not her mother's, but was inherited by her from her father. The Munsif disallowed her objection, on the ground that only the right, title, and interest of the defendant's mother was put up for sale. On appeal the Judge set aside the Munsif's order. *Held*, that, for the purposes of her objection, *B.* was a third party unconnected with the decree, and that her objection should have been disposed of under section 246 of Act VIII of 1859. Section 11 of Act XXIII of 1861 did not apply and there was no appeal. HARIS CHANDRA GUPTO *v.* SHASHI MALA GUPTI **[6 B. L. R., 721: 15 W. R., 163**

27. ——— Claim by representative.—*Appeal.—Act XXIII of 1861, s. 11.—Execution of decree.*—In execution of his decree, the decree-holder attached certain property as being that of the judgment-debtor. On this *R.*, the son of the judgment-debtor, intervened, stating that he held possession of the property in his own right, and did not inherit it as any part of his mother's assets. The Munsif admitted his claim on the ground that the property was not that of the judgment-debtor. *Held*, the order was one under section 246, and no appeal would lie to the Judge. IN RE RAINEY **[6 B. L. R., 725, note**

S. C. RAINEY *v.* ISHUR CHUNDER BHUTTACHARJEE **[12 W. R., 333**

28. ——— Release of lands as being endowed property.—*Appeal.*—A decree-holder in execution having attached certain lands, the judgment-debtors objected that the lands were not their property, but held by them as shebaits of a religious endowment. The Munsif found that, although the land formed part of some which had been released by Government as appropriated to religious purposes, they were held by the defendants entirely to their own use, and overruled the objection. *Held*, that the order was one under Act VIII of 1859, section 246, and that no appeal lay to the Judge. NIMAYE CHURN PUTRETUNDEE *v.* JOGENDRO NATH BANERJEE . . . . . **21 W. R., 365**

CLAIMS TO ATTACHED PROPERTY —*continued.*

29. ——— Suit to set aside summary order.—*Order releasing attached property.*—A regular suit to set aside a summary order is against general principles, and only lies when the power to bring such a suit is expressly conferred, as under section 246, Code of Civil Procedure. A party who is unsuccessful in his attempt to obtain execution against any particular property has only the remedy provided in section 246, and failing to take advantage of that, his only alternative is to make a fresh application for execution. SADABURT PERSHAD SAHOO *v.* LOTF ALI KHAN. PHOOLBAS KOOER *v.* LALL JUGGESSUR SAHI. BIKRAMJEET LALL *v.* PHOOLBAS KOOER. RAM DHYAN KOONWAR *v.* PHOOLBAS KOOER . . . **14 W. R., 340**

30. ——— *Suit for reversal of order under s. 246.—Nature of claim in suit.*—A party against whom an order has been obtained under section 246, Act VIII of 1859, must, if he sue for its reversal, assert substantially the same right as that which has been contended for in the execution. COLVIN, COWIE, *v.* ELIAS . **2 B. L. R., A. C., 212 [S. C. 11 W. R., 40**

31. ——— *Proof of possession.—Title.—Act VIII of 1859, s. 15.*—In a suit brought under section 246, Act VIII of 1859, for establishment of right,—*Held*, that the plaintiff's failure to prove his possession at the time of the institution of the suit is not sufficient for its dismissal. The question of title should be tried according to the meaning of that section. Section 246, Act VIII of 1859, distinguished from section 15. MATHURA PANDEY *v.* RAM RUCHA TEWAREE **[3 B. L. R., A. C., 108: 11 W. R., 482**

32. ——— Suit after rejection of claim.—*Civil Procedure Code, 1882, ss. 278, 283.—Damages for wrongful attachment.*—Suits under section 283 of the Code, although they are brought for the purpose of establishing rights which have been negatived in execution proceedings, are neither described in the Code nor are dealt with in practice as appeals from the orders of lower Courts; they are substantive suits to all intents and purposes, and must be tried like any other suits subject to the ordinary rules of procedure and evidence. There is nothing in the provisions of sections 278 to 283 of the Code limiting, in a suit under section 283, a plaintiff's right to compensation for his loss, or the defendant's responsibility for his wrongful act; and if the existence of the summary procedure (in sections 278 to 282) leads to delay, and that delay to further loss, the consequences must fall upon the defendant. KISHORI MOHUN RAI *v.* HURSOOK DASS **[I. L. R., 12 Calc., 696**

33. ——— *Suit to establish right as tenant.—Right of suit.—Declaratory suit.*—A plaint stated that the plaintiff was proprietor of certain land which was let to one *M.*, and that whilst *M.* was in possession, and before the expiration of his tenancy, a creditor took out execution against him and put up for sale the future profits of the property (wasilat) which would come into the hands of *M.*,

CLAIMS TO ATTACHED PROPERTY.
Suit after rejection of claim—*continued.*

alleging that *M.'s* interest was not that of a tenant, but of a usufructuary mortgagee. The plaintiff thereupon put in a claim under section 246, Act VIII of 1859, but his claim was rejected; and he then brought a suit under that section for a declaration that *M.'s* interest in the property was that of a tenant, and not that of a usufructuary mortgagee. It appeared that, on the termination of *M.'s* tenancy, the plaintiff let the land to another person. *Held* that the suit would not lie. AMJAD ALI *v.* KUNKU SHAW . **9 B. L. R., Ap., 28: 17 W. R., 304**

34. ——————— *Effect on suit of satisfaction of decree and release of property.—Intervenor.—Cause of action — Civil Procedure Code (Act VIII of 1859), ss. 246, 247.*—Where a person whose property has been attached in execution of a decree against another person, and whose claim under section 246 of Act VIII of 1859 has been rejected, brings a suit under the provisions of section 247 of Act VIII of 1859, it is no objection to that suit that, previously to the filing thereof, the decree (in execution of which the property had been attached) was satisfied by the judgment-debtor and the property released from attachment. SREEPUTTY MIRDHA *v.* KARTICK SINGHA
[I. L. R., 9 Calc., 10: 11 C. L. R., 181

CLERK OF THE COURT, FUNCTIONS OF—

——————— **Ministerial officer.**—It is not within the province of the Clerk of a Court to issue judicial orders on any subject. He is merely a ministerial officer of the Court, and any act which he is competent to perform must be of that character only, and therefore not one to be judicially dealt with or rescinded by the Court. GOSHAIN JAG ROOP GEER *v.* CHINGUN LALL . . . **2 N. W., 46**

CLERK OF SMALL CAUSE COURT, BOND FOR PERFORMANCE OF DUTIES OF—

See PRINCIPAL AND SURETY—LIABILITY OF SURETY . **I. L. R., 1 All., 87**

CLUB.

——————— *Expulsion of member by committee.—Maxim, "Audi alteram partem."*—*G.*, having been expelled from a club by the committee on the ground that he had published a certain pamphlet which was considered to be a libel by the committee, sued the members of the committee for damages and to have his name replaced on the list of members. It was proved that, in considering *G.'s* conduct with reference to the publication of the pamphlet, the committee took into consideration certain letters which *G.* had written to certain members of the committee, and that his expulsion was partly for printing the pamphlet and partly for writing the letters. *Held* that, as the decision of the committee was arrived at *bonâ fide*, the Court had no right to decide whether the pamphlet was or was not a libel. *Held*, further, that as *G.* had no opportunity of defending himself on

CLUB—*continued.*

the charge of writing the letters, his expulsion was illegal. GOMPERTZ *v.* GOLDINGHAM
[I. L. R., 9 Mad., 319

CODICIL.

See WILL—FORM OF WILL.
[I. L. R., 4 Calc., 721

CO-HABITATION, AGREEMENT IN CONSIDERATION OF—

See CONTRACT ACT, s. 25.
[I. L. R., 1 All., 478

COIN.

See COUNTERFEITING COIN.

COLLATERAL INSTRUMENTS.

See STAMP ACT, 1869, ss. 34, 41.
[I. L. R., 3 Calc., 347

COLLECTOR.

See EXECUTION OF DECREE—DECREES UNDER RENT LAW.
[1 B. L. R., A. C., 177, 216
5 B. L. R., 115

See EXECUTION OF DECREE—TRANSFER OF DECREE FOR EXECUTION, &c.
[I. L. R., 7 Bom., 332

See CASES UNDER MEASUREMENT OF LANDS.

See CASES UNDER PARTITION.

See RES JUDICATA—COMPETENT COURT.

——————— **Legality of proceedings of, under Bengal Act VII of 1868.**

See CASES UNDER JURISDICTION OF CIVIL COURT—REVENUE COURTS—ORDERS OF REVENUE COURTS.

——————— **Order of—**

See REVISION—MISCELLANEOUS CASES.
[10 C. L. R., 14

——————— **Order of, as to standard of measurement.**

See CASES UNDER APPEAL—MEASUREMENT OF LANDS.

——————— **Power of, to sell for arrears of rent.**

See BENGAL ACT IV OF 1870.
[15 B. L. R., 343: 24 W. R., 149
23 W. R., 362

——————— **Prosecution by—**

See STAMP ACT, 1869, s. 29.
[I. L. R., 2 Calc., 399

——————— **of Sea Customs, Madras.**

See JUDICIAL OFFICERS, LIABILITY OF—
[I. L. R., 1 Mad., 89

COLLECTOR—*continued.*

1. ——— **Duty of Collector.**—*Sale by Government through Collector.—Giving possession to purchaser.*—When a Collector, by order of the Board of Revenue, sells a khas mehal as of a specified area and jumma, and borne on the towji under a certain number and name, it is the duty of the Collector to point out and give possession of that which he has professed to sell. WATSON & Co. *v.* SHURNOMOYEE . . . . . **9 W. R., 259**

2. ——— **Power of Collector.**—*Officer acting in two capacities.—Criminal Procedure Code, 1861, s. 168.*—A Collector who entertains a charge, under section 168 of the Code of Criminal Procedure, of an offence against any Court or public servant, should not try the case himself as Magistrate, nor, unless under very exceptional circumstances, give evidence as a witness before himself as Magistrate. QUEEN *v.* NEHAL MAHTEE . **9 W. R., Cr., 13**

3. ——— *Power to authorise manager to sue.—Beng. Act IV of 1870, s. 11.—Quære,*—Whether, where the estate and effects of minors are by an order of the Civil Court vested in the Collector, who appointed a manager under Act XL of 1858, the Collector has power under Bengal Act IV of 1870, section 11, to give authority to the manager to bring a suit in the Civil Court. The point being a technical one, and no substantial injury having been done, the High Court refused to interfere. IN THE MATTER OF KALEE DOSS ROY . **18 W. R., 466**

4. ——— **Collector as manager of a minor's estate.**—*Act XX of 1864, ss. 11 and 15.—Officer of Government.—Act XIV of 1869, s. 32.—Jurisdiction.*—Sections 11 and 15 of Act XX of 1864, taken together, show that a Collector, when appointed to take charge of the estate of a minor, is so appointed in his capacity as Collector, and, therefore, as an officer of Government within the meaning of Act XIV of 1869, section 32. NARSINGRAO RAMACHANDRA *v.* LUXUMANRAO **[I. L. R., 1 Bom., 318**

5. ——— **Collector as Municipal Commissioner.**—*District Magistrate.—Act XIV of 1869, s. 32.—Bom. Act VI of 1873.—Jurisdiction.—Acts done in public capacity.*—Where the acts complained of by the plaintiff were committed by the Collector of a district, appointed Municipal Commissioner under Act XXVI of 1850, section 6, in his official capacity of District Magistrate, and before Bombay Act VI of 1873 came into force,—*Held,* that the Municipal Commissioner was an officer of Government within the meaning of section 32 of Act XIV of 1869, and ought to be sued in the Court of the District Judge and not in that of a Subordinate Judge. *Quære,*—Whether a suit under Bombay Act VI of 1873 must be commenced in the District Court. GANGADHAR SHIVKARN *v.* COLLECTOR OF AHMEDNAGAR . . . **I. L. R., 1 Bom., 628**

6. ——— **Decree for sale sent to Collector for execution.**—*Power of Collector to vary decree.—Responsibility of Collector to judgment-creditor.*—A Collector, to whom a decree for sale of mortgaged property has been transferred for execu-

COLLECTOR.—**Decree for sale sent to Collector for execution**—*continued.*

tion under section 320 of the Civil Procedure Code, is limited to one of the three courses specified in section 321, and may not depart from them; much less may he do what the Court itself could not do in such a case—allow payment of the debt to be made by instalments. A Collector, to whom a decree has been so transferred for execution, acts ministerially, and, when he delegates his functions to an assistant or a mamlatdar, incurs a risk of having to answer in damages to the person who is by any error or mistake deprived of the fruits of his judgment; and this risk attaches independently of malice or negligence. MAHADAJI KARANDIKAR *v.* HARI D. CHIKNE **[I. L. R., 7 Bom., 332**

7. ——— **Order prohibiting receiving transit duties in British territory for Foreign State.**—*Power of Collector.—Held,* that it was beyond the power of a Collector to issue an order prohibiting the receiving of transit duties for Holkar's Government in British territory. REG. *v.* VITHAL LAKSHUMAN . . **5 Bom., Cr., 13**

8. ——— **Modification of orders of Assistant Collector.**—*Mad. Regs. IX of 1822, and VII of 1828, s. 3.—Power of Collector.*—The authority of a Collector to modify, confirm, or reverse the decision of the Head Assistant Collector under section 3 of Regulation VII of 1828 is not confined to cases decided under Regulation IX of 1822 only, and the decision of the Collector under Regulation VII of 1828 is final. CHUNIA AIYAN *v.* MAHOMED FAKIRUDDIN SAIB . . . **2 Mad., 322**

9. ——— *Power to set aside decision under Mad. Act VIII of 1865.*—A Collector has no power to set aside the decision of a Head Assistant Collector when the latter is exercising the powers conferred on a Collector by Madras Act VIII of 1865. RAJARAM LALA *v.* KALIAPPEN **[5 Mad., 129**

10. ——— *Objection to register and assess land transferred in accordance with Mad. Reg. XXV of 1802.*—A Collector is bound to register and sub-assess a portion of a zemindary transferred in accordance with the provisions of Regulation XXV of 1802, such transfer not being opposed to Hindu or Mahomedan law, or the existing law. PONNUSAMY TEVAR *v.* COLLECTOR OF MADURA . **3 Mad., 35**

11. ——— **Issue of summons to attend departmental enquiry.**—*Mad. Act III of 1869.*—A Collector who, in order to draw up a report for the information of Government, holds a departmental enquiry into the conduct of a tahsildar accused of extortion in the discharge of his executive duties, is authorised, under the provisions of Madras Act III of 1869, to issue summonses for the attendance of persons whose evidence may appear to him necessary for the investigation. SRINIVASA AYANGAR *v.* QUEEN **[I. L. R., 4 Mad., 393**

12. ——— **Power of Collector to transfer suits under the Rent Recovery Act.**—*Mad. Reg. VII of 1828.*—The Collector of a district is competent to transfer suits under the Rent Reco-

COLLECTOR.—Power of Collector to transfer suits under the Rent Recovery Act—*continued.*

very Act filed before an Assistant Collector in his district to the file of any other Assistant Collector in the same district. KAILASANATHA *v.* TIRUVENGADA [I. L. R., 7 Mad., 420

13. ——— **Reference to district panchayet.**—*Mad. Reg. XII of 1816.—Village panchayet.—Power of Collector.*—A Collector cannot order a reference to a district panchayet under Regulation XII of 1816, unless there has been (1) an enquiry as to whether the parties will submit to the jurisdiction of a village panchayet; (2) an objection from either party to such reference, and a request in writing by one of the parties that the matter be referred to a district panchayet. CHIKATI *v.* PEDDAKIMEDI . . . I. L. R., 8 Mad., 569

14. ——— **Deputy Collector.**—*Reference of cases to Munsif.—Mad. Reg. XII of 1816.—Act VII of 1857.*—A Deputy Collector, invested by a Collector with all the powers of a Covenanted Assistant, or with the special power to determine claims under Regulation XII of 1816, is competent to refer cases under that Regulation for disposal to a District Munsif. The authority must be delegated under section 3, Act VII of 1857. ANONYMOUS [4 Mad., Ap., 1

15. ——— *Suit for resumption.—Beng. Reg. II of 1819, s. 30.*—Under section 30, Regulation II of 1819, a Deputy Collector, although authorised to put the case in such a state of preparation as to facilitate the hearing and decision by the Collector, had no authority to pronounce a decision himself. RADHAMADHUB GHOSE *v.* KHIRUDNAUTH ROY . . 1 Ind. Jur., O. S., 84

16. ——— *Suit under Beng. Reg. II of 1819.*—A Deputy Collector has no jurisdiction to try a suit under section 30, Regulation II of 1819, but should return the plaint, and refer the party to the Collector who has jurisdiction. GOUREEKANT BANERJEE *v.* LALL MAHOMED MOLLAH [W. R., F. B., 70 Marsh., 265: 2 Hay, 107

KALLY DASS BANERJEE *v.* MUTTY LALL CHUCKERBUTTY . . . . . Marsh., 483

17. ——— *Act XXII of 1872.—Act XIV of 1863, s. 8.—Collector in charge of subdivision.*—A Deputy Collector who by virtue of Act XXII of 1872 must be deemed to have been a Deputy Collector in charge of a subdivision within the meaning of Act X of 1859 and Act XIV of 1863, and whose powers for the decision of suits were, therefore, the powers of a Collector, was transferred to the settlement department, and heard and determined a suit, under Act X of 1859, for enhancement of rent. *Held*, that his powers continued in him notwithstanding his transfer, and that, therefore, he did not need to be re-invested under section 8 of Act XIV of 1863. GIRDHAREE *v.* DILSOOKH RAI [5 N. W., 221

COLLECTOR—*continued.*

18 ——— **Deputy Collector not acting as Settlement Officer.**—*Act XXII of 1872.—Act I of 1874, ss. 7, 8.*—The provisions of section 2 of Act XXII of 1872 applied only to suits in which the proceedings of Deputy Collectors were liable to be set aside for want of jurisdiction, and did not have the effect of reviving decrees passed by them which had been annulled in appeal, or of annulling the decrees in appeal by which those decrees were annulled. Except in the cases of Deputy Collectors employed in making or revising a settlement, Act I of 1874 made no provision for the validation of decrees of Deputy Collectors set aside for want of jurisdiction, or for the invalidation of the decrees of the Appellate Courts which annulled those decrees. *Quære,*—Whether the proviso to section 8 of Act I of 1874, that the provisions of the section should not apply to any case in which the holder of a decree made by an officer employed in making or revising a settlement, and treated as invalid for want of authority in such officer, had, before the passing of the Act, obtained a decree in a competent Court in another suit on the same cause of action, would have applied to a case where the holder of the decree brought another suit, the decree in which was against him. JEEWA RAM *v.* ISEEB . . . . . 6 N. W., 153

19. ——— **Deputy Collector acting as Settlement Officer.**—*Reg. IX of 1825, ss. 5 and 6.*—Any Deputy Collector, deputed and authorized under section 6 of Regulation IX of 1825 to make an enquiry, with the same powers and authority in regard to all lands held free of assessment and for the investigation of all claims touching such lands as by section 5 of the Regulation were vested in Collectors making settlements prescribed by Regulation VII of 1822, is justified in taking the initiative in cases in which the Government has no interest, as in plots under 50 bighas, with respect to which it has waived its right to resume in favour of the proprietor of the mahal. BHOLAN MISSER *v.* KANHIYA LAL . . . . . 7 N. W., 302

20. ——— **Transfer of case to Assistant Collector to record evidence.**—A Collector is incompetent to send a case to the Assistant Collector merely to record the evidence therein, and when this is done, all subsequent proceedings will be annulled. ZAIB-OONNISSA *v.* ADJOODHYA PERSHAD [2 N. W., 198

BHOWANEE DUTT SINGH *v.* BEER SINGH [2 N. W., 196

21. ——— **Offence against the Stamp Laws.**—*Act XVIII of 1869, s. 34.*—The Collector being primarily responsible for the prosecution of offences against the Stamp Acts of 1869 and 1879, should not himself try, as a Magistrate, a person accused of an offence against either of those Acts. EMPRESS OF INDIA *v.* DEOKI NANDAN LAL [I. L. R., 2 All., 806

22. ——— **Agent of Court of Wards for disqualified proprietor.**—*N.-W. P. Land Revenue (Act XIX of 1873), s. 204,—Public Officer.—Civil Procedure Code, 1877, ss. 2 and 424.*—A Collector, when acting under section 204 of Act XIX of

COLLECTOR.—Agent of Court of Wards for disqualified proprietor—*continued.*

1873 as the agent of the Court of Wards in respect of the estate of a disqualified person, is a public officer within the meaning of sections 2 and 424 of Act X of 1877, and consequently, when sued for acts done in that capacity, is entitled to the notice of suit required by the latter section. COLLECTOR OF BIJNOR *v.* MUNUVAR . . . . I. L. R., 3 All., 20

COLLISION.

See JURISDICTION, ADMIRALTY.
[10 Bom., 110
1 Hyde., 275
4 Bom., O. C., 149

See CASES UNDER SHIPPING LAW—COLLISION.

COMMISSION.

Col.
1. CIVIL CASES 909
2. CRIMINAL CASES . . . 913

See EVIDENCE—CIVIL CASES—SECONDARY EVIDENCE—NON-PRODUCTION FOR OTHER CAUSES . . I. L. R., 9 Calc., 939

See PARDA-NASHIN WOMEN.
[I. L. R., 4 Calc., 20: 3 C. L. R., 93

1. CIVIL CASES.

1. ——— Case on peremptory board.—*Practice.*—A commission for the examination of witnesses will be issued, even though the cause is entered upon the peremptory board of the day, if the issuing of such commission is not calculated to prejudice the defendants, or to subject them to loss or inconvenience. JANSSEN *v.* DUNDAS
[1 Hyde, 269

2. ——— Witness out of jurisdiction.—*Power of granting commission to examine a party to suit.*—A commission will be granted nearly as a matter of course to examine a material witness who is out of the jurisdiction of the Court, if the witness cannot be brought into Court by its ordinary process. But the commission will not be granted, at the instance of either party, to enable him to give evidence himself under a commission, except under very strong circumstances indeed, such as where he is seriously ill. DOUCETT *v.* WISE
[1 Ind. Jur., N. S., 357

3. ——— Obligation to issue.—As to the obligation on the Court to issue a commission, see *per* AINSLIE, *J.*, in HARIDAS BAISAKH *v.* MOAZAM HOSSEIN
[8 B. L. R., Ap., 16: 15 W. R., 447

4. ——— Non-resident witnesses.—*Civil Procedure Code, 1859, s. 175.*—The Court is invested with discretionary power to grant or to refuse applications made under section 175, Act VIII of 1859, for the examination by commission of witnesses resident more than 100 miles distant from Calcutta. BURNEY *v.* EYRE . . . . 1 Hyde, 68

COMMISSION—*continued.*

1. CIVIL CASES—*continued.*

5. ——— Power of Deputy Collector.—A Deputy Collector is competent to depute an officer of his Court to take evidence on commission if the place where the witness is examined is within his jurisdiction. RAM CHAND MOOKERJEE *v.* KAMINEE DABEA . . . . 10 W. R., 236

6. ——— Examination of infant.—The Court will not issue a commission for the examination of an infant of tender years. IN THE MATTER OF BEENODEENY DOSSEE
[2 Hyde, 152: Cor., 78

7. ——— Notice to opposite party.—The issue of a commission for the examination of an absent witness without notice to the opposite party, even if not illegal, is objectionable. TARUCKNATH MOOKERJEE *v.* GOUREE CHURN MOOKERJEE
[3 W. R., 147

8. ——— Witnesses residing out of British territories.—Where the application of a party to a suit to have the evidence of witnesses residing beyond the British territories taken under a commission failed, owing to circumstances beyond his control, a subsequent application to have other witnesses examined within the British territories ought to have been complied with. MULLUK ALI SHAH *v.* MEHER BANOO . . 8 W. R., 448

9. ——— Witness, servant of party applying.—*Civil Procedure Code, 1859, s. 175.*—An application for the issue of a commission under Act VIII of 1859, section 175, should be supported by some reason other than the mere distance of place of residence of the witness. If the witness is a stranger, a commission will be right and reasonable; but not if he is a servant of the party applying. AMRITH NATH JHA *v.* DHUNPUT SINGH
[20 W. R., 253

10. ——— Examination under commission.—*Practice—Counsel.*—The examination of witnesses under a commission is of the same nature as an examination in open Court, and should be conducted by counsel and not by attorneys. The return should show on the face of it that the oath was administered to the commissioner as well as to the interpreter. PRANKRISHNA CHANDRA *v.* BISSONATH CHANDRA . . . 8 B. L. R., Ap., 101

11. ——— Examination de bene esse.—*Practice.—Act VIII of 1850, ss. 175, 179.*—A *de bene esse* examination of a witness about to leave the jurisdiction of the Court must be taken by the Court, unless the parties consent to the evidence being taken under a commission. EDWARDS *v.* MULLER
[5 B. L. R., 252

12. ——— *Counsel.*—An examination *de bene esse*, being on the same footing as the examination of a witness in a cause, can only be conducted by counsel. HOFFMAN *v.* FRAMJEE
[Cor., 7

COMMISSION—*continued.*

1. CIVIL CASES—*continued.*

13. ——— **Attendance of witnesses for examination.**—It is the duty of the party obtaining a commission for the examination of witnesses to take such steps as may be necessary to secure the attendance before the commissioner of the witnesses he desires to examine. LEKHRAJ *v.* PALEE RAM . . . . . **2 N. W., 210**

14. ——— **Right of person not joining to cross-examine witnesses.**—A party who has not joined in a commission is entitled to cross-examine the witnesses who are examined under the commission. GREGORY *v.* DOOLEY CHUND **[14 W. R., O. C., 17**

15. ——— **Commission issued without jurisdiction.**—*Obligation to execute.*—A Magistrate is not bound to execute a commission of a Small Cause Court, directing him to take the evidence of prisoners in jail, in a case in which none of the circumstances existed authorising that Court to issue the commission. GOPAL CHUNDER SIRCAR *v.* KUENODHAR MOOCHEE . . **7 W. R., 349**

16. ——— **Charge by Judicial Officer for executing commission.**—*Commission from Insolvent Court.—Taxation of costs.—Counsel's fees.—Practice.*—In the course of insolvency proceedings the Official Assignee obtained a rule *nisi* calling on one *D.*, alleged to have been gomastah to the insolvent, to show cause why he should not hand over to the Official Assignee certain goods and moneys claimed as part of the insolvent's estate. *D.* applied for and obtained a commission to issue to the Judge of Agra as commissioner to examine witnesses on his behalf, but the Judge of Agra refused to execute the commission without being paid his fees, which *D.* accordingly paid. On the hearing of the rule, it was discharged with costs, including costs of the commission. On the taxation of the bill of costs as between party and party, the taxing officer disallowed the sum paid to the Judge of Agra, and allowed certain fees and additional fees to the counsel for *D.* Exceptions were filed by both parties, and eventually the exceptions came on for argument. *Held*, the Judge of Agra was not bound to execute a commission issuing from the Insolvent Court without making a charge for so doing: the amount of the charge is in the discretion of the taxing officer. As to allowing fees to the counsel for *D.*, the taxing officer should consider what was fair and reasonable, regard being had to the nature and circumstances of the case: they are not necessarily to be measured by the amount allowed by the Official Assignee for his counsel. IN RE GHASEERAM . **12 B. L. R., Ap., 4**

17. ——— **Parda-nashin women.**—*Costs.*—The Court will not order the costs of a commission to examine a defendant who is a *parda-nashin* lady to be paid by her, or order the estimated cost of the commission to be paid into Court, although the application for the commission is made by the lady herself. MONINDROBHOOSUN BISWAS *v.* SHOSHEEBHOOSUN BISWAS . **I. L. R., 5 Calc., 866**

COMMISSION—*continued.*

1. CIVIL CASES—*continued.*

18. ——— **Difference between arbitrators and commissioners.**—Commissioners appointed by the Court are officers of the Court, and act by a majority; therefore, where two of the commissioners were agreed,—*Held*, that they had power to make a valid return of the commission, notwithstanding the dissent of the third. RAJENDRA MATILAL *v.* RAMNARAIN MATILAL **[3 B. L. R., Ap., 3**

19. ——— **Evidence taken on commission, Admissibility of.**—*Act VIII of 1859, ss. 177, 176, and 179.—Powers of High Court to issue commission.*—A commission for the examination of a witness at Mandalay can only issue from the High Court. The consent of parties is not requisite to the admissibility of evidence taken under such commission, if the examination have been upon oath or affirmation. AGA MAHOMED JAFFER TEHARANI *v.* NAZIRULLAH . **2 B. L. R., A. C., 73 [10 W. R., 385**

20. ——— *Act VIII of 1859, s. 179.—Evidence on record.—Use by one party of evidence under a commission issued at the instance of another party.*—The evidence of the defendant taken under a commission was allowed to be read on the plaintiff's behalf without the deposition being put in as part of the plaintiff's case as being part of the record under s. 179, Act VIII of 1859. DWARKANATH DUTT *v.* GUNGA DAYI **[8 B. L. R., Ap., 102**

21. ——— *Evidence taken in absence of other side.*—That the evidence was given in the absence of the other side is not enough to make the deposition of a witness taken on commission inadmissible. RAM CHAND MOOKERJEE *v.* KAMINEE DABEA . . . **10 W. R., 236**

22. ——— A Court may legally refuse to hear read in evidence the deposition of a defendant taken by commission where there is no evidence to prove that the defendant was from sickness unable to attend personally at the time of the trial, and the Court declines to dispense with the proof of such circumstance. PRITHEE BULLUBH PAL SREECHUNDUM MARI SULTAN *v.* HARA DHUN SHOME . . . . . **22 W. R., 331**

23. ——— *Documents attached to return of commission.*—Documents attached to the return of a commission, and identified with the documents referred to in the evidence, may be read at the hearing of the suit in which the commission issued, unless they have been objected to on being tendered in evidence before the commissioner. Objections to the admissibility of such documents cannot be taken at the hearing of the suit. STRUTHERS *v.* WHEELER . . . . **6 C. L. R., 109**

24. ——— **Commission of partition.**—*Lien of commissioners on return for fees.*—Certain commissioners, who had acted under a commission of partition, refused to give up the return they had made until they were paid their fees. On application

COMMISSION—*continued.*

1. CIVIL CASES—*continued.*

Commission of partition—*continued.*

to the Court, they were ordered to send in the return. *Held*, that commissioners, under a commission of partition, have no lien on their return thereunder for their fees. RAJMOHEENEY DABEE *v.* MUDDOOSOODUN DEY . . . **Bourke, O. C., 24**

2. CRIMINAL CASES.

25. ——— Evidence of Government servant ordered on service taken by commission previously to departure.—*High Court Criminal Procedure (Act X of 1875), s. 76.*—Where a Government servant who had executed his recognizance to appear and give evidence for the prosecution at a criminal trial to take place in the High Court of Bombay was subsequently ordered to a distant station on the public service, and could not, with due regard to the public interest, return to Bombay in time for the trial,—*Held*, on the application of Government, that his evidence might be taken by commission before his departure from Bombay under the provisions of section 76 of the High Court Criminal Procedure (Act X of 1875). EMPRESS *v.* BAL GANGADHAR TILAK . **I. L. R., 6 Bom., 285**

26. ——— Ground for refusing commission.—*Prejudicing prisoner. High Courts' Criminal Procedure Act (X of 1875), s. 76.*—The High Court refused to issue a commission in a criminal case, on the ground that such a course would be unsatisfactory and dangerous to the interests of the prisoner. EMPRESS *v.* COUNSELL **[I. L. R., 8 Calc., 896**

27. ——— Parda-nashin woman.—*Examination by commission.—Personal appearance in Court.—Criminal Procedure Code (Act X of 1872), s. 330.—Semble,*—That in criminal cases *parda-nashin* women are not of *right* exempted from personal attendance at Court Also that the word "inconvenience" in section 330 of the Criminal Procedure Code (Act X of 1872) empowers the Courts to allow examination by commission in criminal cases where a witness, according to the manners and customs of the country, ought not to appear in public. The complainant in a case of defamation, alleging that she was a *parda-nashin*, applied to be examined by commission. *Held*, that the fact that she was a complainant, and not merely a witness, materially altered her position as regards the question whether she ought not to be exempted from personal appearance in Court, and that, under the circumstances, she ought not to be examined by commission, but ought to attend personally to be examined in Court. Direction to the Magistrate to make such arrangements for the examination of the complainant in Court as should secure her privacy, consistent with the recording of her evidence, according to law, in the presence of the accused. Witnesses in criminal cases should not be examined by commission except in extreme cases of delay, expense, or inconvenience. IN THE MATTER OF THE PETITION OF FARID-UN-NISSA . . . . **I. L. R., 5 All., 92**

COMMISSION—*continued.*

2. CRIMINAL CASES—*continued.*

28. ——— Grounds for granting commission.—*Inconvenience.—Expense.*—At the trial of a person for an offence under section 411, Penal Code, the Court of Session, under section 33 of the Evidence Act, used against the accused the evidence of the owner of the property in respect of which the accused was charged and of his wife taken by commission during the enquiry, and the evidence of the servant of those persons taken at the enquiry, and also the evidence of the owner of the property taken during the trial under a commission issued by the Sessions Judge under section 503 of the Criminal Procedure Code. The grounds upon which the Sessions Judge admitted the evidence taken during the enquiry were that the attendance of the witnesses could not be procured without an expense of R500, an amount which he considered unreasonable; that the witnesses would be inconvenienced; and that their evidence did not concern the accused personally, having reference only to the identification of the property in respect of which the accused was charged. *Held*, that the Sessions Judge had improperly admitted such evidence. Inconvenience to witnesses is no ground allowed under section 33 of the Evidence Act, and the question of identification was a most material one, and the evidence of the witnesses in question was of the utmost moment, the whole case resting on it; and as regards the ground of expense, it was impossible to consider the amount unreasonable, considering that the entire case rested on the evidence of those witnesses, and that the accused had not cross-examined those whose evidence had been taken by commission, nor, looking at his position, could he arrange for their cross-examination. *Held*, that on these grounds the Sessions Judge was not justified in issuing a commission under section 503 of the Criminal Procedure Code. QUEEN-EMPRESS *v.* BURKE **[I. L. R., 6 All., 224**

29. ——— Application by prisoner for commission to place out of the jurisdiction.—Previously to the trial at the Sessions the prisoner had applied to the Court for commissions to Pondicherry and Mauritius to take evidence on his behalf. The application was refused on the ground that the High Court had no authority to issue a commission in such a case, but the learned Judge (WEST, *J.*) reserved the question for the full Court. *Held*, that the High Court had no power to issue a commission out of the jurisdiction in a criminal case on an application by the accused. EMPRESS *v.* MOORGA CHETTY **[I. L. R., 5 Bom., 338**

COMMISSION, ORDER DISALLOWING, TO ADMINISTRATOR GENERAL.

See LETTERS PATENT, HIGH COURT, CL. 15. **[I. L. R., 1 Mad., 148**

COMMISSION, RULE AS TO RATE OF—

See ADMINISTRATOR GENERAL'S ACT, 1874, s. 27 . **I. L. R., 1 Mad., 148**

COMMISSION TO MOOKTEARS, PRACTICE OF GIVING—

See PLEADER—REMOVAL, SUSPENSION, AND DISMISSAL OF— . 11 B. L. R., 312

COMMISSION TO OFFICIAL ASSIGNEE.

See INSOLVENT ACT, s. 19.
[I. L. R., 8 Mad., 79
I. L. R., 13 Calc., 66

COMMISSION SALE, GOODS REMAINING WITH INSOLVENT ON—

See INSOLVENCY—ORDER AND DISPOSITION . . I. L. R., 3 Calc., 58

COMMISSIONER, SUIT BY, FOR HIS COSTS.

See RIGHT OF SUIT—COSTS.
[I. L. R., 4 Mad., 399

COMMISSIONER FOR TAKING ACCOUNTS—Certificate and report of—

See PRACTICE—CIVIL CASES—COMMISSIONER FOR TAKING ACCOUNTS.
[I. L. R., 3 Bom., 161

——— Disobedience to order of—

See PRACTICE—CIVIL CASES—COMMISSIONER FOR TAKING ACCOUNTS.
[10 Bom., 4

——— Motion to vary report of—

See PRACTICE—CIVIL CASES—COMMISSIONER FOR TAKING ACCOUNTS.
[I. L. R., 1 Bom., 158
I. L. R., 9 Bom., 250

——— Power to grant certificates.

See PRACTICE—CIVIL CASES—COMMISSIONER FOR TAKING ACCOUNTS.
[I. L. R., 3 Bom., 161

1. **——— Dismissal of suit on failure to pay fee.**—*Civil Procedure Code, 1877, s. 394.—Remuneration of Commissioner.*—The Code of Civil Procedure does not authorise the dismissal of a suit on refusal or failure of a party to deposit the amount ordered by the Court as remuneration to a commissioner appointed under section 394 to examine accounts. The remuneration of a commissioner appointed by the Court to examine accounts should, as a rule, be a definite amount and not at a monthly allowance. RAGAVA CHARIAR *v.* VEDANTA CHARIAR
[I. L. R., 3 Mad., 259

2. **——— Enquiry into correctness of report.**—*Civil Procedure Code, 1859, s. 181.—Power of High Court to examine accounts.—Act XXIII of 1861, s. 37.*—An error in the principle on which an account is taken is not the only ground on which a Court should enquire into the correctness of a report of a commissioner appointed under section 181 of the Code of Civil Procedure. It is competent to an

COMMISSIONER FOR TAKING ACCOUNTS—Enquiry into correctness of report—*continued.*

Appellate Court, under the powers conferred by section 37 of Act XXIII of 1861, to examine the accounts, even if no exception has been taken to them in the Court appointing the commissioner. Madras rulings dissented from. AHMED VALAD NANHUBHAI *v.* KHASAJI VALAD KARIMBHAI
[6 Bom., A. C., 149

3. **——— Power of High Court to deal with commissioner's report.**—*Civil Procedure Code, 1859, s. 181.*—Where a commissioner appointed under section 181 of Act VIII of 1859 to investigate the state of accounts between a debtor and creditor, made his report on which the judgment appealed against was founded, the High Court on regular appeal refused to take a fresh account. SARAPU VENKADESAN *v.* MALAI ISVARAIYYA . . . . . 1 Mad., 1

4. **——— *Objection not taken in Court below.—Error in taking account.***—The Appellate Court will not enter into the details of the account of a commissioner appointed under section 181 of the Code of Civil Procedure. A party cannot be heard in the Appellate Court upon items to which he took no objection in the Court below. But where there has been error in the principle upon which such account has been taken, the Appellate Court will correct such error, if excepted to in the Court below. VENKATA REDDI *v.* VENKATARAMAIYA. CHINNAMALLAIYA *v.* VENKATARAMAIYA . . . . . 1 Mad., 418

5. **——— Effect of commissioner's report.**—Although a commissioner's report should have very great weight attached to it, it is not absolutely binding. *Venkata Reddi* v. *Venkataramaiya, 1 Mad., 418,* dissented from. KANKATALA CHELLAMAIYA *v.* POLESHETTI PAPAIYA
[6 Mad., 36

6. **——— Swearing or affirming commissioner.**—*Civil Procedure Code, 1859, s. 181.*—There is nothing in the Code of Civil Procedure making it necessary that a commissioner appointed to take accounts should be sworn or affirmed. NURSINGH DASS *v.* NARAIN DASS . 3 N. W., 217

7. **——— Investigation of accounts.**—*Civil Procedure Code, 1859, s. 181.—Taking depositions of witnesses.*—Where the plaintiff had filed his khatta-books in Court and did not allege that they had been falsified, he should have balanced the account himself, and the lower Court should not have deputed an ameen, under section 181 of Act VIII of 1859, to investigate the accounts. Such an investigation does not include or allow the taking the depositions of witnesses; and such depositions are not legally admissible as evidence in the case. CHAND RAM *v.* BROJO GOBIND DOSS . . . . 19 W. R., 14

8. **——— Power of Court to deal with facts found by Commissioner.**—*Civil Procedure Code, 1859, s. 181.—Reference to examine accounts.*—In a suit for an account, it was ordered by

COMMISSIONER FOR TAKING ACCOUNTS.—Power of Court to deal with facts found by Commissioner—*continued.*

consent of parties that the case should be referred to a commissioner to take accounts, who in taking them was to decide upon all questions of fact, whether as to the delivery of certain merchandise, or the value of such merchandise delivered or otherwise, with full powers for the purposes of the investigation; and that if questions of law should arise and could not be settled or disposed of before the commissioner, they were to be submitted to the Court. *Held*, that this reference was different from the ordinary reference to a commissioner to examine accounts under section 181 of the Code of Civil Procedure. *Quære*,—Whether it would be competent to the Court to reopen a question of account against a clear finding upon a question of fact relating to the account, and made by the commissioner upon the evidence properly before him. WATSON *v.* AGA MEHEDEE SHERAZEE . . **L. R., 1 I. A., 346**

COMMISSIONER OF INSOLVENT COURT, APPEAL FROM—

See SECURITY FOR COSTS—APPEALS.
[5 B. L. R., 179

COMMISSIONER OF INSOLVENT COURT, POWER OF—

See INSOLVENT ACT, s. 73.
[1 B. L. R., O. C., 130
3 B. L. R., Ap., 14
5 B. L. R., 179
15 B. L. R., Ap., 10
9 Bom., 319

COMMISSIONERS OF REVENUE AND CIRCUIT.

——— The law relating to Commissioners of Revenue and Circuit reviewed. IN RE PARBHU NARAYAN SINGH
[3 B. L. R., A. C., 370: S. C., 12 W. R., 323

COMMITMENT.

See CRIMINAL PROCEDURE CODE, 1882, s. 347 . . **I. L. R., 3 Calc., 495**

See MAGISTRATE, JURISDICTION OF—COMMITMENT TO SESSIONS COURT.
[I. L. R., 2 All., 910

1. ——— Discretion as to commitment.—*Proper exercise of discretion.*—The power of commitment given to a Court of Session by section 435, Code of Criminal Procedure, must be exercised judicially upon the evidence before the Court, and such Court ought not to order a commitment, unless the evidence appear to it sufficient for a conviction within the terms of section 226. QUEEN *v.* SHAMA SUNKER BISWAS . . **10 W. R., Cr., 25**

2. ——— *Discretion of Sessions Judge to commit discharged person.*—A Sessions Judge has a discretion to order or not to order the commitment to the Sessions Court of any accused

COMMITMENT.—Discretion as to commitment—*continued.*

person discharged by the Magistrate, with which the High Court will not interfere. QUEEN *v.* SHEETARAM CHOWDHRY . . **2 W. R., Cr., 44**

3. ——— Discharge of accused on withdrawal of prosecution after commitment.—*Criminal Procedure Code (1882, ss. 214, 215), 1872, s. 197.—Commitment on a charge of adultery.*—A Magistrate having committed a person for trial by the Court of Session on a charge of adultery, immediately afterwards, on the representation of the prosecutor that he wished to withdraw from the prosecution, discharged the accused. *Held* that the order of discharge was bad, as under sections 196 and 197, Explanation, Criminal Procedure Code, a commitment once made can be quashed by the High Court only. EMPRESS *v.* JANGBIR
[I. L. R., 4 All., 150

4. ——— Commitment after order of discharge.—*Criminal Procedure Code, 1872, s. 197.*—A Magistrate, after examining four witnesses for the prosecution, discharged the accused under section 195, Criminal Procedure Code, 1872. Subsequently, on becoming aware that there was a fifth witness present, the Magistrate cancelled his order of discharge, took further evidence, and committed the accused for trial to the Court of Session. *Held*, on submission of the case with reference to Explanation 1 of section 197, Act X of 1872, that the commitment was good. ANONYMOUS **7 Mad., Ap., 40**

5. ——— Commitment made without jurisdiction.—Where a Magistrate without jurisdiction commits an accused person to the Sessions Court, such commitment is void, and no reference to the High Court is necessary to have it set aside. IN THE MATTER OF EMPRESS *v.* ALIM MUNDLE
[11 C. L. R., 55

See, however, section 532 of the Criminal Procedure Code, 1882.

6. ——— Illegal commitment.—*Criminal Procedure Code, 1872, s. 197.—Power to quash commitment.*—Where the accused could not be found and the witnesses were examined in his absence under section 327, Criminal Procedure Code, 1872, and he was on arrest committed and put on his trial without any re-examination of the witnesses and pleaded not guilty,—*Held* that, having been committed and having pleaded to the charge, the commitment could not be quashed. EMPRESS *v.* SAGAMBUR
[12 C. L. R., 120

7. ——— *Criminal Procedure Code, 1882, s. 215.—Defect in law.*—Where a person was committed on a charge of using certain evidence known to be false,—*Held*, that the fact that there was not any evidence to connect such person with the use of such false evidence, was a defect in law sufficient to justify the quashing of the commitment. EMPRESS *v.* NAROTAM DAS
[I. L. R., 6 All., 98

COMMITMENT.—Illegal commitment— *continued.*

8. ——— *Order for further enquiry and commitment passed simultaneously.*— Where the order of the Sessions Judge amounted to simultaneously directing further enquiry into the alleged offence and to ordering commitment of the accused,—*Held*, that the commitment was premature and illegal and must be set aside. ADYAN SING *v.* QUEEN-EMPRESS . . I. L. R., 13 Calc., 121

9. ——— **Power of the Court of Session to commit a discharged person for trial without the intervention of a Magistrate.** —*Criminal Procedure Code, ss. 193, 436, and 537.*— In cases exclusively triable by the Court of Session, section 436 of the Code of Criminal Procedure (Act X of 1882) empowers the Court of Session or District Magistrate to order a discharged person to be committed for trial by such Court. There is nothing in that section to show that, when such order is made, the commitment thereupon must necessarily be made by the Magistrate who has discharged him, whilst the first proviso to it shows that it may be made by the Court of Session or by the District Magistrate, according as the power under that section happens to be exercised by one or the other. Meaning of the expression "a Court of competent jurisdiction" in section 537 of the Criminal Procedure Code (X of 1882) considered. A Court of Session may try a prisoner so committed and charged by itself. QUEEN-EMPRESS *v.* KRISHNABHAT [I. L. R., 10 Bom., 319

10. ——— **Appellate Court, Powers of, as to commitment.**—*Criminal Procedure Code, ss. 423, 436, 439.*—The Appellate Court referred to in section 423 of the Criminal Procedure Code can, in an appeal from a conviction, only order an accused person to be committed for trial when it considers that the accused is triable exclusively by the Court of Session. The meaning of the words in section 423 (*b*) of the Criminal Procedure Code, "or order him to be tried by a Court of competent jurisdiction subordinate to such Appellate Court, or committed for trial," is as follows: If on an appeal from a conviction the Appellate Court finds that the accused person, who was triable only by a Magistrate of the first class or by a Court of Session, has, by an oversight or under a misapprehension, been tried, convicted, and sentenced by a Magistrate of the second class, the Appellate Court may in that case reverse the finding and sentence, and order the accused to be re-tried by a Magistrate of the first class or by the Court of Session; and, in like manner, when the appellant, who was triable solely by the Court of Session, has been tried, convicted, and sentenced by a Magistrate of the first class, the Sessions Judge, in disposing of the appeal, is empowered to reverse the finding and sentence, and to order that the accused be committed for trial. QUEEN-EMPRESS *v.* SUKHA [I. L. R., 8 All., 14

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See CASES UNDER UNLAWFUL ASSEMBLY.

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——— **s. 173.**

See INSOLVENT ACT, s. 46. [1 Ind. Jur., N. S., 350, 352
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COMPANY—*continued.*

1. FORMATION AND REGISTRATION.

1. ——— **Association of artizans for acquisition of gain.**—*Registration of Association.*—An association of artizans for the purpose of enhancing the price of their work by bringing all the business of the trade into one shop and dividing the prices of the work done amongst the members according to their skill, is an association that has for its object the acquisition of gain, and if consisting of more than twenty persons must be registered. BHIKAJI SABAJI *v.* BAPU SAJU

[I. L. R., 1 Bom., 550

2. ——— **Evidence of Registration.**—*Evidence of Registration of Shareholders.*—The register of shareholders required by section 14 of Act XIX of 1857 may consist of particulars entered in different books, which taken together substantially contain all the information which the Act requires. If there be a substantial compliance with the requisitions of the Act, the register is not invalidated by reason of slight deviations from its directions or by unimportant omissions or defects in particulars of information specified in section 14. If the certificate of registration be not forthcoming, the fact of incorporation may be proved *aliunde.* IN RE ALLIANCE FINANCIAL CORPORATION, BLANKY'S CASE

[3 Bom., O. C., 106

3. ——— **Suit to recover debts arising from transaction before registration.**—*Company not authorised to sue by officers.—Act X of 1866.*—A society, which came into existence after Act X of 1866, but was not registered until some time afterwards, under the provisions of that Act, sued by some of its officers to recover debts arising out of transactions entered into before registration. *Held,* that such society could not recover in the suits in their present form, as it was not, before registration, an association authorised to sue in the name of an officer. SENNAY POORASAY HINDU JANONOOKOOLA NIDHI *v.* THAYAR AMMAL . **8 Mad., 193**

2. ARTICLES OF ASSOCIATION AND LIABILITY OF SHAREHOLDERS.

4. ——— **Objections outside scope of articles of association.**—*Companies' Act, X of 1866, ss. 16 and 208.*—Section 16 of Act X of 1866 does not refer to obligations contracted with a company in accordance with the purpose of its formation other than those directly implied by the articles of association Section 208 of the Act has no application to companies formed but not registered after the Act came into force. PURSEWALKUM HINDU JANOBACARA NIDHI *v.* NARAYANA ACHARRY

[8 Mad., 198

5. ——— **Articles of association, Variation in.**—*Liability of shareholders.*—Where a clause in the articles of association provided that the existing shareholders for the time being should have the option of taking and subscribing for the shares in the additional capital, rateably and in proportion to their respective shares in the existing capital

COMPANY—*continued.*

2. ARTICLES OF ASSOCIATION AND LIABILITY OF SHAREHOLDERS—*continued.*

Articles of association, Variation in— *continued.*

of the company,—*Held,* that the clause being imperative, and not merely directory, a deviation from it could not be made, unless with the assent of every shareholder. EASTERN FINANCIAL ASSOCIATION *v.* PESTANJI CURSETJI . . **3 Bom., O. C., 9**

6. ——— **Material variance between prospectus and memorandum of association.**—*Illegal powers.—Shareholders.*—Distinction pointed out between the case of a person who agrees to take shares in a projected company upon the faith of a prospectus, and one who does so upon the faith of a document purporting to be the proposed memorandum of association of such a company. The defendant, on being shown a document purporting to be the memorandum of association of a projected company, signed his name to it as having taken four shares. This document was not registered as the memorandum of association of the company, but another was, which differed from it in omitting, in its 4th clause, the word *yearly* before the word *profits,* on which the company were to pay a certain commission to the secretaries, agents, and treasurers, and in adding to its 6th clause a provision empowering the company by special resolution in general meeting to subdivide the shares. *Held* that the first was not, but the second was, a material variance. *Quære,*—Whether the provision empowering the company to subdivide the shares was illegal. But even if it was,—*Held,* that the effect of it being practically to alter the position of the defendant from what it would have been had the document signed by him been registered as the memorandum of association of the company, the defendant was not a shareholder in the company registered. *In re the Financial Corporation, L. R., 2 Ch. Ap., 714,* commented on. ANANDJI VISRAM *v.* THE NARIAD SPINNING AND WEAVING COMPANY, LIMITED

[I. L. R., 1 Bom., 320

7. ——— **Contributories.**—*Act X of 1866, ss. 6, 11, 18, 22, 36, 37, and 101.—Liability of registered shareholders.—Appeal from Recorder.*—In June 1865 was projected the Pegu Saw Mills Company, Limited, appellants being amongst the projectors, and having signed the prospectus, and entered their names in a list (attached to the prospectus) of intending shareholders, each to a specified extent. Their names were also entered as such shareholders in the registration of the company under Act X of 1866. In January 1867 certain contributors (amongst whom appellants were not) and certain creditors applied to the Recorder of Rangoon, under clauses 4 and 5, section 101, to have the company wound up, and an official liquidator appointed. A liquidator having been appointed, he applied to the Court to call upon each of the contributories, named in a list which he presented, to pay up his contribution. Accordingly, the Recorder declared the appellants to be contributories, and directed each of them to pay the amount appearing against his name. *Held,*

COMPANY—*continued.*

2. ARTICLES OF ASSOCIATION AND LIABILITY OF SHAREHOLDERS—*continued.*

Contributories—*continued.*

that this was a suit by the official liquidator to have appellants declared contributories, and an appeal therefore lay from the Recorder's decision so declaring them. *Held* that the liability, under sections 6, 11, 18, 22, 36, and 37, of a registered shareholder, as member of a company, to contribute, is a *primâ facie* liability only; it being open to him to show that although his name was on the register, yet he did not agree to become a member; and that, as appellants were not cognizant of (much less did they assent to) the registration of their names as shareholders, whilst they refused to receive any shares or pay up any calls or deposits, the sole step taken by them of joining others in putting forth the prospectus and affixing their names therein to a certain number of shares could not be said to be an agreement to become members of the company, and therefore they were not contributories. COTTON *v.* THE PEGU SAW MILLS COMPANY . . . . . **9 W. R., 539**

8. ——— Name on register.—*Refusal to sign articles of association.—Shareholder.*—Defendant applied for 100 shares in a company, and on their being allotted to him paid R1,000 in deposit. His name was placed upon the register of shareholders, but he refused to sign the articles of association. *Held*, that he was not liable as a shareholder. GOOSERY COTTON MILLS COMPANY *v.* STEEL **[2 Hyde, 238**

9. ——— Share in company, Signification of.—*Name on register.*—A share in a company signifies a definite portion of its capital, and does not necessarily mean the right of a person whose name is then actually on a register of shareholders. PARBHUDAS PRANJIVANDAS *v.* RAMLAL BHAGIRATH **[3 Bom., O. C., 69**

10. ——— Shareholder whose shares are forfeited, Position of.—*Contributories.*—A member of a duly registered company whose shares have been forfeited is as much a past member as a member whose shares have been surrendered or transferred, but he is not liable to be placed on the list of contributories until it is established that the existing members are unable to satisfy the contributions required to be made by them, in pursuance of the Indian Companies Act, and that the debts, in respect of which he is called upon to contribute, were incurred prior to the date on which he ceased to be member of the company. IN RE THE ALLAHABAD TRADING COMPANY **[1 N. W., Part 6, p. 101: Ed. 1873, 190**

11. ——— Constituting person a member of company.—*Companies Act, X of 1866, s. 22.—Member of company.—"Subscriber of the memorandum."—"Agreement to become a member."—Company not in existence.—Rescission.—Liability for calls.*—The defendant, amongst others, subscribed (for 101 shares) a copy of the memorandum and articles of association of the plaintiff company then in process of formation, but subsequently, and before registration, gave notice to the persons most active in the promotion of the said company, that he would withdraw his signature, and would have no connection thenceforth with the proposed company. His withdrawal, however, was not accepted. Subsequently to the receipt of the said notice, the memorandum and articles of association, so signed by the defendant and others, were presented for registration; but registration was refused, on the ground that the said documents were not printed. A printed copy of each was then procured and registered. The registered copies differed, in respect of the signatures subscribed thereto, from the copies signed by the defendant. The defendant's name was put upon the register of the company as the holder of 101 shares, but without the defendant's assent or knowledge, and two calls were made upon him in respect of the said shares. The defendant denied that he was a member of the said company, or liable for calls. *Held*, that the defendant was not a member of the plaintiff company; either (*i*) as a "subscriber of the memorandum of association" under the earlier part of section 22 of the Indian Companies Act, inasmuch as the memorandum there referred to was *the registered* memorandum, of which the document signed by the defendant was not even a true copy; or (*ii*) by reason of an "agreement to take shares" under the latter part of that section, inasmuch as the agreement there alluded to was an agreement *with the company*, and the agreement (if any) entered into by the defendant was not, and could not have been, an agreement with the company, the company not being at that time in existence. *Quære,*—Whether it is enough, to constitute a person a member of a company under the earlier part of section 22, to subscribe a true copy of the registered memorandum of association. GUZERAT SPINNING AND WEAVING COMPANY *v.* GIRDARLAL DALPATRAM **[I. L. R., 5 Bom., 425**

3. TRANSFER OF SHARES AND RIGHTS OF TRANSFEREES.

12. ——— Blank transfer.—*Right of transferee under blank transfer to registration.—Discretion of Directors.—Companies Act, 1866, s. 34.—Discretion of the Court to refuse to hear the case under s. 34.*—The power given to the Court by section 34 of the Indian Companies Act of 1866 is discretionary, and the Court will not order a transfer to be registered where the alleged transferor is not before the Court, and there is any real doubt as to the validity or *bonâ fides* of the transaction. IN THE MATTER OF THE INDIAN COMPANIES ACT. IN THE MATTER OF THE PETITION OF LUCHMEE CHUND. LUCHMEE CHUND *v.* THE BENGAL COAL COMPANY **[I. L. R., 8 Calc., 317**

13. ——— Refusal of company to register purchase at sale in execution of decree.—*Mandamus.*—Where shares in the East In-

COMPANY—*continued.*

3. TRANSFER OF SHARES AND RIGHTS OF TRANSFEREES—*continued.*

Refusal of company to register purchase at sale in execution of decree—*continued.*

dian Railway Company belonging to an execution-debtor who had absconded with the share certificates, were sold in execution, the transfer being executed by a Judge under the provisions of Act VIII of 1859, section 267,—*Held* that, although the Company's deed of settlement, under which their Act of Parliament declared that the Company should be regulated, gave to the Board of Directors a power of approval or disapproval of intending shareholders, they had no option as to registering a shareholder who purchased shares in execution; and that they were also bound to grant him, under the circumstances, new share certificates. REG. ON THE PROSECUTION OF TOOLSEE DASS NUNDY *v.* EAST INDIAN RAILWAY COMPANY

[1 Ind. Jur., N. S., 258: Bourke, O. C., 395

4. POWERS, DUTIES, AND LIABILITIES OF DIRECTORS.

14. ——— Power to appoint solicitor to company.—*Suit by agents of company to restrain it from carrying into effect a resolution of directors.—Injunction.—Right to sue, Survival of.*—By the memorandum and articles of association of the New Dhurumsey Poonjabhoy Spinning and Weaving Company, the plaintiff's firm of *M. F. & Co.* were appointed agents of the company for twenty-five years, and it was provided that they should have the general control and management of the company. Clause 98 of the articles provided that the said firm, as such agents, should have full power and authority (*inter alia*) to appoint and employ, in or for the purposes of the transaction and management of the affairs and business of the company, such solicitors as they should think proper. An agreement, dated 26th August 1874, was also entered into between the company and the partners in the firm of *M. F. & Co.*, their executors, administrators and assigns, *for the time being constituting the partnership firm of M. F. & Co.*, whereby it was agreed that the said firm should be agents to the company for twenty-five years to buy and sell, &c., and particularly to exercise all the powers contained in clause 98 of the articles of association. *Messrs. C. and B.* were duly appointed solicitors to the company, and acted as such for a considerable time. Merwanji Framji, one of the members of the said firm of *M. F. & Co.*, died in the middle of March 1876. The plaintiffs complained that *G.*, one of the shareholders in the company, became desirous of ousting the plaintiffs from the position of agents of the company, and of becoming the managing director of the company; that, in July 1881, he procured his own election, and that of certain nominees of his as directors of the company; and on the 8th August 1881, procured the passing of a resolution at a board meeting to the effect that as *Messrs. C. and B.*, the company's solicitors, were also the solicitors of the agents, it was desirable, for the interests of the company, that a change should be

COMPANY—*continued.*

4. POWERS, DUTIES, AND LIABILITIES OF DIRECTORS—*continued.*

Power to appoint solicitor to company—*continued.*

made, and that *Messrs. H., C., and L.*, be appointed solicitors of the company. The plaintiffs alleged that the only object of passing the said resolution was to facilitate the design of *G.*, of ousting the plaintiffs from their agency, and getting the management of the company for himself; that *Messrs. H., C., and L.* had been for a long time the solicitors of *G.*, and had been advising him in his designs upon the company and upon the plaintiffs, and they contended that the resolution was a breach of the contract between the company and the plaintiffs, and a violation of the articles of association of the company. The plaintiffs sued *G.* and two other directors of the company, and the company itself, and prayed for an injunction against the defendants to restrain them from committing any breach of the agreement of 26th August 1874, and in particular from carrying into effect the resolution appointing *Messrs. H., C., and L.* as solicitors for the company, and to restrain them from doing any thing inconsistent with the memorandum and articles of association. The defendants contended that the contract of the 26th August 1874 had been determined by the death of Merwanji Framji, and that the powers conferred on the agents by clause 98 of the articles were, subject to the general powers of management, vested in the directors by the articles, and that the case was not one in which an injunction could be granted. *Held* that, having regard to the memorandum and articles of association, the contract was that the firm of *M. F. & Co.* for the time being should be the agents of the company for twenty-five years, and that the right to sue on the contract by its nature survived to the plaintiffs after the death of Merwanji Framji. *Held*, also, that there being no provision either in the articles of association or the agreement of 26th August 1874, that the power thereby conferred on the agents should be subject to the control or assent of the directors, there was no right in the directors to interfere with the agents in the exercise of their powers otherwise than as representing the company in virtue of their general powers of management. NUSSERWANJEE *v.* GORDON . **I. L. R., 6 Bom., 266**

15. ——— Appointment of partner of director to do work for company as solicitor.—*Director of public company.—Trustee.*—Although a director of a public company is always clothed with a fiduciary character in regard to any dealings with property of the company in his capacity of director, the rule that a trustee is not allowed to make a profit of his trust does not apply to such a director, *quâ* director only. When a partner of one of the directors of a company did work for the directors as solicitor, and there was nothing to show that he had not been duly appointed by the directors, his claim in respect of such work was allowed. Distinction drawn between a trustee and a director of a public company. IN THE MATTER OF THE PORT CANNING COMPANY, LIMITED . **6 B. L. R., 278**

COMPANY—*continued.*

4. POWERS, DUTIES, AND LIABILITIES OF DIRECTORS—*continued.*

16. ——— Authority of agent.—*Corporation.—Contract under seal.—Companies' Clauses Consolidation Act, 8 and 9 Vict., c. 16, s. 97.*—The Scinde Railway Company was incorporated by 18 and 19 Victoria, Cap. 115, for the purpose of making and maintaining railways in India, and for other purposes. This was repealed by 20 and 21 Victoria, Cap. 160, which authorised the Company to extend their operations and also their capital, &c. This Act by section 3 declared the Companies' Clauses Consolidation Act, 1845, to be incorporated with it. By section 18 the Company have a "seal for use in India in lieu of the common seal of the Company, and from time to time may vary and renew it, and make regulations for its use; and except as by this Act otherwise expressly provided, every document sealed with such seal, in conformity with such regulations, or in pursuance of any order of the directors, or of any authority given by the Company under their common seal shall be as valid and effectual as if the common seal were affixed thereto." By section 54, "the Company from time to time may appoint and remove such committees, persons or person as the Company think fit to act on behalf of the Company in India or elsewhere, with respect to the making, maintaining, managing, working, and using of the railways and other works of the Company, and the control and conduct of any of the affairs in India or elsewhere of the Company; and may delegate to any such committee, persons and person respectively all or any of the powers of the Company and of the directors and officers thereof, which the Company thinks it expedient that such committee, persons, and person respectively should possess for the purposes of his or their respective appointment." In January 1867, *E.* was the agent of the Company in India, and he entered, it was alleged on their behalf, into a contract with the plaintiffs for sixty sets of iron-work for low-sided waggons. The plaintiffs' firm did not deal in iron-work, and they had to get the goods manufactured for them in England. The Board of Directors were at the time supplying iron-work for the Company. There was nothing to show that *E.* had been appointed under the provisions of section 54 of the Act 20 and 21 Victoria, Cap. 160, nor was there any evidence of the extent of his power or authority. A specification of the contract differed from it, in that it stated the waggons to be covered waggons, and not low-sided waggons. The contract was not made under seal of the Company, nor was the iron-work, the subject of the contract, ever accepted by the Company. The defendants admitted that at the date of the alleged contract *E.* was the agent of the Company in India, but denied that his power extended to the making of such contract; they further stated that the contract, if entered into, had been afterwards cancelled. *Held* by PHEAR, *J.*, that there was no evidence to show that *E.* had authority to make the contract. The contract was one which *E.* would have had power to make in writing only, under section 97 of the Companies' Clauses Consolidation Act, had he been appointed under section 54, 20 and 21 Victoria, Cap. 160; but there was no proof of such

COMPANY—*continued.*

4. POWERS, DUTIES, AND LIABILITIES OF DIRECTORS—*continued.*

Authority of agent—*continued.*

appointment. *Held* on appeal that, assuming that *E.* had been appointed under section 54, with powers as large as in the ordinary course could be conferred upon him under that section, the contract was not one by which, acting as such agent, he had power to bind the Company. STEWART *v.* SCINDE, PUNJAB, AND DELHI RAILWAY COMPANY . 5 B. L. R., 195

17. ——— Duties of promoters and directors.—*Trustees.*—*A.* and *M.*, at the request of *B.*, agreed to get up a company which should purchase from *B.* the good-will, stock, and furniture of Spence's Hotel and all outstandings due to *B.* for four lakhs of rupees. The scheme was made public, and shares were applied for in excess of the intended capital. On the 1st May 1863 the memorandum of association was registered, signed, *inter alia*, by *A.* and *M.* On the same day the prospectus was issued, which stated, *inter alia*, that "the company have purchased from the former proprietors for the sum of R4,00,000 the entire stock of hotel and shop, together with the outstandings on the 30th April 1863, the latter amounting to about R50,000. The dividend of 10 per cent. per annum for two years is guaranteed to the shareholders." The prospectus was signed by *A.* and *M.* and another as directors, but the last took no active part. On the same day an agreement was signed by *B.*, whereby he agreed, in consideration of R4,00,000 paid by *A.* and *M.* as therein mentioned, — *viz.*, R1,50,000 in paid-up shares of the company,—to transfer to them, or Spence's Hotel Company, Limited, all his right, title, and interest in Spence's Hotel, the good-will, furniture, outstandings, &c. The articles of association were dated 7th September 1863. *A.* and *M.* with two others formed the first board of directors. These directors, at an extraordinary meeting on August 1st, presented a report, which was adopted by the meeting, in which they said, "*B.* has deposited with *M.* and *A.* security sufficient to ensure the payment of the 10 per cent. dividend guaranteed to him by the company." On the 5th December 1863 a deed was executed, with the approval of the company's solicitors, by *B.* on the one part, and *A.* and *M.* on the other, which, after reciting that as security for the guarantee of the 10 per cent. dividend *B.* had deposited with *A.* and *M.* 400 fully paid-up shares in the company, witnessed "that *B.* would pay to *A.* and *M.* such sums as would be necessary to make up and pay half-yearly a dividend of 10 per cent. per annum; and that he constituted *A.* and *M.* his attorneys to sell the 400 shares and out of the proceeds to make good the yearly dividend of 10 per cent., and after such payment towards the guaranteed dividend, to hold the remaining shares or balance of money in trust for *B.* absolutely." On the same day another deed, prepared by *A.'s* private solicitor, was executed by *B.* on one part, and *A.* and *M.* on the other, which, after reciting an agreement by *B.* with *A.* and *M.* in April, that if they would assist him in forming such company, for the purchase of Spence's Hotel, and as they had in fact since formed, "he, *B.*, would pay or secure

COMPANY—*continued.*

4. POWERS, DUTIES, AND LIABILITIES OF DIRECTORS—*continued.*

Duties of promoters and directors—*continued.*

to them, *A.* and *M.*, such fitting and proper remuneration for their trouble and risk as might be ultimately arranged;" and after reciting the first deed of 5th December 1865, witnessed "that *B.* covenanted with *A.* and *M.* that, notwithstanding the trust contained in the before-mentioned indenture whereby the surplus mentioned was declared to belong to *B.* absolutely, the same surplus should belong to, and be the exclusive property of, *A.* and *M.* in equal shares: and that if the net profits of the Hotel Company should prove sufficient to pay the whole 10 per cent., then the whole of the 400 shares deposited with *A.* and *M.* should be retained by them for their own benefit in equal shares." This deed was undisclosed until the filing of their written statement by *A.* and *M.* in the present suit. There was no actual deposit of the 400 shares by *B.*, but *A.* and *M.* respectively took 200 shares in their own names. R10,947-9-6 were paid by *A.* and *M.* to make up the deficit on the guaranteed dividend up to December 1864. Also, on the 5th December 1863, *B.* executed another deed, in which, after reciting that he had guaranteed that the outstanding debts of the Hotel should realise, before May 1865, R50,000 at least, and that he had deposited with the company 50 fully paid-up shares as security for this guarantee, he, *B.*, covenanted to pay any deficit, and appointed the company his attorneys to realise these shares, and out of the proceeds to pay themselves the deficit, and, subject to this, to hold the shares or the proceeds in trust for him, *B.* Fifty shares were received from *B.* by *A.* under the trusts of this deed. The outstandings fell short of the guaranteed amount by R19,255. In a suit by the company to recover the 400 shares and for an account of the profits of the same,—*Held*, in the Court below and on appeal, that the suit was rightly brought by the company as plaintiffs. That *A.* and *M.* were the agents of the company to effect the purchase, and, as such, were bound to make for the company the best bargain which they reasonably could, and forbidden to obtain personal profit or benefit out of the matter. *A.* and *M.*, as regards the beneficial interest in the 400 shares, were trustees thereof for the benefit of the company from the date when that interest arose, and *A.* and *M.* were jointly as well as severally responsible for the 400 shares after satisfying the trust of the guarantee. In the lower Court it was decreed that *A.* should make over the 50 shares or their value to the company, and account for the interim receipts and profits. *A.* and *M.* to account for the 400 shares at par value at least, and for dividends and profits thereon, including profits, if any, made by sale at a premium. *A.* to account similarly for the 50 shares. *B.* to make good his two guarantees after being allowed the benefit of the trust of the 400 shares. SPENCE'S HOTEL COMPANY *v.* ANDERSON

[1 Ind. Jur., N. S., 295

Held also, on appeal, that *A.* and *M.* were trustees of the 400 shares for the benefit of the company, and jointly and severally responsible to make them good; and whatever benefit they took under the secret deed they must make good to the company. *A.* to be responsible for the 50 shares (but in this respect, and in respect of the details of the accounts between the parties, the decree of the Court below slightly modified). ANDERSON *v.* SPENCE'S HOTEL COMPANY

[1 Ind. Jur., N. S., 378

COMPANY—*continued.*

POWERS, DUTIES, AND LIABILITIES OF DIRECTORS—*continued.*

Duties of promoters and directors—*continued.*

18. ——— **Liability of directors for negligence in management.**—*Employment of agent by directors.—Acquiescence of shareholders.—Liability of estate of deceased director.—Banker, Who is a.*—The plaintiffs' company went into liquidation early in the year 1879, in consequence of losses sustained by the failure of Nursey Kessowji & Co., which firm had been the bankers of the said company. The said firm had stopped payment on the 26th December 1878, having then in its hands the sum of R8,80,250-14-1, belonging to the company. In this suit the official liquidators of the company sought to recover that sum from the defendants, who had been directors of the company, and a further sum of R2,48,670-14-0 as damages sustained by the company through the fraud and gross negligence of the defendants in permitting Nursey Kessowji, the agent of the company, to deal with certain shares for his own purposes. The first four defendants were the directors of the company; the fifth defendant was the assignee of the estate of Nursey Kessowji, whose firm of Nursey Kessowji & Co. had become insolvent. The plaintiffs' company was registered on the 31st July 1878, and by the memorandum and articles of association the said Nursey Kessowji was appointed secretary, treasurer, and agent of the company for a period of twenty-five years, upon the terms and conditions contained in an agreement annexed to the articles of association, whereby it was (*inter alia*) provided that Nursey Kessowji should deposit with such banker or bankers as the directors for the time being should appoint, all the moneys due from him to the said company, and exceeding in amount at any one time the sum of R5,000. On the 6th August 1878, the directors of the company appointed the firm of Nursey Kessowji & Co. to be the bankers of the company. It was further alleged by the plaintiffs that, immediately after the registration of the company, the directors and Nursey Kessowji began to borrow money upon the credit of the company far in excess of the legitimate wants of the company, and to pay over the money so borrowed to the firm of Nursey Kessowji & Co., to be used by that firm in speculative business; that the said loans were obtained by the directors, not *bonâ fide* for the purposes of the company, but for the purposes of supplying funds to the firm of Nursey Kessowji & Co., to enable it to carry on its business. At the end of the year 1878 the sum paid over by the directors to the firm of Nursey Kessowji had, by reason of such borrowing, amounted to the sum of R8,80,250. The plaintiffs alleged that the said loans were wholly unne-

COMPANY—*continued.*

4. POWERS, DUTIES, AND LIABILITIES OF DIRECTORS—*continued.*

Liability of directors for negligence in management—*continued.*

cessary; and they charged the directors with gross negligence in raising the said loans or permitting them to be raised; and in permitting the moneys so borrowed to remain in the hands of the firm of Nursey Kessowji & Co., to be applied by that firm to its own purposes. As to the R2,48,670-14-0, the plaintiffs alleged that certain unallotted shares of the total value of R3,93,750 had been left in the hands of the directors to be disposed of, the proceeds of which were to be applied in making certain payments due by the company; that, instead of applying these shares to such purposes, the directors had filled up the said shares in the name of Nursey Kessowji, and authorised him to mortgage the same, in order to raise funds; that the said Nursey Kessowji had accordingly dealt with the said shares, and had applied the proceeds thereof to his own purposes. The plaintiffs charged the directors with fraud and gross negligence as to these shares, and claimed to recover R2,48,670-14-0 in respect thereof from the defendants. The defendants alleged that they had acted *bonâ fide* in all matters connected with the company; that they had always believed the firm of Nursey Kessowji & Co. to be in a solvent condition; and had no reason to mistrust its management of the affairs of the company. One of the defendants (No. 3) died after the institution of the suit, and his sons were made parties. His representatives and Kessowji Naik (defendant No. 1) also claimed to set off against the plaintiffs' claim certain payments made by them as guarantors for the company. *Held*, (1) that one of the directors knew as a fact that the agent was not in a solvent condition; and that the other directors, in the circumstances of the case, ought to have ascertained his financial condition. (2) Directors are responsible for the management of their company where, by the articles of association, the business is to be conducted by the board with the assistance of an agent. They cannot divest themselves of their responsibility by delegating the whole management to the agent, and abstaining from all enquiry. If he proves unfaithful under such circumstances, the liability is theirs, just as much as if they themselves had been unfaithful. (3) That the directors had not used fair and reasonable diligence in the management of the company's affairs, and were liable to refund the money entrusted by them to the agent, Nursey Kessowji, without proper knowledge as to whether it was needed, and without any subsequent investigation of a serious character with respect to its disposal. Such conduct amounted to gross negligence. All the directors were equally responsible, as all attended the directors' meetings, and all gave the same blind sanction to every act and proposal of the agent. *Held*, also, that the estate of the deceased director was liable on the ground that the misfeasance of a director is a breach of trust, and not a mere personal default. A separate debt cannot be set off against a joint and several debt, and directors cannot set off money due from the company to them against sums which they may be ordered to refund to the liquidators. NEW FLEMING SPINNING AND WEAVING COMPANY *v.* KESSOWJI NAIK [I. L. R., 9 Bom., 373

COMPANY—*continued.*

4. POWERS, DUTIES, AND LIABILITIES OF DIRECTORS—*continued.*

Liability of directors for negligence in management—*continued.*

19. ——— **Power of directors to deal with profits either by declaring a dividend or by appropriating to reserve fund.**—*Power of shareholders to interfere with declaration of dividend.*—The articles of association of the *B. Co.* provided (*a*) that the directors might, with the sanction of the company in general meeting, declare a dividend; (*b*) that the directors might, before recommending any dividend, set aside out of the profits of the company such sum as they thought proper as a reserve fund to meet contingencies or for equalising dividends, &c. The directors of the company added to the existing reserve fund a certain portion of the profits of the company for the year 1885, and thereby diminished the amount of dividend which they could otherwise have declared. Some of the shareholders disapproved of the course taken by the directors, and contended (1) that the shareholders of the company had a right by resolution to withdraw from the reserve fund a sum sufficient to enable the directors to declare a suitable dividend; (2) that they had the right to direct the directors to declare a dividend greater or less than that recommended by the directors out of the amount standing to profit and loss, including the amount so withdrawn. *Held*, that under the articles of association the contention of the shareholders could not be sustained. The reserve fund consisted of profits, and by the articles the disposal of profits was expressly entrusted to the directors. To allow the shareholders to deal with it would be a direct contravention of the articles, which entrusted to the management of the directors all the business of the company. Nor could the shareholders decide the question as to the amount of dividend. By the articles they agreed that the directors should declare the dividend, and only reserved to themselves the power to vote a dividend to which they objected. The remedy of the shareholders, if they were dissatisfied with the directors, was to remove them from office, or to alter the articles of association. THE BOMBAY-BURMA TRADING CORPORATION *v.* DORABJI CURSEJI . . . I. L. R., 10 Bom., 415

20. ——— **Sale and re-purchase of shares for future delivery.**—*Liability of company for acts of directors.*—In January 1865 the plaintiffs purchased from the defendants 2,000 shares in the defendants' company at 15 per cent. premium, for which they paid in cash R3,20,000, and the defendants simultaneously agreed to re-purchase, for future delivery and payment at a fixed time in July, the same 2,000 shares at 29½ per cent. premium. The contracts for the re-purchase were signed by three directors of the defendants' company, and on each was a memorandum, initialled by two of them, referring to a list of the "Share Receipts," delivered with the words "we are duly to examine and receive the

COMPANY—*continued.*

4. POWERS, DUTIES, AND LIABILITIES OF DIRECTORS - *continued.*

Sale and re-purchase of shares for future delivery—*continued.*

same at the fixed time." One hundred and ninety letters of allotment in the names of several persons, and for various numbers of shares, endorsed by the original allottees, and initialled by one of the three directors, were, together with receipts for the first call, handed over to the persons who acted for the plaintiffs by the three directors of the defendants' company who made the contracts. In April the defendants' company made a fresh call, payable on the 4th May. A list of the names and addresses of the original allottees of what were called "shares in the market" (*i.e.*, other than those purchased by the company itself for cash, or held by it on mortgage) was made out from the date of settlement, and notices of forfeiture for non-payment of the call were sent by post. The original holders of the 190 letters of allotment were included in the list, but no notice was sent to the plaintiffs. On the 27th of May all shares upon which the second call was not paid were declared to be forfeited for the benefit of the company. The defendants' company, as stated in the memorandum of association, was established among other objects for the purchase and sale of debentures, stocks, shares of joint-stock companies (including the shares of this company), and other securities, the making loans and advances on such securities as the directors of the company might think fit. *Held*, that the contracts for the purchase of the 2,000 shares being within the scope of the authority of the directors, the defendants were bound by them; that the defendants were bound to treat the plaintiffs as the holders of those shares, and to give them the notice required by the articles of association; and that they were not at liberty to give that notice to the original allottees, who, by the admission of the defendants, testified by the acts of their agents in making the contracts, had parted with the shares; that the shares were, consequently, not legally forfeited, and the defendants having refused to accept them, and they being then unsaleable, the plaintiffs were entitled to recover the full price as damages. ORIENTAL FINANCIAL ASSOCIATION *v.* MERCANTILE CREDIT AND FINANCIAL ASSOCIATION . . . . **3 Bom., O. C., 1**

21. ——— **Purchases of shares by individual directors.**—*Liability of directors.—Absence of sanction of Board.*—*J. S.*, an allottee of 25 shares in a company registered under Act XIX of 1857, signed the memorandum and articles of association, and paid the first call on the 28th September 1863, on which he sold the 25 shares to *B. P.*, the chairman of the company. The purchase by *B. P.* was made in pursuance of an agreement entered into between *B. P.* and *P. H.*, another director of the company, and two other persons, who were members of the firm of *B., B., & Co.*, and then managers of the company, which they accordingly jointly purchased, and subsequently divided among themselves; *B. P.* taking for himself two fifths of the whole, including the 25 shares of *J. S.* The fact of the joint purchase was not communicated to the other

COMPANY—*continued.*

4. POWERS, DUTIES, AND LIABILITIES OF DIRECTORS—*continued.*

Purchases of shares by individual directors—*continued.*

directors of the company, nor was there any evidence to show that their attention had been called to certain entries in the books of the company relating to *B. P.* having paid the second call on his two-fifths of the joint purchase. *J. S.* got no notice to pay the second call, and never applied for or obtained a certificate for the 25 shares; but such a certificate was obtained by *B. P.* on the 10th of October 1864, certifying that *J. S.* was the shareholder. *J. S.* had signed a blank form of transfer and a blank form of request to the directors to transfer, which were undated and without particulars; but *B. P.* never executed the transfer as transferee, and the shares never were transferred to his name on the register, nor was the sale to him ever brought to the notice of the directors as a board, or to any of his partners, of any portion of the 2,800 shares; and the articles of association required the consent in writing of the directors to every transfer. On application by *J. S.* that his name should be removed from the list of contributories as framed by the official liquidator, and the names of *B. P.'s* trustees under Act XXVIII of 1865 substituted therein in respect of the 25 shares, —*Held*, that *J. S.* was not exonerated, under the circumstances, from the duty of obeying the articles of association and the provision of Act XIX of 1857; that the act of an individual director in his private capacity ought not to bind the board, which had never authorised or ratified his conduct; and that the official liquidator, as representing the body of shareholders, rightly insisted upon keeping *J. S.'s* name on the list of shareholders. IN RE EAST INDIAN TRADING AND BANKING COMPANY. JAMNADAR SAVAKLAL'S CASE . . **3 Bom., O. C., 113**

22. ——— **Purchase by company of its own shares.**—*Omission to register transfer.—Contributories.*—A company registered under Act XIX of 1857, and enabled by its memorandum of association to purchase its own shares, purchased seven thousand of them which were in scrip, share certificates having never been issued in respect of them. The letters of allotment indorsed by the allottees and receipts for the first call were made over, at the time of purchase, to the company. No transfers, however, were executed by the allottees, nor were the shares registered by the company in their own name, but they continued to stand in the names of the allottees. Two thousand of the seven thousand shares had been re-sold by the company; and the remaining five thousand were mentioned in a list, kept by the company, of shares purchased by them. On application to the allottees to have their names removed from the list of contributories, as framed by the official liquidator,—*Held* that the company, through its directors, having, as well by the act of purchase as by their subsequent conduct, treated themselves as the owners of the shares, could not be permitted to take advantage of their own neglect, or that of their officers, in not registering the shares in the name of the company, and that the name of the

COMPANY—*continued.*

4. POWERS, DUTIES, AND LIABILITIES OF DIRECTORS—*continued.*

Purchase by company of its own shares—*continued.*

company therefore be substituted as holders of the shares. IN RE MERCANTILE CREDIT AND FINANCIAL ASSOCIATION. EX PARTE DALVI

[3 Bom., O. C., 125

23. ——— Purchase of shares in other companies and their own shares.—*Trustee shareholders.—Parties.—Acquiescence.*—The purchase by the directors of a joint-stock company, on behalf of the company, of shares in other joint-stock companies, unless expressly authorised by the memorandum of association, is *ultra vires.* A joint-stock company, even though it be empowered by its memorandum of association to deal in the shares of other companies, is not thereby empowered to deal in its own shares, and a purchase by the directors of the company of its own shares, on behalf of the company, is therefore, under such circumstances, *ultra vires.* A sharer in a joint-stock company can maintain an action against the directors of such company to compel them to restore to the company funds of the company that have by them been employed in transactions that the directors have no authority to enter into, without making the company a party to the suit. Where a shareholder purchased shares in a joint-stock company, knowing at the time that similar companies were in the habit of dealing in their own shares and those of other companies, and believing that the company in question adopted the same practice, but made no enquiry to ascertain whether or not such was the case, nor made any objections to such dealings of the company until it was discovered they had resulted in loss, it was held that he had, by his own conduct, lost his right to hold the directors personally liable in respect of such dealing, and the result was held to be the same whether the said shareholder was beneficially entitled to his shares, or merely a trustee of them for others. JEHANGIR RASTAMJI MODI *v.* SHAMJI LADHA

[4 Bom., O. C., 185

24. ——— Misrepresentation in prospectus.—*Companies Act, 1866, s. 154.—Prospectus.—Liability of directors for misrepresentation.*—*R. G.*, on the faith of statements in the prospectus of a company, was induced to apply for fifty shares in the company, which were allotted to him, and he paid the deposit money thereon. At the time of issuing the prospectus there were no other members of the company besides the directors. Some of the material statements in the prospectus were untrue to the knowledge of the directors. The prospectus, which was published on the 23rd June 1865, contained the following statements: "Capital, fifty lakhs of rupees in 10,000 shares, of R500 each, with power to increase. R50 per share to be paid on application, and the balance by calls of R100 each, to be made within not less than three months of each other. The first call will not be made within less than three months after the closing of the share list. Of these 10,000 shares, 6,000 will be reserved for

COMPANY—*continued.*

4. POWERS, DUTIES, AND LIABILITIES OF DIRECTORS—*continued.*

Misrepresentation in prospectus—*continued.*

England, but the operations of the company will not be delayed until they can be sent home and taken up." On 18th July 1865 the company advertised that "all the Indian shares being subscribed for, the share list is now closed, and the letters of allotment will be issued at an early date." In truth, not half the number of "Indian shares" were at any time subscribed for. On the 22nd November 1865, the directors resolved that "a call of R100 per share be made upon the shareholders, payable at the National Bank of India on the 15th December proximo." *R. G.* received notice of the call, but did not pay it. On 18th April 1866 the directors desired the secretary to write to shareholders who had not paid their first call in full, asking them to do so at once. *R. G.*, who had not signed the articles of association, on receipt of notice from the secretary, requested to be allowed to withdraw his money, forfeiting one-fifth, or to be allowed to hold five shares instead of fifty. The request was refused by the directors, who on 18th July 1866 passed a further resolution that the defaulters, among whom *R. G.* was named, "have notice sent them that unless the amount of the calls due on their respective shares, together with interest thereon at the rate of 12 per cent. per annum from the 15th December 1865 be paid into the National Bank of India, Calcutta, on or before the 7th August 1866, legal proceedings will be adopted against them for the recovery without further notice." *R. G.*, on receiving notice of this resolution, wrote, through his attorneys, informing the directors that he would apply to the High Court to have his name removed from the register of shareholders. The directors thereupon declared the shares to be forfeited. On 25th September 1866 a resolution to wind up the company voluntarily was passed at a general meeting of the shareholders, and was afterwards confirmed. In the course of the winding-up the liquidator applied to the Court, under section 154, Act X of 1866, to determine whether *R. G.* was entitled to a refund of the deposit money paid by him on the fifty shares allotted to him in the company, or whether he was liable to pay, as a contributory, the call in respect of his shares made before the shares were forfeited. It was not until the hearing of this application that *R. G.* became aware of the facts which proved that the directors had published material statements which they knew to be untrue. *Held*, that the issuing of a prospectus is an act comprised within the term "management and conduct of the company's business." The statements made in the prospectus were the representations of the company. *R. G.* was entitled to have his contract to take 50 shares set aside, and to be repaid the amount of his deposit money. IN THE MATTER OF THE INDIAN COMPANIES ACT, 1866. ROMANATH GOSSAIN'S CASE

[2 Ind. Jur., N. S., 296

25. ——— Misrepresentation.—*Bills of exchange.—Liability of company on bill drawn by directors.—Contract Act (IX of 1872), ss. 18 and*

COMPANY—*continued.*

4. POWERS, DUTIES, AND LIABILITIES OF DIRECTORS—*continued.*

Misrepresentation—*continued.*

19.—On the 9th October 1878 the National Bank purchased from the *N. Co.* a bill of exchange for 4,000 dollars, equivalent to R8,680, drawn by the *N. Co.* upon the firm of *N. K. & Co.* of Hongkong. The bill was in the following form: "Sixty days after sight of this first of exchange (second and third of the same tenor and date not being paid) pay to the order of the National Bank of India the sum of dollars four thousand only, value received, and place the same to account of Nursey Kessowji, Ghelabhoy Pudumsey, Directors. Nursey Kessowji, Secretary, Treasurer and Agent. The Nursey Spinning and Weaving Company, Limited." The bill was duly accepted and presented for payment, but was dishonoured. On the 6th January 1879, the bank gave notice of dishonour, and demanded payment from the company as drawers of the bill. On the 18th January 1879, the *N. Co.* was ordered to be wound up, and the bank sent in a claim against the company *as drawers* of the bill, and subsequently sent in an alternative claim for R8,680, being the "amount paid by the bank to, and received by, the company." *Held*, on the authority of *In re the New Fleming Spinning and Weaving Company, Limited, I. L.R., 4 Bom. 275*, that having regard to the form of the bill, the *N. Co.* could not be made liable as *drawers*; but held, also, that the bank was entitled to recover the amount of the bill from the *N. Co.* as money received to the use of the bank, on the ground that the directors of the *N. Co.*, while acting within their authority, had sold to the bank on behalf of the company, as a bill upon which the company was liable, one upon which the company was not liable, and had, therefore, been guilty of misrepresentation within the meaning of sections 18 and 19 of the Contract Act (IX of 1872). IN THE MATTER OF THE NURSEY SPINNING AND WEAVING COMPANY

[I. L. R., 5 Bom., 92

26. ——— Power of directors, as such, to draw bills of exchange.—*Companies Act (X of 1866), s. 47.—Winding up.—Interest on debts subsequently to date of order to wind up.—Rules of Bombay High Court of 3rd August 1866.—Rule No. 24.*—The articles of association of the New Fleming Spinning and Weaving Company, Limited, authorised the directors "to raise or borrow from time to time in the name or otherwise on behalf of the company such sums of money as they from time to time think expedient, either by way of sale or mortgage of the whole or any part of the property of the company, or by bonds, debentures, or promissory notes, or in such other manner as they deem best, and for the purpose of securing the repayment of any money so borrowed with interest, to make and carry into effect any arrangement which they may deem expedient by conveying or assigning any property of the company to trustees or otherwise." *Held* that, though power to borrow money on bills of exchange was not specifically given, yet bills of exchange being in many respects analogous to promissory notes, and promissory notes having been specifically mentioned in the article, the power

COMPANY—*continued.*

4. POWERS, DUTIES, AND LIABILITIES OF DIRECTORS—*continued.*

Power of directors, as such, to draw bills of exchange—*continued.*

to raise money by an equally well-known and recognised mode,—*viz*, by drawing, endorsing, or accepting bills of exchange,—must be deemed to be included in the general words "or in such other manner as they deem best." Three of the directors of the above company, one of whom was also the secretary, treasurer, and agent of the company, drew a bill in favour of *S.* in the following form: "Sixty days after the date of this first of exchange (second and third of the same tenor and date not being paid) pay to the order of *S.* the sum of rupees two lakhs only, value received, and place to account of *G. P., K. N., N. K.*, Secretary, Treasurer, and Agent, The New Fleming Spinning and Weaving Company, Limited, Directors." The bill was endorsed by *S.* to the Bank of Bombay, was duly presented for payment to the drawee, and protested for non-payment. Subsequently to the date of the drawing of the bill, the New Fleming Spinning and Weaving Company, Limited, went into liquidation. The Bank of Bombay claimed as endorsees of the bill to prove against the company as drawers. *Held* that, assuming that companies under the Indian Companies Act (X of 1866) are by section 47 liable on bills of exchange drawn on their behalf, or on account of persons acting under their authority, the bill in question was not such a bill. Whether or not a note or bill must, on the face of it, express that it is made, accepted, or endorsed, "by or on behalf or on account of" the company, yet there must be on the face of it that which shows that it was so made, accepted, or endorsed, and which excludes the inference that it was made, accepted, or endorsed by or on behalf or on account of any other person. A bill or note may be in a certain sense on behalf of or on account of a company, though there is upon its face no reference to the company, even, in the form of a description of the persons who actually make, accept, or endorse as being directors or secretary. As between such persons and the company such a bill or note may well be on behalf or on account of the company, but it is not therefore so between the company and third parties. So far as third parties are concerned, a company under the Indian Companies Act (X of 1866) can be made liable on a bill or note only when such bill or note on the face of it expresses that it was made, accepted, or endorsed by, or on behalf, or on account of the company, or where that fact appears by necessary inference from what the face of the instrument itself shows. The addition to the signatures of individuals as makers, drawers, acceptors, or endorsers of notes or bills, of their description as director or directors, secretary, treasurer, and agent of a certain company, is not considered to raise such inference, as it does not exclude the supposition that, though described as directors, &c., they intended to make themselves personally liable to holders of the instrument, though as between themselves and the company they may be entitled to be indemnified for anything they may have paid on account of the company in respect

COMPANY—*continued.*

4. POWERS, DUTIES, AND LIABILITIES OF DIRECTORS—*continued.*

Power of directors, as such, to draw bills of exchange—*continued.*

of such notes or bills. *Dutton* v. *Marsh, L. R., 6 Q. B., 361,* followed. Rule No. 24 of the Rules dated the 3rd of August 1866, made by the High Court of Judicature at Bombay, under the powers given by section 189 of the Indian Companies Act (X of 1866), is *ultra vires* so far as it allows interest on debts or claims subsequent to the date of the order to wind up a company to creditors whose debts or claims do not carry interest. IN THE MATTER OF THE NEW FLEMING SPINNING AND WEAVING COMPANY . . . . . **I. L. R., 3 Bom., 439**

Held, on appeal, affirming the decision of GREEN, *J.,* that the company was not liable. In order to make a company liable on a bill or note, it must appear on the face of such bill or note that it was intended to be drawn, accepted, or made on behalf of the company, and no evidence *dehors* the bill or note is admissible under section 47 of the Indian Companies Act (X of 1866). IN RE THE NEW FLEMING SPINNING AND WEAVING COMPANY **[I. L. R., 4 Bom., 275**

27. ——— Bills of exchange, Issue of.—*Transactions ultra vires.—Re-drafts.*—A company was formed with the following objects, as stated in the memorandum of association, *viz.,* "of securing valuable property in the new port and town of *C.* and its immediate vicinity; and of improving the property so acquired by building upon, letting, or selling it, as may be deemed most advisable; and of undertaking the construction of public works calculated to facilitate trade, and also of constructing tramways, roads, docks, wharves, and jetties upon the lands so to be acquired; and for all other purposes that may be essential or conducive to the attainment of, or connected with, the above objects." Soon after the establishment of the company, the directors were induced to take a share in, and become liable for the cost of, a mill for husking rice, which it was intended to establish by a separate company; and a considerable sum was advanced out of the funds of the company for the building of the mill and for machinery, &c. The undertaking failed, and the directors, to avoid losing the advances of the company, resolved to take over the mill, and carry it on as the property of the company. They accordingly purchased a large quantity of rice which was husked at the mill, and consigned to several firms in England. *P. M. & Co.* were appointed agents of the company in Calcutta for the purpose of shipping the rice, under letters from the directors guaranteeing that the company would pay at maturity any re-drafts which might be drawn on *P. M. & Co.* as their agents in respect of the shipments. Bills of exchange were drawn by *P. M. & Co.* on the firms to which the respective consignments were made, and these bills were sold in the ordinary course of business in Calcutta, *P. M. & Co.* realising the proceeds for the benefit of the company. Those bills were honoured by the respective consignees. The rice was sold in England at a

COMPANY—*continued.*

4. POWERS, DUTIES, AND LIABILITIES OF DIRECTORS—*continued.*

Bills of exchange, Issue of—*continued.*

considerable loss, and re-drafts for the deficiency were drawn on *P. M. & Co.* or on the company. The company went into liquidation during these transactions. Some of these re-drafts had been accepted by the company, and others merely registered by the liquidators as claims against the company. Claims were now made on the company by the drawees or endorsees of these re-drafts, but the liquidators declined to pay them, stating that the proceedings in connection with the consignments of rice were not authorised by the memorandum and articles of association of the company, and that therefore the company was not liable for any losses in respect of such consignments. *Held,* that trading in rice was a transaction *ultra vires* of the company; the directors therefore could not bind the company, and the consignees could not recover in respect of the shipments. The company was not liable on the re-drafts; it had no power to issue bills of exchange or to accept the re-drafts, and therefore the holders of those which had been in fact accepted were in no better position than the holders of those which had not been accepted. IN THE MATTER OF THE PORT CANNING COMPANY **[7 B. L. R., 583**

28. ——— Promissory notes, Issue of.—*Negotiation within ordinary course of business.*—Where the articles of association of a limited company stated that the objects for which the company was established were for the purchase of the business of an hotel-keeper, confectioner, and provisioner, the future working and carrying on of the said business, and the doing of all such other things as were incidental or conducive to the attainments of the above objects, it was held that the directors had power to bind the company by the issue of negotiable securities in the ordinary course of business. Where a note, which had been taken by the company as a security from two judgment-debtors of the company, was endorsed by the company to a third party, and discounted by him, and was on the due date, not having been taken up by the makers, renewed by the company,—*Held,* that such negotiation of the note by the company was within the ordinary course of the business of the company. Also held upon the facts, that the power of the company to issue negotiable securities was well exercised, and that the company had due notice of dishonour by the makers. CHOONILAL SEAL *v.* SPENCE'S HOTEL COMPANY **[1 B. L. R., O. C., 14**

29. ——— Liability of company for loan to secretary, treasurer, and agent.—*Principal and agent.—Undisclosed principal.—Election.—Contract Act (IX of 1872), ss. 230, 233, 234.*—By the memorandum and articles of association of the New Fleming Spinning and Weaving Company *N. K.* was appointed secretary, treasurer, and agent of the company, with power to raise or borrow from time to time, in the name or otherwise on behalf of the company, such sums of money as he might think expedient by bonds, debentures, or pro-

COMPANY—*continued.*

4. POWERS, DUTIES, AND LIABILITIES OF DIRECTORS—*continued.*

Liability of company for loan to secretary, treasurer, and agent—*continued.*

missory notes, or in such other manner as he might deem best; and for the purpose of securing the repayment of any money so borrowed, to make any arrangement which he might deem expedient by conveying or assigning away property of the company to trustees or otherwise. *N. K.* was also secretary, treasurer, and agent of three other mill companies in Bombay. On the 31st October 1878 the directors passed the following resolution: "That the unallotted shares be filled up in the name of Nursey Kessowji, Esquire, secretary, treasurer, and agent, who is empowered to mortgage them at a fair rate of interest to enable him to obtain funds for the use of the company." On the 11th November 1878 *P.* advanced a sum of R1,00,500 upon the terms contained in a Gujarati writing of that date, and signed by *N. K.* In this document *N. K.* acknowledged the receipt of the money, for which 335 shares in the New Fleming Spinning and Weaving Company were duly handed over as security, and he agreed to repay it within three months. The last clause in the agreement stated that it was "duly agreed to and approved by him (*N. K.*) and his heirs and representatives." As an additional security, *P.*, when advancing the loan, obtained from *K. N.* (father of *N. K.*) a guarantee in the following terms: "To Thuker Purmanundass Jivandass. Written by Sha Kessowji Naik. To wit,—This day Sha Nursey Kessowji has received from you R1,00,500, namely one lakh and five hundred, having deposited by way of security 335, namely three hundred and thirty-five, 'shares' of 'The New Fleming Spinning and Weaving Company, Limited.' If your said money cannot be paid with interest by the expiration of the time, and you should sustain any kind of loss in (respect of) that, I am duly to pay the same. As to that I am not to raise any obstacle or objection. In case it should be necessary, I am to fill up and duly deliver to you an 'indemnity bond' on stamped paper through your vakeel (solicitor). This writing is duly agreed to and approved by me and my heirs and representatives. Bombay, the 11th of November in the English year 1878." On the evening of the day on which the loan was made,—*viz.*, 11th November 1878,—but without the knowledge of *K. N.*, it was agreed between *N. K.* and *P.* that the time for the repayment of the loan should be extended to six months. In December 1878 *N. K.* became insolvent, and on 28th December 1878 a petition was presented to the High Court to wind up the New Fleming Spinning and Weaving Company. On the 30th December, *P.*, through his solicitors, wrote a letter to the company, stating that *N. K.* had obtained a loan from him of R1,00,500 on behalf of the company, and enquiring whether the fact appeared in the company's books. To this letter he received a reply signed by "*K. N.*, Director," stating that the loan appeared in the books in *P.'s* name. On the 17th January 1879, an order was made for the winding-up of the New Fleming Spinning and Weaving Company, and on the 4th February 1879 *P.* gave notice to the official liquida-

COMPANY—*continued.*

4. POWERS, DUTIES, AND LIABILITIES OF DIRECTORS—*continued.*

Liability of company for loan to secretary, treasurer, and agent—*continued.*

tors of the company of his claim against the company for the money advanced by him on the 11th November 1878. In March 1869 he filed a suit against *K. N.* to enforce his guarantee, but was unsuccessful, the Court holding that, by extending the period of the loan to six months, the agreement of the 11th November 1878 had been materially varied without *K. N.'s* knowledge, and that *K. N.* was consequently discharged. On the 24th April 1879 *P.* filed his affidavit in support of his claim against the company. The company resisted the claim. *Held* (1) that the directors had power, under the memorandum and articles of association, to authorise *N. K.* to borrow money on behalf of the company, and that they had done so, and with that object had entrusted him with the unallotted shares. (2) That when *P.* advanced the loan to *N. K.*, he was led to believe that *N. K.* was obtaining it on behalf of the four mill companies of which he was secretary, treasurer, and agent, but that *P.* was not aware and was not informed for which of the said companies the loan was obtained, and that the money was in fact advanced to *N.* as to an agent acting on behalf of an undisclosed principal. (3) That *P.*, when he discovered that the money was obtained for the New Fleming Spinning and Weaving Company, was entitled to claim against the company and to rank as a creditor of the company for the amount advanced to *N. K.* with interest from the date of the loan,—*viz.*, 11th November 1878,—to the date of the presentation of the petition to wind up the company. PURMANUNDASS *v.* CORMACK

[I. L. R., 6 Bom., 326

30. ——— Borrowing in excess of power in articles of association.—*Ratification.*—Under the articles of association of a limited company, the directors had power, from time to time as they might see fit, without any previous consent of the shareholders, to borrow any sum of money not exceeding R50,000, on the bill, bond, note, or other security of the company, upon such terms as they might think proper; and had power, with the sanction of a special resolution of the company previously obtained at a general meeting, to borrow any sum of money not exceeding in the whole, together with the R50,000, the sum of R1,00,000. *K.* advanced sums of money to the company amounting in 1879 to over R80,000. No previous sanction was given to any of these advances. On the 4th October 1879, an extraordinary general meeting of shareholders was held, at which a resolution was passed sanctioning a mortgage to *K.* of the whole of the company's property, except a certain garden, to secure the payment of a sum, not exceeding R1,00,000, for advances already made and to be made, with interest at 7 per cent. This resolution was confirmed on the 16th of October, and the mortgage was executed on the 22nd of December 1879. Subsequently the company was ordered to be wound up, and *K.* advanced a claim for R1,20,787. *Held*, that there is a distinction between loans which a company is empowered to

COMPANY—*continued.*

4. POWERS, DUTIES, AND LIABILITIES OF DIRECTORS—*continued.*

Borrowing in excess of power in articles of association—*continued.*

raise under its borrowing powers, and debts which, in meeting its current liabilities and in the actual carrying on of its affairs, the company, or its agents on its behalf, have contracted; and that the advances made by *K.* did not amount to a borrowing within the meaning of the articles of association. *In re Cefn. Cilcen Mining Company L. R. 7 Eq., 85* and *Waterlow* v. *Sharp L. R. 8 Eq., 501* followed. *Held*, also, that the borrowing powers conferred by the articles of association justified a mortgage, the object of which was in part to cover previously incurred liabilities. IN THE MATTER OF THE INDIAN COMPANIES ACT, 1866, AND OF THE MEDLA TEA COMPANY. C. KERNOT *v.* WALTON . **I. L. R., 9 Calc., 14**

31. ——— Ratification.—*Act done by directors in excess of authority.*—The ratification by a company of particular acts done by its directors in excess of the authority given them by the articles of the company, does not extend the powers of the directors so as to give validity to acts of a similar character done subsequently. IRVINE *v.* THE UNION BANK OF AUSTRALIA . **I. L. R., 3 Calc., 280**

5. WINDING UP.

(*a*) GENERAL CASES.

32. ——— Right to apply for winding up.—*Holder of paid-up shares.*—The holder of fully paid-up shares may apply for the winding up of a company as a contributory under the 104th section of Act X of 1866. The Court will not be satisfied with the bare statement of a director that a company is unable to pay its debts, so as to grant a winding-up order. IN THE MATTER OF THE INDIAN COMPANIES ACT, 1866, AND THE SYLHET AND CACHAR TEA COMPANY . **2 Ind. Jur., N. S., 94**

33. ——— Branch of English company in Calcutta.—*Leave to provisional liquidator to advance money for a going indigo concern.*—A joint-stock banking company, established by deed and Royal Charter in England, under the provisions of the English Joint-Stock Companies Act of 7 and 8 Victoria, with agencies in different parts of the world, and registered under the Joint-Stock Companies Act of 1862 (25 and 26 Victoria, Cap. 89), but not under any Indian Act, having its principal place of business in London, though having a principal branch in Calcutta to which the other branches in India are subordinate, is not such a company as can be wound up as an "unregistered company," under the provisions of the Indian Companies Act of 1866 (Act X of 1866), but should be wound up by the Court of Chancery, and an order of the Court of Chancery under the English Act of 1862, winding up the company in England, has the effect of winding up all branches of the company in India and elsewhere. IN THE MATTER OF THE INDIAN COMPANIES ACT, 1866 **[1 Ind. Jur., N. S., 335**

COMPANY—*continued.*

5. WINDING UP—*continued.*

(*a*) GENERAL CASES—*continued*

34. ——— Jurisdiction of High Court.—*Winding-up of company formed in England.—Principal place of business.—Indian Companies Act (X of 1866), s. 213.*—A limited company formed in England under the English Companies Act, 1862, and having its registered office in England, but which has its principal place of business in Calcutta, and is managed exclusively by directors in Calcutta, and the business of which is carried on exclusively in India, can be wound up by the High Court. IN THE MATTER OF THE INDIAN COMPANIES ACT, 1866, AND OF THE CALCUTTA JUTE MILLS COMPANY, LIMITED **I. L. R., 5 Calc., 888**

35. ——— Winding up in England.—*English Companies Act, 1862.—Call-order made by Court of Chancery.*—The Courts in India treat a call-order made by the Court of Chancery in England upon a contributory of a company registered in England, and being wound up under the authority of the Court of Chancery as a foreign judgment, and will not allow the liability of a defendant sued upon such order to be disputed, unless it be shown that the Court had no jurisdiction to make the order, or that the defendant had no notice of it, or that it is not in its nature a final order. THE LONDON, BOMBAY, AND MEDITERRANEAN BANK *v.* HORMASJI PESTANJI FRAMJI . . **8 Bom., O. C., 200**

See LONDON, BOMBAY, AND MEDITERRANEAN BANK *v.* BURJORJI SORABJI LYWALLA **[I. L. R., 9 Bom., 346**

36. ——— Winding up under supervision of Court.—*Order for dissolution of company.—Voluntary winding-up.—Official liquidator.—Companies Act, VI of 1882.*—As a general rule a winding-up of a company under supervision of the Court should be terminated in the same way as a purely voluntary winding-up,—*i.e.*, under sections 186 and 187 of the Companies Act, VI of 1882. Although, under section 195 of the Companies Act, VI of 1882, the Court has power to make an order dissolving a company in the course of winding up, subject to its supervision, such cases must be exceptional and can only occur when the Court has deemed it proper to carry on the winding-up under supervision in a manner such as clearly to approximate to a winding-up by the Court. The ordinary rule is the other way, and it is reasonable that it should be so; as, generally, a winding-up under supervision is not conducted under so intimate a control of the Court as to put the Court in a position to judge of the correctness of the liquidators' action and the completeness of the winding-up. So far as the Court does not interfere, a winding-up under supervision remains essentially a voluntary winding up; but the Court in a winding-up under supervision has full authority to interfere and to exercise to any extent the power which it might have exercised if an order had been made for winding-up the company by the Court. The words "official liquidator" in section 160 of the Companies Act, VI of 1882, do not include the liquidators in a winding-up under supervision. Motion

COMPANY—*continued.*

5. WINDING UP—*continued.*

(*a*) GENERAL CASES—*continued.*

Winding up under supervision of Court —*continued.*

for an order for the dissolution of a company wound up under supervision of the Court refused. IN RE THE CARWAR COMPANY

[6 I. L. R., Bom., 640

37. ——— **Stay of proceedings.**—*Jurisdiction of High Court, Calcutta, to wind up company at Bombay.*—A bank was registered at Bombay only as an unlimited company under Act XIX of 1857, and carried on business at Bombay and Calcutta. At a meeting held before Act X of 1866 came into force, it was resolved that the company be wound up voluntarily under Act XIX of 1857, which resolution was confirmed after Act X of 1866 came into operation, and more than a month after the original resolution. *Held*, that these resolutions were informal; that the company was not winding up under either Act; and that an action against it by a creditor could not be stayed. *Semble*,—That an action will not be stayed against a company which is being wound up voluntarily under Act X of 1866. And held that a company registered at Bombay only as before mentioned cannot be wound up by the High Court in Calcutta. IN THE MATTER OF THE INDIAN COMPANIES ACT, 1866, AND THE EAST INDIA BANK.

[1 Ind. Jur., N. S., 330

38. ——— *Order of Chancery Court in England.—Stay of actions in India.*—Where a company was being wound up by the Court of Chancery in England, all actions brought against it in this country were ordered to be stayed. PEITSCH *v.* THE COMMERCIAL BANKING CORPORATION . . . . 1 Ind. Jur., N. S., 363

39. ——— *Order of Chancery Court in England.—Suit against company in India.*—A suit may be brought in the Courts in India against a company that is being wound up under "The Companies Act, 1862 (25 and 26 Victoria, Cap. 89, section 87)," without the leave of the Court of Chancery being first obtained. *Semble*,—The High Court will, in the exercise of its general power, stay the proceedings in a suit against such a company where the circumstances are such as to render it proper to do so. BANK OF HINDUSTAN, CHINA, AND JAPAN *v.* PREMCHAND RAICHAND. AMEDBHAI HABIBHAI *v.* PREMCHAND RAICHAND

[5 Bom., O. C., 83

40. ——— *Leave to proceed to execution, Order for.—Stay of execution.*—Where leave had been given to certain creditors to proceed to execution in a suit against a company, while proceedings for the winding-up of the company were pending, but before the winding-up order had been made,—*Held*, that the leave to proceed to execution was not necessarily affected by the winding-up order. IN THE MATTER OF THE INDIAN COMPANIES ACT, 1866, AND THE SYLHET AND CACHAR TEA COMPANY . 2 Ind. Jur., N. S., 123

COMPANY—*continued.*

5. WINDING UP—*continued.*

(*a*) GENERAL CASES—*continued.*

Stay of proceedings—*continued.*

41. ——— *Act XIX of 1857, s. 72.—Civil Procedure Code, 1859, s. 288.*—In an application, under section 288 of the Civil Procedure Code, to execute an order of a District Court for the winding-up of a company by staying suits which had been filed against the company in the High Court,—*Held*, first, that the order can take effect only from the time when it is filed in the Court to which it shall have been transmitted for the purpose of being executed, and that suits can only be stayed from that time; secondly, that where the decree in a suit has already been actually executed by the attachment of property of the defendants, although the sum decreed may not have been realised by a sale, there is no longer a suit or action to be stayed within the meaning of section 72 of Act XIX of 1857. NARAYAN SHAMJI *v.* GUJERAT TRADING COMPANY

[3 Bom., O. C., 20

42. ——— **Notice of appeal.**—*Extension of time for appeal.—Indian Companies Act (X of 1866), s. 141.—Practice.*—Notice of an appeal against any order or decision made or given in the matter of the winding-up of a company by the Court, must, under section 141 of Act X of 1866, be given to the respondent within three weeks after the order or decision complained of has been made. The Court has power to extend the time for giving the notice after the three weeks have expired, upon special circumstances being shown. IN THE MATTER OF THE SARAWAK AND HINDUSTAN BANKING AND TRADING COMPANY. LALLAH BARROOMUL *v.* THE OFFICIAL LIQUIDATOR

[I. L. R., 4 Calc., 704: 3 C. L. R., 581

43. ——— **Notice of proceeding.**—*Service of notices and orders.—Suit against contributories.—Contributory in India to English Company.—Last known address or place of abode.—Rule 63 of the Rules of 1862 of the High Court, Bombay.*—The London, Bombay, and Mediterranean Bank, a joint-stock company registered under the English Companies Act, 1862, was ordered to be wound up by an order of the Court of Chancery in England in 1866, and by a subsequent order of the said Court made in the winding-up of the bank it was ordered that service of any notice, summons, order, or other proceeding in these matters might be effected by putting such notice, &c., into any post office, either in England or at Bombay, duly addressed to such contributories being past members according to their respective *last known addresses or places of abode.* By a final balance order dated 5th June 1879, it was ordered by the Court of Chancery in England that the persons named in the schedule to the said order being contributories as past members of the said bank should within four days after the service of the said order pay the amount set opposite to their names, with interest, from the 15th March 1879. The defendant's name appeared in the said schedule, and the present suit was brought to recover the sum therein appearing as due from

COMPANY—*continued.*

5. WINDING UP—*continued.*

(*a*) GENERAL CASES—*continued.*

Notice of proceeding—*continued.*

him to the bank, *viz.*, R3,900. The defendant denied that he had ever held shares in the plaintiffs' bank, or that he ever had notice of any of the proceedings in the winding-up. At the trial it appeared that all the various orders and notices to shareholders made in the winding-up of the bank prior to the balance order of the 5th June 1879 had been sent by post to the defendant, addressed to him at No. 36, Fanasvadi, and were all returned undelivered. It was proved that he had never resided there; but that his brother had a place of business there, and that the defendant used occasionally to go there for the purpose of attending to his brother's business. It further appeared that the residence of the defendant, as given in the register of shareholders, was Loharchall, and not 36, Fanasvadi. *Held* that the notices, orders, &c., prior to the order of 5th June 1879, were not so served as to make the defendant subject to that final order; that the obligation to obey the command of the Court of Chancery contained therein had not arisen as against the defendant; and that, consequently, the present suit must fail. It is a leading principle of English law, always understood except when expressly excluded, that a person proceeded against in a Court must have due notice of the proceeding; failing such notice, he is entitled to protection if the judgment or order obtained in his absence is made the ground of a suit in any Court governed by English principles. The Court of Chancery in England had not in this case so called the defendant before it as to enable it in his absence to pronounce a definitive order against him or to bind him in the Court of his domicile, although he was included in the order of the Court of Chancery. The fact that the defendant frequently attended his brother's place of business at No. 36, Fanasvadi, was not sufficient to make that place his "last known address." If there had been evidence that he had used No. 36, Fanasvadi, as an address for receiving letters, that might probably have been sufficient. It would then have been known as his address—at least as an address. The address or residence of a member of a company entered in the register of shareholders, although sufficiently ascertained for the purpose of communication from the company, is not, therefore, ascertained for a service of legal proceedings. For the purpose of such service, care must be taken to find out the last known place of abode of the alleged contributory, and to effect the substituted service there. LONDON, BOMBAY, AND MEDITERRANEAN BANK *v.* GOVIND RAMCHANDRA [I. L. R., 5 Bom., 228

44. ——— **Suit against contributory on the B list.**—*Plea of discharge in insolvency.—Foreign judgment.—Balance order.—Insolvent Act (Stat. 11 and 12 Vic., c. 21), s. 61.*—The plaintiffs, who were an English joint-stock company registered under the English Companies Act, 1862, sued the defendant, as a past member of the bank, upon a balance order of the High Court of Justice in England dated 24th February 1881. The bank was

COMPANY—*continued.*

5. WINDING UP—*continued.*

(*a*) GENERAL CASES—*continued.*

Suit against contributory on the B list—*continued.*

in liquidation under a winding-up order made on 20th July 1866. The defendant pleaded discharge by insolvency, and it appeared that he had filed his schedule on 15th January 1873, and had obtained his discharge under section 60 of the Indian Insolvent Act (Statute 11 and 12 Victoria, Cap. 21) on the 15th July 1874. *Held*, (but doubting) that the question of the defendant's liability or non-liability to the claim made against him as a contributory could not be raised in this suit, and that, on formal evidence being given by the plaintiffs, judgment must go against the defendant. LONDON, BOMBAY, AND MEDITERRANEAN BANK *v.* DADABHOY CURSETJI MAJU . . . . I. L. R., 10 Bom., 582

45. ——— **Transfer of assets to new company.**—*Companies Act (X of 1866), ss. 149-154 and 175.—Right of creditors of transferring company.—Dissentient shareholders.—Sanction of Court.*—By special resolutions passed on the 3rd July 1878 and confirmed on 31st July 1878, the shareholders of the Fleming Spinning and Weaving Company (Limited) resolved that the company should be wound up voluntarily, and that all the assets of the said company should be transferred by the liquidators to a new company then intended shortly to be formed and registered in Bombay, called the New Fleming Spinning and Weaving Company, Limited, and that the liquidators should receive as the consideration for such transfer certain fully paid-up shares in the new company for distribution among the shareholders of the old company. The said transfer was to be made subject to a covenant on the part of the new company to perform all the agreements and to discharge all the debts and liabilities of the old company. The new company was duly formed and registered on the same day (31st July 1878), and the specified number of shares was delivered to the liquidators of the old company for distribution among the shareholders of the old company. Two of the said shareholders, *J.* and *H.*, the holders of 50 and 20 shares respectively, dissented from the special resolutions in the manner provided by section 175 of the Indian Companies Act (X of 1866), and required the liquidators to purchase their interests. The matter was thereupon referred to arbitration. In the case of *H.* an award was made and filed, but further proceedings were stayed by order of Court. In the case of *J.* no award was made, and he brought a suit which was still pending against both the old and new companies and the liquidators to recover R75,000, the alleged value of his shares. In pursuance of the resolution, the liquidators of the old company handed over the assets to the new company, but no formal grant or assignment, in writing, of the said assets was executed. They remained in its possession until the 17th January 1879, on which day the said new company was ordered to be wound up by the Court. The petitioners were appointed official liquidators, and, as such, were in possession of the assets at the

COMPANY—*continued.*

5. WINDING UP—*continued.*

(*a*) GENERAL CASES—*continued.*

Transfer of assets to new company—*continued.*

date of the petition. No property whatever remained in the hands of the old company, except the shares remaining to be distributed among the dissentient shareholders. The new company had discharged debts of the old company to the amount of six lakhs of rupees, and there remained debts of over three lakhs due by the old company. Until after the new company had become insolvent, no creditor of the old company had expressed his dissent from the above special resolution, or had refused to accept the new company as his debtor. On 1st March 1879 the voluntary winding-up of the old company was directed to be continued as a winding-up under the supervision of the Court. The official liquidators of the new company now presented a petition, praying that the above special resolutions might be sanctioned by the Court. Certain unsatisfied creditors of the old company opposed the petition, insisting that the sanction should be refused, except upon the condition that they should be paid in full out of the property of the old company. The two dissentient shareholders *J.* and *H.* also objected to the sanction being given unless provisions were made for the satisfaction of their claims as soon as they should be ascertained. *Held* that, under the special circumstances of the case, the sanction of the Court should be given to the resolutions, but subject to the value of the interest of the two dissenting shareholders being paid or adequately secured. Such order to be without prejudice to any question between the creditors of the old company and the dissenting shareholders. IN RE THE FLEMING SPINNING AND WEAVING COMPANY [I. L. R., 3 Bom., 299

46. ——— **Transfer or sale of business.**—*Special resolution.—Dissentient member.—Notice of dissent.—Requirements of notice.—Powers of voluntary liquidator.—Waiver.—Arbitration.—Failure to make award.—Second arbitration.—Companies Act, X of 1866, ss. 116, 149, 175 to 179.*—The *F. S. & W. Co.* (*Ld.*) in the course of being wound up voluntarily proposed to transfer its business and property to another company to be called the *New F. S. & W. Co.*, and passed a special resolution on the 3rd July, confirmed on the 31st July 1878, under section 175 of the Indian Companies Act, X of 1866, empowering the liquidators to carry out the transfer. *J.*, a dissentient member of the old company, sent on the 5th August, and, therefore, within the seven days provided by that section, a notice expressing his dissent from such resolution; but the notice did not contain the requisition provided for by the latter part of that section, requiring the liquidators either to abstain from carrying the resolution into effect, or to purchase his interest in the company. The liquidators, however, replied on the 23rd August by offering to purchase *J.'s* shares, which offer being refused, they and *J.* entered into an agreement on the 12th October, "in pursuance of the provisions in that behalf contained in the Indian Companies Act, X of 1866,"

COMPANY—*continued.*

5. WINDING UP—*continued.*

(*a*) GENERAL CASES—*continued.*

Transfer or sale of business—*continued.*

for the reference of "the dispute as to the price to be paid to the said *J.* for his shares in the *F. S. & W. Co.* (*Ld.*)" to two arbitrators and an umpire to be named by them. The agreement fixed a short date for the making of the award. The arbitration was entered on, but the time limited for the award having expired without any award being made, *J.* filed a suit, on the 28th of December, to recover the value of his shares. On the 1st March 1879, the winding-up of the *F. S. & W. Co.* was ordered to be continued under the supervision of the Court, and *J.'s* suit was at the same time stayed. *J.* then endeavoured to have the arbitration revived. In this he was unsuccessful, the submission not having been filed in Court, and the arbitration being held to be already dead and past revival. The suit subsequently came on to be heard, and was dismissed, on the ground that section 175 of the Act made an arbitration and an award a condition precedent to any suit. *J.* then called on the liquidators to nominate an arbitrator, and enter on a fresh arbitration. This the liquidators doubted whether they could legally do, and therefore they now petitioned the Court for its order and direction in the matter. They submitted that *J.* had never acquired the rights of a dissentient shareholder under section 175 by reason of the insufficiency of his notice, and that, in any case, one arbitration having been already entered upon and determined, *J.* could not now call upon them to enter on a fresh arbitration. *Held*, following *In re Union Bank of Kingston-upon-Hull, L. R. 13 Ch. D. 808*, that *J.'s* notice of dissent of the 5th August was in itself an insufficient notice under the provisions of section 175 of the Indian Companies Act, 1866, inasmuch as it did not contain the requisition to the liquidators required by the latter part of that section, and that, consequently, it was open to the liquidators to have treated *J.* as disentitled to the rights of a dissentient shareholder under that section. *Held*, further, that it was within the power of the liquidators to waive such informality in the notice on behalf of the company, and that they had in fact done so, and that *J.* was consequently entitled to the rights of a dissentient shareholder under that section. *Held*, further, that the rights of a dissentient shareholder, under that and the following sections, who had elected to have the value of his interest in the company decided by arbitration, were not limited to a single reference to arbitration, and were not extinguished by the expiry, without an award being made, of the time fixed by such reference for making an award; that in such a case, unless otherwise disentitled, the dissentient shareholder was entitled to a second reference to arbitration for the purpose of arriving at a definite result by means of an award, which was the object contemplated by those sections of the Act. IN RE THE FLEMING SPINNING AND WEAVING COMPANY. JEHANGIR GUSTADJI *v.* JOOSUP HAJI AHMED . I. L. R., 7 Bom., 494

COMPANY—*continued.*

5. WINDING UP—*continued.*

(*b*) POWERS OF LIQUIDATORS.

47. ——— Power of liquidators to compromise under sanction of the Court.—*Act X of 1866, s. 174.*—Under section 174 of the Indian Companies Act, the Court has power to sanction compromises of calls, debts, and liabilities before the list of contributories has been settled, or the competence of the shareholders has been ascertained. The Privy Council will be reluctant to interfere with the discretion of Courts having jurisdiction to sanction a compromise by the liquidators of a company winding up under section 174 of the Indian Companies Act, where all the facts have been placed before the Court in India, and there is no reason to suppose that the proceedings for a compromise have been tainted with fraud. BANK OF HINDUSTAN, CHINA, AND JAPAN *v.* THE EASTERN FINANCIAL ASSOCIATION

[3 B. L. R., P. C., 8: 12 W. R., P. C., 27 13 Moore's I. A., 15

48. ——— Power of provisional liquidator to make advances.—*Mortgagee for advances to indigo factory.*—Where it was shown that the bank was first mortgagee of certain indigo concerns, and had advanced money to the planter for the purpose of carrying on the cultivation and manufacture up to the time of the winding-up, and it was still necessary that further sums should be advanced for the completion of the cultivation and manufacture; and that under the circumstances it would be clearly for the benefit of the creditors that such advances should be made,—*Held*, that the provisional liquidator, supposing the winding-up of the bank and his appointment by the Court in India had not been *ultra vires*, would have been authorised by the Court to make the required advances. IN THE MATTER OF THE INDIAN COMPANIES ACT, 1866

[1 Ind. Jur., N. S., 335

49. ——— *Mortgagee for advances to indigo factory.—Companies Act, 1866, ss. 116, 174.—Sub-mortgage by liquidator of lien of company on indigo crop.*—Where a bank at the time of its failure were mortgagees of an indigo crop for the season's outlay on which they had advanced sums of money, and it was found that a further sum was necessary to complete the season's cultivation and manufacture of the crop which would otherwise be lost, an application that the provisional liquidator should be allowed to borrow the money required from third persons, assigning to them the mortgage lien held by the bank on the crop on trust to pay themselves in the first place and afterwards to pay the surplus proceeds to the bank, was refused as not being sanctioned by the provisions of section 116 and section 174 of the Companies Act, 1866. The Court had no power to sanction such an arrangement, which would be altering in a material degree the footing on which a security held by the bank stood, and interposing a new trust between it and its debtor. IN THE MATTER OF THE INDIAN COMPANIES ACT, 1866, AND OF THE AGRA AND MASTERMAN'S BANK . . **1 Ind. Jur., N. S., 350**

COMPANY—*continued.*

5. WINDING UP—*continued.*

(*c*) COSTS AND CLAIMS ON ASSETS.

50. ——— Petitioning creditor's costs.—In an application by a creditor of a company to have it wound up under the superintendence of the Court, the Court will always be in favour of making an order for its being so wound up. The petitioning creditor is entitled to his costs as a first charge on the assets of the company, subject to any prior liens on the estate. IN RE THE NAHOR HABI TEA COMPANY . . . . . **3 B. L. R., Ap., 11**

51. ——— Distribution of assets.—*Companies Act (XIX of 1857), s. 73.*—Where a company is being wound up under Act XIX of 1857, and its assets are collected and distributed under the 73rd section of that Act, all creditors take *pro ratâ.* IN THE MATTER OF ACT XIX OF 1857 AND THE GANGES STEAM NAVIGATION COMPANY

[1 Ind. Jur., N. S., 394

52. ——— Claims on assets.—*Precedence of judgment-debt due to Secretary of State.—Stay of execution of judgment-debt.*—A judgment-debt due to the Crown is in Bombay entitled to the same precedence in execution as a like judgment-debt in England, if there be no special legislative provision affecting that right in the particular case. Under similar circumstances a judgment-debt due to the Secretary of State in Council for India is in Bombay entitled to the like precedence, and the reason is that such debt is vested in the Crown, and when realised falls into the State treasury. The nature of the cause of action in respect of which the judgment was recovered does not affect the right of the Crown or of the Secretary of State in Council for India to priority. As the Crown is not, either expressly or by implication, bound by the Indian Companies Act (X of 1866), and as an order made under that Act for the winding-up of a company does not work any alteration of property, such an order does not enable the Court to stay the execution of a judgment-debt due to the Crown or to the Secretary of State in Council for India. It is a principle recognised by the laws of many countries that claims of the Crown or State are entitled to precedence,—*e.g.*, the Hindu, Roman, and French codes, the laws of Spain, the United States of America, Scotland, and England. SECRETARY OF STATE IN COUNCIL FOR INDIA *v.* THE BOMBAY LANDING AND SHIPPING COMPANY . . . **5 Bom., O. C., 23**

53. ——— *Right of servants to prove preferentially to other creditors.—Wages of captain and crew.*—Where a steam-tug company was being wound up under the Indian Companies Act, 1866, it being admitted that the vessels were in the habit of going to sea,—*Held*, that the captains and crews were entitled to rank preferentially, and to be paid their wages in full, in priority to the claims of other creditors. *Semble*,—They would be similarly entitled if the vessels plied substantially in tidal waters, whether plying actually on the open sea or not. *Held* also that, in the absence of any contract or custom to the contrary, the cap-

COMPANY—*continued.*

5. WINDING UP—*continued.*

(c) COSTS AND CLAIMS ON ASSETS—*continued.*

Claims on assets—*continued.*

tains and crews were monthly servants of the company, and were entitled to be paid only for the month in which they were dismissed. *Held*, also, that servants of companies generally had no right to prove in preference to other creditors, or to be paid in full, or in priority to them. But where *A.* by his contract was to be paid R1,000 on any breach of its terms,—*Held*, that he was entitled to prove for R1,000. IN RE THE INDIAN COMPANIES ACT, 1866, AND OF THE CALCUTTA STEAM TUG ASSOCIATION, AND IN RE THE EASTERN STEAM TUG COMPANY **[2 Ind. Jur., N. S., 17**

But *see* IN THE MATTER OF AGRA AND MASTERMAN'S BANK . . **1 Ind. Jur., N. S., 352**

where, however, the order was made under section 46 of the Insolvent Act.

54. ———————— *Wages of labourers.—Beng. Acts III of 1863 and VI of 1865.*—The wages of labourers employed under Bengal Acts III of 1863 and VI of 1865 are leviable out of the land, and form a primary charge upon it, into whosesoever hands it may pass. Therefore such labourers are entitled to their wages in full against a company which is being wound up; and purchasers of the land from the company are entitled to set off against the purchase-money payments made by them to such labourers on account of wages due to them by the company previous to the purchase. IN THE MATTER OF THE INDIAN COMPANIES ACT, 1866, AND THE SOUTHERN CACHAR TEA COMPANY **[2 Ind. Jur., N. S., 180**

55. ———————— *Salary of servant.—Proof of claims.—A.* had been engaged as assistant to a company for three years under articles of agreement, which contained no provision for his dismissal, except in case of *A.'s* failure to perform his covenants or for misconduct. Before the expiration of the three years the company was ordered to be wound up under the Indian Companies Act, 1866. At or about the time of filing the petition to wind up, notice had been given to *A.* that his services were no longer required. Since then *A.* had been unable, though he had done his best, to obtain service elsewhere. *A.'s* period of contract had since expired. *B.* also had been similarly engaged, but had received no such notice, and was still continuing in the company's service. His period of contract had not yet expired. In a proceeding in proof of claims of creditors against the company,—*Held*, that *A.* was entitled to his salary to the end of the period of three years. *B.* was also entitled to his salary to the end of the period of his contract, or should that happen first, till the company came to an end. IN THE MATTER OF THE INDIAN COMPANIES ACT, 1866, AND THE SEEBSAUGOR TEA COMPANY **[2 Ind. Jur., N. S., 257**

56. ———————— *Unpaid wages of servants.—Priority.—Indian Companies Act, VI of 1882.*—Under the Indian Companies Act, VI of 1882, the claim of servants of a company, in respect of unpaid wages, has no priority to other debts due by the company. IN RE THE PARELL MILL COMPANY **[I. L. R., 10 Bom., 211**

COMPANY—*continued.*

5. WINDING UP—*continued.*

(c) COSTS AND CLAIMS ON ASSETS—*continued.*

Claims on assets—*continued.*

"COMPASS MAP," MEANING OF—

———— "Compass map" generally means the revenue surveyor's map. BETTS *v.* MAHOMED ISMAEL CHOWDHRY . . **25 W. R., 521**

COMPENSATION.

Col.

1. CIVIL CASES 954
2. CRIMINAL CASES— 955
   (a) FOR LOSS OR INJURY CAUSED BY OFFENCE 955
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See COSTS . . . **Marsh., 91**

See DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES—TORTS. **[3 B. L. R., P. C., 44**

See DAMAGES—SUITS FOR DAMAGES—TORTS . . **5 B. L. R., Ap., 4 [1 Agra, 104 11 W. R., 143**

See FINE . **3 C. L. R., 404, 405, note**

See GHATWALI TENURE. **[2 B. L. R., A. C., 114 14 B. L. R., Ap., 7**

See INJUNCTION—SPECIAL CASES—OBSTRUCTION TO RIGHTS OF PROPERTY—LIGHT AND AIR . . **1 Bom., 148 [I. L. R., 2 Bom., 133 I. L. R., 8 Bom., 95**

See CASES UNDER LAND ACQUISITION ACT, ss. 35, 39.

———— Liability of Justices for—

See CALCUTTA MUNICIPAL ACT, 1863. **[8 B. L. R., 433: 17 W. R., 364**

———— Suit by lessee against lessor for—

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, N.-W. P. **[I. L. R., 1 All., 338**

1. CIVIL CASES.

1. ———— **Release of attached property.**—*Civil Procedure Code, 1859, s. 88.*—Compensation under section 88, Act VIII of 1859, can only be awarded, on the application of the defendant, by the Court which disposes of the case, and cannot be given by another Court in whose custody certain property belonging to the defendant has been found and attached at the instance of the plaintiff. HURO SOONDERY DOSSEE *v.* BUNGSEE MOHUN DOSS **[3 W R., Mis., 28**

COMPENSATION—*continued.*

1. CIVIL CASES—*continued.*

2. ——— **Excessive attachment.**—*Civil Procedure Code, 1859, s. 88.*—Where a suit was for R3,000, and the plaintiff, who was declared entitled to R677, without sufficient grounds attached the defendant's property to the amount of R3,000, the defendant was held entitled to compensation. MAHOMED REZOODDEN *v.* HOSSEIN BUKSH KHAN [6 W. R., Mis., 24

2. CRIMINAL CASES.

(*a*) FOR LOSS OR INJURY CAUSED BY OFFENCE.

1. ——— **Order that portion of fine should be paid as compensation.**—*Criminal Procedure Code, 1861, s. 44.*—The accused were convicted of the theft of some bullocks and fined. Under section 44 of the Criminal Procedure Code the Magistrate directed that the fines, if collected, should be paid to a witness as compensation for having to return the bullocks which he had purchased to the complainant. *Held* that this order was bad. The sale to the witness was not "the offence complained of" within the meaning of section 44. ANONYMOUS [7 Mad., Ap., 13

2. ——— **Award of portion of fine in theft where property is recovered.**—Where loss is occasioned to a person whose property has been stolen, it is not illegal for the trying Magistrate to award portion of the fine inflicted on the accused as amends to the owner of such property, although the stolen property is recovered and restored to the owner. REG. *v.* YESSAPPA BIN NINGAPPA [5 Bom., Cr., 41

3. ——— **Nature of compensation.**—*Loss to person injured.—Damages.*—The compensation awarded, under section 44 of the Code of Criminal Procedure, to the person injured, in consideration of the loss which he has suffered, corresponds to damages awarded in civil proceedings. QUEEN *v.* BAIJOO KOORMEE . . . 5 W. R., Cr., 76

4. ——— **Proof of loss or damage.**—*Criminal Procedure Code, 1861, s. 44.*—On a reference by a Sessions Judge, an order made by a Magistrate under section 44 of the Criminal Procedure Code, 1861, awarding compensation to the complainant out of a fine inflicted for causing hurt, reversed, as there was no evidence on the record to show that loss was caused, or that any special damage of a pecuniary nature resulted to the complainant from the offence. REG. *v.* SAMSEN BABAJI . . 3 Bom., Cr., 43

5. ——— **Compensation between co-defendants.**—*Criminal Procedure Code, s. 44.*—A Magistrate has no power to take property from one defendant and give it to another defendant. ANONYMOUS . . . . . 4 Mad., Ap., 28

6. ——— **Injury by negligence of accused.**—*Award from fine imposed on person negligently digging pit whereby another person was injured.*—An award of compensation to the widow of a person who died in consequence of a fall into a pit,

COMPENSATION—*continued.*

2. CRIMINAL CASES—*continued.*

(*a*) FOR LOSS OR INJURY CAUSED BY OFFENCE—*continued.*

Injury by negligence of accused—*continued.*

negligently dug by the accused, from the fine imposed on the latter, is illegal. REG. *v.* SHIABASAPPA [7 Bom., Cr., 73

7. ——— **Heirs of person suffering by offence.**—*Criminal Procedure Code, 1861, s. 44.*—Compensation, under section 44 of the Code of Criminal Procedure, cannot be awarded to any one excepting the person who has directly suffered by the offence. It cannot be given to the heirs of a person who has been killed. QUEEN *v.* LALL SINGH [10 W. R., Cr., 39

8. ——— **Form of order for compensation.**—*Criminal Procedure Code, 1861, s. 44.*—The award of compensation referred to in section 44 of the Code of Criminal Procedure should be a part of the sentence and order made upon a conviction for an offence of the nature specified therein, and should be found upon a statement of loss, damage, or expenses, as the case may be, ascertained at the trial. QUEEN *v.* GOUR CHURN DOSS . . 11 W. R., Cr., 53

9. ——— **Innocent purchaser of stolen property.**—*Theft.—Award of portion of fine.—Criminal Procedure Code, 1872, s. 308.*—Where a person has been convicted of theft and sentenced to a fine, section 308 of the Code of Criminal Procedure, 1872, does not authorise a Magistrate to award part of the fine as compensation to a person who has innocently purchased the stolen property. QUEEN *v.* REDDON . . . I. L. R., 6 Mad., 286

10. ——— **"Taken into account."**—*Criminal Procedure Code, 1872, s. 308.*—The expression "taken into account" in the Code of Criminal Procedure, section 308, means that the compensation awarded by the Magistrate is to be taken into consideration by the Court in a subsequent civil suit, not that it is to be afterwards deducted from the damages awarded. LOVE *v.* AINSWORTH [22 W. R., 336

11. ——— **Cattle Trespass Act, 1871, s. 22.**—*Illegal seizure of cattle.—Costs paid by complainant.—Fine or imprisonment in default of payment of fine.*—The illegal seizure of cattle under section 22 of the Cattle Trespass Act, 1871, is not a criminal offence. The law allows certain Magistrates to adjudicate compensation to a party injured by an illegal seizure. Court fees paid by the complainant may form part of such compensation. It is not lawful to pass a sentence of fine or imprisonment in default of payment of the compensation awarded in a matter under section 21 of the Cattle Trespass Act. IN THE MATTER OF KETABAI MUNDUL [2 C. L. R., 507

12. ——— *Illegal seizure and detention of cattle—Costs of prosecution.—Court Fees Act, s. 31.*—A Magistrate having under section 22 of the Cattle Trespass Act, 1871, adjudged

COMPENSATION—*continued.*

2. CRIMINAL CASES—*continued.*

(*a*) FOR LOSS OR INJURY CAUSED BY OFFENCE—*continued.*

Cattle Trespass Act, 1871, s. 22—*continued.*

a seizure of cattle to be illegal, directed the captor, under section 31 of the Court Fees Act, 1870, to pay the complainant the costs of the stamp and process fees incurred in prosecuting the complaint. *Held*, that section 31 of the Court Fees Act did not apply. *Held* also that, under section 22 of the Cattle Trespass Act, such costs could be awarded to the complainant as compensation for the loss caused by the seizure and detention of the cattle. HUSSAIN *v.* SANJIVI . **I. L. R., 7 Mad., 345**

(*b*) TO ACCUSED ON DISMISSAL OF COMPLAINT.

13. ——— Compensation to accused.—*Power to award compensation without hearing evidence.—Held*, that it was not competent to the Magistrate to order compensation to the accused under section 270, Act XXV of 1861, without hearing evidence. BILASH *v.* MAKROO **[2 B. L. R., S. N., 15: 10 W. R., Cr., 61**

14. ——— *False case of theft.—Criminal Procedure Code, 1861, s. 270.*—Compensation is not allowable in false cases of theft. JUHOORUN *v.* GIRDHAREE RAM **[3 W. R., Cr., 70**

CHIDI CHOWBEE *v.* BHOWANY **[1 W. R., Cr., 1**

QUEEN *v.* GOGUN SEIN . **2 W. R., Cr., 57**

JALIL MUNSHI *v.* FARNAM HOSSEIN **[6 W. R., Cr., 55**

DHURAI NOSHYO *v.* HUBEE NOSHYO **[7 W. R., Cr., 12**

CHOOTOO DHOON BHARBONIA *v.* ABDOOL MEAH **[7 W. R., Cr., 40**

GUNAMANEE *v.* HAREE DATTA **[18 W. R., Cr., 6**

But *see* KALI CHURN LAHIRI *v.* SHOSHEE BHOOSUN SANYAL . **23 W. R., Cr., 17**

15. ——— *Defamation.*—Nor in a case of defamation. ASSARUDDEE KHAN *v.* BALOO KHAN . . . **1 W. R., Cr., 6**

16. ——— *Penal Code, s. 374.*—But only in cases under Chapter XV of the Criminal Procedure Code, and therefore not in a case under section 374 of the Penal Code. RATEEAH *v.* PHOKONDEE . . . . **5 W. R., Cr., 1**

17. ——— Section 270 of the Code of Criminal Procedure applies only when a complaint of an offence, triable under Chapter XV of the Code, is dismissed. ANONYMOUS **[6 Mad., Ap., 49**

QUEEN *v.* LALLOO SINGH . **8 W. R., Cr., 54**

where it was held the section did not apply to cases of mischief committed on land and house-

COMPENSATION—*continued.*

2. CRIMINAL CASES—*continued.*

(*b*) TO ACCUSED ON DISMISSAL OF COMPLAINT—*continued.*

Compensation to accused—*continued.*

breaking by night, though both contain an element of criminal trespass to which the section does apply.

18. ——— *Amount of compensation.*—R50 is the measure of compensation awardable from any complainant, irrespective of the number of accused persons. QUEEN *v.* LALLOO SINGH . . . . . **8 W. R., Cr., 54**

19. ——— *Wrongful confinement.*—Compensation cannot be awarded in a case of wrongful confinement. JHABU *v.* BAHAR ALLY . . . . . **7 W. R., Cr., 11**

AZGUR HOWLADAR *v.* ASARUDDIN **[17 W. R., Cr., 1**

20. ——— *House-breaking*—Nor in a case of house-breaking by night. DHURA NOSHYO *v.* HUBEE NOSHYO . **7 W. R., Cr., 12**

21. ——— *Fines.—Power of Subordinate Magistrates.*—Subordinate Magistrates of the second class have no power to award fines to accused as compensation for frivolous and vexatious prosecutions. REG. *v.* JELLAPA BIN MUDAKAPPA . . . . . **1 Bom., 181**

22. ——— *Frivolous and vexatious case.—Causing hurt.*—In a trial for causing hurt, the Subordinate Magistrate awarded compensation to the defendant for a frivolous and vexatious complaint under section 270 of the Code of Criminal Procedure. *Held* that the section did not apply to such a case. ANONYMOUS . . **5 Mad., Ap., 40**

23. ——— *Cases in which summons on complaint issues.—Criminal Procedure Code, 1861, s. 270.*—Amends, under section 270 of the Code of Criminal Procedure, are awardable only in cases triable by the Magistrate in which a summons on complaint shall ordinarily issue. REG. *v.* RAMJIVALAD DAJI . . . **5 Bom., Cr., 12**

24. ——— *Fine.—Criminal Procedure Code, 1861, ch. XIV.*—A fine cannot be awarded as compensation in a case falling under Chapter XIV of the Code of Criminal Procedure, 1861. QUEEN *v.* NIJANUND . . **3 W. R., Cr., 60**

25. ——— *Award on dismissal of vexatious complaint.—Criminal Procedure Code, 1861, s. 270.*—Under section 270 of the Criminal Procedure Code, a Magistrate dismissing a complaint as frivolous or vexatious can only award a sum not exceeding R50 to the accused by way of compensation, and cannot impose it by the way of fine; nor can he directly sentence the complainant to imprisonment in default of payment. QUEEN *v.* GOPAI **[2 N. W., 430**

26. ——— *Failure to prove case.—Criminal Procedure Code, 1861, s. 270.*—The High Court refused to interfere with the order of a

COMPENSATION—*continued.*

2. CRIMINAL CASES—*continued.*

(*b*) TO ACCUSED ON DISMISSAL OF COMPLAINT—*continued.*

Compensation to accused—*continued.*

Magistrate fining complainants under section 270 of the Code of Criminal Procedure, when it appeared, after due enquiry by the Magistrate, that the complainants laid claim to large jummas in a chur, without possessing any documents to prove their rights. IN THE MATTER OF MOTHOOR GHOSE **[11 W. R., Cr., 10**

27. ——————— *Unfounded charge of being person of bad repute.—Criminal Procedure Code, 1861, s. 270.*—A Magistrate is not authorised, under section 270 of the Criminal Procedure Code, to award compensation from the complainant to the accused in respect of an unfounded charge brought against such accused of being a person of bad character or repute. QUEEN *v.* BAL KISHEN **[2 N. W., 447**

28. ——————— *Offences other than under Penal Code.*—The power of Magistrates to award compensation to accused persons against whom frivolous and vexatious complaints have been made, is not confined to complaints brought under the provisions of the Penal Code. THE QUEEN ON THE PROSECUTION OF WARD *v.* TURNER **[4 N. W., 94**

29. ——————— *Vexatious charge.—Criminal Procedure Code, 1861, s. 270.*—Where a complainant prefers three charges of three distinct offences, two of which are offences triable under Chapter XV and one under Chapter XIV of the Code of Criminal Procedure, a Magistrate may award amends to the accused under section 270 of the Code, if he considers the charge with reference to the cases under Chapter XV to have been vexatious. MODHOOSOODUN GHOSE *alias* MADHUB CHUNDER GHOSE *v.* JOYRAM HAZRAH . . **13 W. R., Cr. 39**

30. ——————— *Vexatious charge.—Criminal Procedure Code, 1861, s. 270.*—Where a judicial officer from over-anxiety for the due administration of justice in his Court makes a mistake in taking steps against parties whose conduct appears to obstruct the Court of Justice, somewhat too hastily and without due circumspection, it is not to be presumed that he had acted vexatiously in the sense of section 270 of the Criminal Procedure Code, or otherwise than in perfect good faith, so as to justify an award of compensation to the person who was prosecuted by his directions. ANONYMOUS CASE **[15 W. R., 506**

31. ——————— *Criminal Procedure Code, s. 250.—Vexatious or frivolous charge.—Case instituted "upon complaint."*—A case instituted by the police, on a complaint to them, is not instituted "upon complaint" in the sense of section 250 of the Criminal Procedure Code, and therefore in such a case an order awarding compensation made under that section is illegal. IN THE MATTER OF THE COMPLAINT OF ISKRI ISHREE *v.* BAKHSHI **[I. L. R., 6 All., 96**

COMPENSATION—*continued.*

2. CRIMINAL CASES—*continued.*

(*b*) TO ACCUSED ON DISMISSAL OF COMPLAINT—*continued.*

Compensation to accused—*continued.*

32. ——————— *Dismissal in default of appearance.*—Where a Magistrate dismissed a complaint in default, under section 259, Code of Criminal Procedure, and fined the complainant under section 270, the fine was remitted and ordered to be refunded. RAM CHURN DEY *v.* JANULL **[17 W. R., Cr., 6**

33. ——————— *Amount of compensation.—Criminal Procedure Code, 1869, s. 270.*—Since the passing of Act VIII of 1869, a Magistrate may, under section 270, in a case in which more than one person has been accused, award compensation not exceeding R50 to each person. IN THE MATTER OF THE PETITION OF BHYROO LALL **[14 W. R., Cr., 75**

34. ——————— *Alteration of charge to bring offence under ch. XV of Code.—Criminal Procedure Code, 1861, s. 270.*—When on a complaint being preferred to a Magistrate of an offence not coming within Chapter XV of the Code of Criminal Procedure, the Magistrate alters it so as to bring it under Chapter XV, he cannot award compensation to the accused under section 270 of the Criminal Procedure Code, the offence originally complained of not being one for which compensation can be awarded. REG. *v.* GURNINGAPA . . **7 Bom. Cr., 58**

35. ——————— *Alteration of charge to bring offence under ch. XV of Code.—Held* that, where a Magistrate is dealing with a charge which he has the power to dispose of finally under Chapter XV of the Code of Criminal Procedure, although the charge, as originally laid, fell under Chapter XIV, he has a discretion to inflict a fine under section 270 of that Code. HOTHOOR LALOONG *v.* HINDOO SINGH MOUZ . . **10 W. R., Cr., 49**

36. ——————— *Cattle Trespass Act, 1871, s. 20.—False complaint.*—A complaint was made against certain persons under section 20 of the Cattle Trespass Act of 1871, charging them with having illegally seized and detained the complainant's cattle. The Assistant Magistrate who heard the complaint found it to be false, and he ordered the complainant to pay R20 compensation to the accused, and in default to suffer simple imprisonment for 21 days. On application to the High Court,—*Held* that the order was illegal and must be set aside. IN THE MATTER OF KALA CHAND *v.* GUDADHUR BISWAS **[I. L. R., 13 Calc., 304**

37. ——————— *Cattle Trespass Act, 1871, s. 20.—Frivolous complaint.—Compensation.—Cattle Trespass Act, ch. V.—Complaint of illegal seizure, not complaint of offence.—Criminal Procedure Code, s. 250.*—The illegal seizure of cattle under colour of the Cattle Trespass Act, 1871, not having been constituted an offence under that Act or otherwise, an award of compensation, under section 250 of the Code of Criminal Procedure, to the ac-

COMPENSATION—*continued.*

2. CRIMINAL CASES—*continued.*

(*b*) TO ACCUSED ON DISMISSAL OF COMPLAINT—*continued.*

Compensation to accused—*continued.*

cused on such complaint is illegal. PITCHI *v.* ANKAPPA . . . . . **I. L. R., 9 Mad., 102**

38. ——————— *Cattle Trespass Act, s. 20.—Criminal Procedure Code, s. 4 (a), s. 250.—Illegal seizure of cattle under the Cattle Trespass Act, not an offence within the meaning of the Code of Criminal Procedure.*—In a case instituted upon complaint made under section 20 of the Cattle Trespass Act, the Magistrate acquitted the accused, and being of opinion that the complaint was vexatious, directed the complainant to pay compensation to the accused as under section 250 of the Code of Criminal Procedure. *Held,* that the act complained of was not an offence within the meaning of the Code of Criminal Procedure, and that the order awarding compensation was illegal. KOTTALANADA *v.* MUTHAYA . . . **I. L. R., 9 Mad., 374**

39. ——————— *Cattle Trespass Act, 1871, s. 20.—Fine or imprisonment in default of payment.*—It is not lawful to pass a sentence of fine or of imprisonment in default of payment of the compensation awarded in a matter under section 20 of the Cattle Trespass Act (I of 1871). IN THE MATTER OF KETABDI MUNDUL . **2 C. L. R., 507**

40. ——————— *Dismissal of charge.—Criminal Procedure Code, 1882, s. 245 (1872, s. 211).—Order of acquittal.*—An order for compensation against a complainant may be made on an order of acquittal under section 211 of the Criminal Procedure Code. MONA SHEIKH *v.* ISHAN BARDHAN **[I. L. R., 6 Calc., 581**

41. ——————— *Dismissal of charge after hearing evidence.—Criminal Procedure Code, ss. 245 and 250.—Vexatious complaint.—Acquittal.—Compensation.*—Section 250 of the Criminal Procedure Code (Act X of 1882) authorises the payment of compensation in cases where the accused has been acquitted, under section 245 of the Code, after the whole evidence in the case has been recorded. *Number* v. *Ambu, I. L. R., 5 Mad., 381,* followed. QUEEN-EMPRESS *v.* PANDU VALAD GOPALA . . . . . **I. L. R., 10 Bom., 199**

42. ——————— *Failure to substantiate charge.—Committal of prosecutor for false evidence.—Act XXV of 1861, s. 270.—Act X of 1872, s. 209.*—When a prosecutor fails to substantiate his charge, by making contradictory statements, the Magistrate who tries the case under Chapter XV of the Criminal Procedure Code can award compensation to the accused, although he commit the prosecutor to take his trial on a charge of giving false evidence. QUEEN *v.* RUPAN RAI **[6 B. L. R., 296: 15 W. R., Cr., 9**

43. ——————— *Trial in original Court.—Criminal Procedure Code, 1872, s. 209.*—The special provisions of section 209 of Act X of

COMPENSATION—*continued.*

2. CRIMINAL CASES—*continued.*

(*b*) TO ACCUSED ON DISMISSAL OF COMPLAINT—*continued.*

Compensation to accused—*continued.*

1872 as to award of compensation to a complainant are applicable only in the case of original trials under Chapter XVI of the Criminal Procedure Code, 1872. ANONYMOUS . . . . . **8 Mad., Ap., 7**

44. ——————— *Acquittal after trial of charge.—Criminal Procedure Code, 1872, ss. 209, 211.*—Where a formal charge has been drawn up and the accused tried and acquitted, the acquittal should be one under section 220, Criminal Procedure Code, 1872, and not under section 211, and therefore no compensation can be awarded to the accused under section 209 in such a case. RADHANATH PANJA *v.* WOOMA CHURN CHOWDHRY . **22 W. R., Cr., 12**

45. ——————— *Acquittal after trial of charge.—Criminal Procedure Code, 1872, s. 209.*—The fact that the accused has been tried and acquitted is no bar to the award of compensation under section 209 of the Code of Criminal Procedure, 1872. NUMBER *v.* AMBU **[I. L. R., 5 Mad., 381**

46. ——————— *Complainant.—Ministerial officer.—Criminal Procedure Code, 1872, s. 209.—Award of compensation.*—A karkun on the establishment of a Civil Court, entrusted with the execution of a writ, reported to the Court that a particular person obstructed him in attaching property as commanded by the writ; and a report was thereupon made by the Court to a Magistrate with a view to proceedings being taken against the obstructor. The Magistrate acquitted the accused, and ordered the karkun to pay the accused compensation under section 209 of the Criminal Procedure Code. *Held,* that such last-mentioned order was wrong, the karkun not being a complainant within the meaning of section 209 of the Code of Criminal Procedure. In such a case as the above the Subordinate Judge should be regarded as the complainant, and he, having acted judicially, was not liable to the penalty provided in section 209 of the Criminal Procedure Code. IN RE KESHAV LAKSHMAN . **I. L. R., 1 Bom., 175**

47. ——————— *Complaint of hurt.—Summons for assault.—Discharge of accused.*—Where the complaint, and the proof adduced in support thereof, showed that the accused persons, if guilty at all, were guilty of offences not triable under Chapter XVI of the Code of Criminal Procedure, 1872, and the Magistrate issued a summons to answer a charge for assault under section 352 of the Penal Code, and, after examining the witnesses for the complainant, discharged the accused and awarded compensation to the accused under section 209 of the Code of Criminal Procedure, 1872,—*Held,* that the order awarding compensation was illegal. SOMER *v.* QUEEN . . . . . **I. L. R., 6 Mad., 316**

48. ——————— *Complaint taken cognizance of by Magistrate.—Criminal Procedure Code, 1882, s. 250.—Complaint to police.*—Under

COMPENSATION—*continued.*

2. CRIMINAL CASES—*continued.*

(*b*) TO ACCUSED ON DISMISSAL OF COMPLAINT—*continued.*

Compensation to accused—*continued.*

section 250 of the Code of Criminal Procedure compensation cannot be awarded when, the complaint having been made to the police, the Magistrate has taken cognizance of the case upon receiving a charge sheet against the accused sent in by the police. QUEEN-EMPRESS *v.* POLAVARAPU [I. L. R., 7 Mad., 563

49. ——— *Complaints under special law.—Criminal Procedure Code, 1861, s. 270.*—Section 270 of the Code of Criminal Procedure does not apply to complaints under a special law, but only to complaints triable by the Magistrate and punishable under the Penal Code with imprisonment for a period not exceeding six months. QUEEN *v.* ABDOOL AZEEZ KHAN . . 14 W. R., Cr., 36

50. ——— *Order for compensation to complainant under Act XIII of 1859.—Breach of contract.*—An order directing compensation under Act XIII of 1859 is illegal. Such portion of the money advanced to the defendant as had been appropriated to the fulfilment of the contract, or as could justly be set-off against a part fulfilment of the contract, ought not to be ordered to be refunded. ANONYMOUS [4 Mad., Ap., 68

51. ——— *Effect of award of compensation on dismissal of complaint.—Right of suit.*—The compensation or award which a Magistrate, who dismisses a complaint as frivolous or vexatious, is empowered in his discretion to award to an accused person, does not deprive the latter of any right of suit in the Civil Court which he may possess. ADRAM *v.* HURBULLUB . . 2 N. W., 58

52. ——— *Recovery of amount when not paid.—Distress warrant.—Criminal Procedure Code, 1872, s. 209.*—A Magistrate in making an order for compensation under section 209, Code of Criminal Procedure, is bound, if the amount be not paid, to proceed to the recovery of it by distress and sale of the moveables of the person ordered to pay; but if such person admits he has no goods, and thereby waives the right to have the amount levied by distress, the Magistrate may proceed to imprison him in the civil jail. The warrant of distress cannot have currency simultaneously with the imprisonment. BISHESHWAR SHAHA *v.* BISHWAMBHUR SIRCAR . . . 23 W. R., Cr., 65

COMPLAINANT.

See COMPENSATION—CRIMINAL CASES—TO ACCUSED ON DISMISSAL OF COMPLAINT . I. L. R., 1 Bom., 175

See CONVICTION . 22 W. R., Cr., 32

1. ——— **Person giving information to police of murder.**—*Criminal Procedure Code, 1861, s. 360.*—Where a person gave information to a

COMPLAINANT.—Person giving information to police of murder—*continued.*

Magistrate and the police of murder having been committed, and subsequently, on the charge having been dismissed, petitioned the Sessions Judge to have the matter re-investigated,—*Held,* that he was not a complainant within the meaning of section 360 of the Criminal Procedure Code, 1861. REG. *v.* FATECHAND VASTACHAND . . 5 Bom., Cr., 85

2. ——— **Contempt of authority of public servant.**—*Criminal Procedure Code, 1872, s. 210.*—In cases of contempt of lawful authority of a public servant, the complainant referred to in section 210 of the Code of Criminal Procedure is the public servant whose authority has been resisted, and without whose sanction no criminal proceedings can be instituted against the offender, and not the person injured by the resistance. IN RE MUSE ALI ADAM . . . . I. L. R., 2 Bom., 653

3. ——— **Complaint of bigamy by a person "aggrieved."**—*Criminal Procedure Code, s. 198.—Penal Code (Act XLV of 1860), s. 494.*—Where the wife of a lunatic was prosecuted for bigamy on the complaint of the lunatic's brother,—*Held* that the complainant, merely as brother of the lunatic, was not a "person aggrieved by such offence" within the meaning of section 198 of the Criminal Procedure Code (X of 1882), and that the complaint could not be entertained. QUEEN-EMPRESS *v.* BAI RUKSHMONI . I. L. R., 10 Bom., 340

COMPLAINT. Col.

1. INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES . . . 964
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See CASES UNDER DISCHARGE OF ACCUSED.

1. INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES.

1. ——— **Cognizance of offence.**—*Criminal Procedure Code, ss. 191, 202, 203.—Magistrate, Power of.—"May take cognizance of," Meaning of*—The use of the term "may take cognizance of any offence" in section 191 of the Criminal Procedure Code does not make it optional with a Magistrate to hear a complainant, but refers rather to the action of the Magistrate in taking cognizance of an offence in either of the specified courses in which the facts constituting the offence may be brought to his notice.

COMPLAINT—*continued.*

1. INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES—*continued.*

Cognizance of offence—*continued.*

He is bound to examine the complainant, and then can either issue summons to the accused, or order an enquiry under section 202, or dismiss the complaint under section 203. UMER ALI *v.* SAFER ALI [I. L. R., 13 Calc., 334

2. ——— **Cognizance of offence without complaint.**—*Power of Magistrate.—Offence under Penal Code or special Act.*—To give a Magistrate jurisdiction to take cognizance of an offence without any complaint under section 68, Criminal Procedure Code, 1861, there must be an offence committed which is punishable under the Penal Code or under some special Act. QUEEN *v.* PANNA LALL MOOKERJEE . . . 19 W. R., Cr., 4

3. ——— *Issue of warrant.—Power of Magistrate.*—A Magistrate, not being the Magistrate of the district, nor in charge of a division of the district, is not competent to issue warrants for the arrest of persons against whom no complaint has been preferred to him, nor any charge made by the police. QUEEN *v.* OOMRAO SINGH [3 N. W., 317

4. ——— *Power of Magistrate.—Information of third person.*—A Magistrate may take cognizance of a case on the information of a third person without any complaint by the party injured. IN RE RAMRUTTUN NEOGEE [6 W. R., Cr., 3

5. ——— **Trial without complaint.**—*Illegal conviction.—Railway Act, 1854.*—A conviction and sentence by a Magistrate, F. P., under the Railway Act, reversed; there being no complaint made before the Magistrate, as required by the Code of Criminal Procedure. REG. *v.* LARKINS [4 Bo.m, Cr., 4

6. ——— *Case referred from Civil Court.*—A Magistrate, F. P., has no jurisdiction without complaint to take up a case referred by the Civil Court to the District Magistrate and sent by him for trial. REG. *v.* DIPCHAND KHUSHAL [4 Bom., Cr., 30

7. ——— *Case referred without jurisdiction by Subordinate Magistrate.*—A Magistrate, F. P., has no power to take up, without complaint being made to him, a case referred to him by a Subordinate Magistrate which such Subordinate Magistrate had no power to refer. REG. *v.* BAGU VALAD OWSARI . . . 4 Bom., Cr., 34

ANONYMOUS CASE . . 7 Mad., Ap., 33

8. ——— *Accused voluntarily appearing.*—Where an accused person appears voluntarily before a Magistrate to answer a charge, the want of a complaint on oath, necessary for the issuing of a summons or warrant (sections 66 and 43, Criminal Procedure Code), becomes immaterial. *Semble,*—A Magistrate taking a complaint and issuing a summons thereon, acts not ministerially but judicially. Conditions under which a Magistrate may proceed with an investigation or trial without a complaint upon oath considered, and cases bearing on the question reviewed and explained. REG. *v.* SADA SHIBAPPA PUNDURANG GUPPA . 5 Bom., Cr., 29

COMPLAINT—*continued.*

1. INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES—*continued.*

Trial without complaint—*continued.*

9. ——— *Illegal conviction and sentence.—Memorandum sanctioning the prosecution.—Stamp Act, X of 1862, s. 3.*—Conviction and sentence under section 3 of Act X of 1862 (Stamp Act) reversed, as no complaint had been made to the trying Magistrate. A memorandum, under the signature of the Collector, sanctioning the prosecution, cannot be accepted in the place of a complaint, so as to authorise the issuing of a summons. REG. *v.* BAI DIVALE . . . . 5 Bom., Cr., 48

10. ——— **Offence charged not proved, but different offence shown.**—*Fresh complaint.*—Where a complaint laid before a Magistrate, F. P., by certain Government employés, accused the prisoner of criminal breach of trust of their wages, but from the evidence adduced it appeared that the offence of which the prisoner was guilty was criminal breach of trust of Government money, it was held that the Magistrate, F. P., had power to frame a charge against and convict the prisoner of the latter offence without a fresh complaint being made to him. REG. *v.* DHONDU RAMCHANDRA . . . 5 Bom., Cr., 100

11. ——— **Offence disclosed in course of proceedings not triable by Magistrate without complaint.**—*Criminal Procedure Code, 1872, s. 142.*—A complaint was made to a Magistrate accusing a certain person of having taken or kept the wife of the complainant. In the course of the proceedings it appeared that the wife had committed bigamy (section 494, Penal Code). The Magistrate without a further complaint committed the woman alone for trial by the Court of Session. *Held,* that the Magistrate had acted within his jurisdiction, section 142 of the Code of Criminal Procedure being designed to prevent a Magistrate from enquiring without complaint into a case connected with marriage, but when a case is properly before the Magistrate, he may proceed against any person implicated. IN THE MATTER OF UJJALA BEWA [1 C. L. R., 523

12. ——— **Offence charged under particular section of Penal Code.**—*Power of Magistrate to apply any other section applicable.*—A Magistrate is not bound to adhere to any particular section of the law which may be mentioned by a complainant in his complaint, but may apply any section which he thinks applicable to the case, so long as the parties are not misled, and the proper procedure is observed. He may recall an order which he finds to be wrong, and substitute any other which he may think right under the law. KALIDASS BHUTTACHARJEE *v.* MOHENDRONATH CHATTERJEE [12 W. R., Cr., 40

COMPLAINT—*continued.*

1 INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES—*continued.*

13. ———— Case referred by Civil Court. —*Criminal Procedure Code, s. 273.—Power to refer.* —The various modes in which civil proceedings can be instituted under the Code of Criminal Procedure pointed out. Where a Civil Cou rt makes over a case to a Magistrate for investigation, the Magistrate ought to examine the complainant and reduce the examination into writing, which should be signed by the Magistrate and the complainant. Section 273, Code of Criminal Procedure, only empowers a superior Magistrate to refer cases to a Subordinate Magistrate when the complaint is made to himself or before a police officer, but not cases where he himself takes cognizance of an offence. BHUGOBAN CHUNDER PODDAR *v.* MOHUN CHUNDER CHUCKERBUTTY **[12 W. R., Cr., 49**

14. ———— Case irregularly sent by Civil Court.—*Investigation without complaint.—Civil Procedure Code, 1861, s. 68.*—Although a Civil Court acted irregularly in sending to the Magistrate for investigation a case of using or attempting to use false evidence when no suit was pending in that Court, yet as the Court had given its sanction to the prosecution of the offence,—*Held,* that it was in the competency of the Magistrate, under section 68 of the Code of Criminal Procedure, even without a charge or complaint, to proceed to investigate, and, if necessary, to commit for trial to the Sessions Court. QUEEN *v.* DOORGA NATH ROY . . **8 W. R., Cr., 9**

15. ———— Previous enquiry.—*Criminal Procedure Code, 1872, s. 146.*—The previous enquiry provided for by section 146 before a complaint is taken up, ought not to be made after the accused has been brought before the Court under a warrant. RAMKANT SIRCAR *v.* JADUB CHUNDER DASS **[21 W. R., Cr., 44**

16. ———— Authorisation to proceed with case.—*Form of complaint, Irregularity or defect in.*—A Court of Session is competent to proceed to the trial of a prisoner brought before it upon a charge by a Magistrate authorised to make a commitment, though the complaint or authorisation be contained only in a letter from the Judge of that Court to the Magistrate of the district, sent with the record of the case, notwithstanding an irregularity or defect of form in recording the complaint. The complaint or authorisation of the Court before which, or against the authority of which, an offence mentioned in Chapter XI of the Code of Criminal Procedure is alleged to have been committed, is a sufficient warrant for commencement of criminal proceedings. *Queen* v *Mahim Chandra Chuckerbutty, 3 B. L. R., A. Cr., 67,* overruled. QUEEN *v.* NARAYAN NAIK **[5 B. L. R., F. B., 660**

S. C. IN THE MATTER OF NARAYAN NAIK **[14 W. R., Cr., 34**

17. ———— Extra-judicial knowledge of Magistrate.—*Criminal Procedure Code, 1861, s. 68.—Summons without complaint.*—The power which a Magistrate of a district, or a Magistrate in charge of a division of a district, has to issue a summons without any complaint, is not affected by the circumstance that the offence with which the accused was charged came to the knowledge of the Magistrate otherwise than through a petition which was presented against the accused. BISSESHUR ROY *v.* HURPERSAD SINGH . . . **11 W. R., Cr., 1**

18. ———— *Act XXV of 1861, s. 68.—Private information.*—A belief founded on private and anonymous information is not knowledge within the meaning of section 68 of the Criminal Procedure Code. IN THE MATTER OF MOHESH CHUNDER BANERJEE. QUEEN *v.* PURNA CHANDRA BANERJEE. QUEEN *v.* KALI SIRKAR **[4 B. L. R., Ap., 1 : 13 W. R., Cr., 1**

19. ———— Report of police officer.—*Criminal Procedure Code (Act XXV of 1861), s. 68.—Act X of 1872, s. 142.—Knowledge.—Report of police.—Interference of High Court.*—Section 68 of the Criminal Procedure Code applies only to cases in which the private individual injured or aggrieved does not come forward to make a formal complaint. That section is intended for the purpose of enabling a Magistrate to take care that justice may be vindicated, notwithstanding that the persons individually aggrieved are unwilling or unable to prosecute; and even in such cases the jurisdiction to arrest requires, for its foundation, knowledge of the fact of an offence having been committed, and that knowledge must be either personal or derived from testimony legally given. The report of the police, or any statement which falls short of an actual formal complaint, or of a statement made on oath, is not sufficient in law to give a Magistrate jurisdiction to issue his warrant. In this case, although the Magistrate had acted illegally before evidence was recorded, and had shown a want of discretion in some of the stages, the High Court refused to quash the Magistrate's order directing the prisoners to be put upon their defence, on the ground that the order had been made by a competent officer after hearing evidence which was judicially received and recorded. IN THE MATTER OF THE PETITION OF SURENDRA NATH ROY. QUEEN *v.* SURENDRA NATH ROY **[5 B. L. R., 274 : 13 W. R., Cr., 27**

20. ———— *Power of Magistrate to issue warrant or entertain case.—Criminal Procedure Code, 1869, s. 66 (a) and ss. 68 and 155.*—In cases in which the police cannot arrest without a warrant, a warrant cannot be legally issued by a Magistrate except on a complaint made upon oath (or under the provisions of section 68), whether the Magistrate issuing the warrant is authorised to entertain cases either on complaint preferred directly to himself, or on the report of a police officer, under section 66 (*a*) of the Criminal Procedure Code or not. The report of a police officer referred to in the above section means, not any communication made by a police officer, but the formal report drawn up under

COMPLAINT—*continued.*

1. INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES—*continued.*

Report of police officer—*continued.*

section 155 of the Criminal Procedure Code, in cases in which the police may arrest without warrant. REG. *v.* JAFAR ALI . . **8 Bom., Cr., 113**

21. ——— Petition of third person.—*Criminal Procedure Code, 1872, s. 205.—Magistrate entertaining petition by third party.*—Certain parties having complained in the Magistrate's Court of assault or ill-usage by order of one whom they called their zemindar, with a view to making them pay enhanced rent, both complainants and accused were absent when the case was called on for hearing. As the Magistrate was about to dismiss the complaint, a third party appeared, and alleged that the complaint had been made with the connivance of the accused for the purpose of fabricating evidence of his right or title to the mouzah where the complainants lived. Thereupon the Magistrate compelled the complainants to appear, took down the evidence of some of them, received a counter-complaint from the third party above mentioned, and convicted the complainants under the Penal Code, section 193, and sentenced them to imprisonment. *Held,* that the Magistrate ought not to have entertained the third party's petition, or compelled the complainants to go on with their case; and that, under the circumstances, the evidence given was not judicial evidence. IN THE MATTER OF THE PETITION OF DUKHUN PAHAN **[24 W. R., Cr., 32**

22. ——— Omission to examine complainant.—The Deputy Magistrate was held to have been wrong in summoning the parties charged before examining the complainant. RUJUB MUNDLE *v.* LOCHUN MUNDLE . . **W. R., 1864, Cr., 73**

2. POWER TO REFER TO SUBORDINATE MAGISTRATE.

23. ——— Case originating with District Magistrate.—*Criminal Procedure Code, 1861, s. 68.*—A case originating with a Magistrate of the district must, under section 68 of the Code of Criminal Procedure, be disposed of by the Magistrate himself, and cannot be referred to a Subordinate Magistrate. QUEEN *v.* HOSSEIN MANJEE **[9 W. R., Cr., 70**

IN THE MATTER OF THE PETITION OF DHUNPUT SINGH . . . . **19 W. R., Cr., 30**

24. ——— Irregularity in recording complaint.—*Complaint not reduced to writing.—Act X of 1872, ss. 144, 44, and 283.—Criminal Procedure Code (Act XXV of 1861), ss. 66, 273, 426, and 439.—Irregularity in commencing proceedings.*—Under section 66 of the Code of Criminal Procedure, the examination of the prosecutor should be reduced to writing, and signed by him. When a complaint is made before a Magistrate, but not reduced to writing, he cannot, under section 273 of the Code of Criminal Procedure, refer the case to a Deputy Magistrate for trial. Sections 426 and 439 do not apply to a case where the prosecution is not

COMPLAINT—*continued.*

2. POWER TO REFER TO SUBORDINATE MAGISTRATE—*continued.*

Irregularity in recording complaint—*continued.*

commenced by a complaint, as directed in the Code. A conviction with such irregularity cannot stand good, merely because the amount of punishment would have been the same if proper proceedings had been instituted. QUEEN *v.* MAHIM CHANDRA CHUCKERBUTTY . . **3 B. L. R., A. Cr., 67**

25. ——— *Complaint not reduced to writing or signed.*—On receipt of a petition from the complainant, the Magistrate, without examining him, and reducing his examination into writing and obtaining his signature thereto, or appending his own signature as Magistrate, referred the petition to a Deputy Magistrate for trial. The Deputy Magistrate tried and convicted the accused. On a reference from the Sessions Judge, on the ground that the proceedings were irregular under section 66, Act XXV of 1861, and that therefore the order of the Deputy Magistrate was without jurisdiction,—*Held* that the petition was sufficient, and that the Magistrate was justified in making over the petition to a Deputy Magistrate, who had the full powers of a Magistrate for enquiry and trial. QUEEN *v.* UMESCHANDRA CHOWDRY **[5 B. L. R., 160: 14 W. R., Cr., 1**

26. ——— *Non-compliance with provisions of Code.*—A Magistrate of a district, before whom a complaint had been made, without complying with the provisions of section 66, Act XXV of 1861, sent the petition to be disposed of by a Deputy Magistrate; and when the Deputy Magistrate had proceeded to some extent with the case, the Magistrate took it up and tried it himself. *Held,* that non-compliance with the provisions of section 66 made the subsequent proceedings void. QUEEN *v.* GIRISH CHANDRA GHOSE **[7 B. L. R., 513: 16 W. R., Cr., 40**

27. ——— *Non-compliance with provisions of Code.—Criminal Procedure Code (Act XXV of 1861), ss. 66, 67.—Act VIII of 1869, s. 66 (b).—Act X of 1872, ss. 144, 147, and 49.*—A Magistrate of a district, before whom a complaint had been made, without complying with the provisions of section 66 of Act XXV of 1861, sent the petition to be disposed of by a Deputy Magistrate not authorised to receive complaints without reference from the District Magistrate, who tried and convicted the offender. *Held, per* KEMP, *J.,* that non-compliance with the provisions of section 66 of Act XXV of 1861 made the subsequent proceedings void. *Held, per* AINSLIE, *J.,* that the order sending the petition to the Deputy Magistrate for disposal gave the latter officer power to receive the complaint under section 66 (*b*) of Act VIII of 1869, and that the subsequent proceedings therefore were valid. IN THE MATTER OF ISWAR CHUNDER KOER *v.* UMESH CHUNDER PAL . . **8 B. L. R., 19**

28. ——— *Omission to examine complaint.—Act XXV of 1861, ss. 66 and*

COMPLAINT—*continued.*

2. POWER TO REFER TO SUBORDINATE MAGISTRATE—*continued.*

Irregularity in recording complaint—*continued.*

273.—Act X of 1872, ss. 144 and 44.—Reference by District Magistrate to Subordinate Magistrate.—A District Magistrate is not bound, on receipt of a complaint, to examine the complaint under section 66 of Act XXV of 1861 before referring the complaint to a Subordinate Magistrate for disposal. The examination of the complainant by the Magistrate to whom the case has been referred is sufficient. QUEEN *v.* HARU . . **9 B. L. R., F. B., 146**

S. C. BHUGOBUT CHURN SEIN *v.* SIAM ALI: IN RE RAM CHUNDER GHUTTUCK, AND IN RE HARU . . . . **18 W. R., Cr., 18**

29. ——— *Reference to Subordinate Magistrate before reducing examination of complainant to writing.—Criminal Procedure Code, 1861, s. 66.*—The Magistrate of the district, on a complaint being presented to him, has no power to refer the petition to a Subordinate Magistrate for trial until he has himself reduced the examination of the petitioner into writing, in accordance with the provisions of section 66 of the Criminal Procedure Code. QUEEN *v.* BHIKAREE . . **4 N. W., 88**

30. ——— **Reference for enquiry and report.**—*Criminal Procedure Code, ss. 4, 202, 350.*—A Magistrate, upon complaint made, having issued process and examined witnesses in support of complaint, ceased to exercise jurisdiction. His successor on taking up the case referred the complaint to the police for enquiry and report, and upon receipt of the report discharged the accused. *Held*, that this procedure was illegal. A reference under section 202 of the Code of Criminal Procedure cannot be made after evidence has been taken for the complainant and process issued. SADAGOPACHARYAR *v.* RAGAVACHARYAR . . **I. L. R., 9 Mad., 282**

3. WITHDRAWAL OF COMPLAINT AND OBLIGATION OF MAGISTRATE TO HEAR IT.

31. ——— **Withdrawal of complaint.**—*Act XXV of 1861, s. 270.—Act X of 1872, s. 210.*—Offences punishable under the Penal Code with more than six months' imprisonment are not triable under Chapter XV of the Code of Criminal Procedure, and consequently do not fall within the provisions of section 271 of that Code. ANONYMOUS CASE **[4 B. L. R., F. B., 41: 12 W. R., Cr., 59**

32. ——— *Criminal Procedure Code, 1872, s. 210.—Penal Code, s. 352.—Criminal force.—Hurt.*—Complainant alleged that he had been seized by the hands and legs, thrown to the ground, slapped, thumped, and slippered on the chest by three persons, one of whom gave a knife to another with directions to stab complainant. *Held*, that the complaint disclosed a case of hurt, and that section 210 of the Code of Criminal Procedure, 1872, did not justify the Magistrate in allowing the complaint to be withdrawn. SAMBASIVANNA *v.* BHOGAPPA . . . **I. L. R., 5 Mad., 378**

COMPLAINT—*continued.*

3. WITHDRAWAL OF COMPLAINT AND OBLIGATION OF MAGISTRATE TO HEAR IT—*continued.*

Withdrawal of complaint—*continued.*

33. ——— *Withdrawal for want of prosecution.—Criminal Procedure Code, 1861, ch. XIV.*—Cases instituted and tried under Chapter XIV of the Criminal Procedure Code cannot be struck off the file at the request of the complainant, or for the want of prosecution on his part. The Magistrate must proceed in such cases in the manner prescribed by the chapter, notwithstanding the complainant may desire to withdraw his complaint. QUEEN *v.* JUGROOP UGRABEE . . **3 N. W., 341**

34. ——— *Effect of withdrawal.—Acquittal.*—The withdrawal of a complaint by the complainant operates as an acquittal, and the High Court has no authority to entertain the matter at all, except upon an application duly made with sanction of the Government. LUCHI BEHARA *v.* NITYANUND DOSS . . **19 W. R., Cr., 55**

35. ——— **Objection of Magistrate to hear complaint.**—*Commencement of prosecution.*—A prosecution commences when a complaint is made, the reception of the complaint being a stage of the judicial proceedings towards conviction. EMPRESS *v.* LAKSHMAN SAKHARAM **[I. L. R., 2 Bom., 481**

36. ——— *Complaint once instituted.—Duty of Magistrate.*—Where once a complaint of an offence which cannot be legally compounded is before a Magistrate, he is bound (unless proceeding under section 146) to make a complete enquiry, and to see that the accused, if guilty, is brought to punishment. QUEEN *v.* DODRAJ DOSADH **[22 W. R., Cr., 83**

37. ——— *Duty of Magistrate.—Remedy by civil suit.*—If a complaint is duly made before a Magistrate, and the act imputed appears to amount to an offence and there is *primâ facie* reason to suppose the accusation true, the Magistrate is bound to proceed though he may consider a civil suit more applicable. QUEEN *v.* NUBAS MUHTON . . . . **8 W. R., Cr., 65**

38. ——— *Duty of Magistrate.—Remedy by civil suit.*—Where there is a *primâ facie* case (of abduction in this instance) made out, a Magistrate should send for the witnesses, and form his opinion on the evidence, and not merely on the strength of the police report reject the complainant's petition and refer him to the Civil Court. BARODAKANT MOOKERJEE *v.* KALI BHUTTACHARJEE **[9 W. R., Cr., 21**

39. ——— *Remedy by civil suit.*—A charge properly laid under the Penal Code should be investigated, even if the case be one in which a civil action will lie. KHOSAL SINGH *v.* TOOLSEE CHOWDHRY . **10 W. R., Cr., 40**

See KOREEM BUX *v.* HOORMUT. **[20 W. R., Cr., 60**

COMPLAINT—*continued.*

3. WITHDRAWAL OF COMPLAINT AND OBLIGATION OF MAGISTRATE TO HEAR IT—*continued.*

Objection of Magistrate to hear complaint—*continued.*

40. ——— *Remedy by civil suit.*—The High Court refused to interfere with an order of a Magistrate, by which he dismissed a complaint of theft, because it appeared to him, after making enquiries from the police, before whom the complaint was in the first instance brought, that the complaint was not one that the Criminal Court should entertain, but in respect to which a suit in the Civil Court should be brought. QUEEN *v.* RUSSEEK MONEE **[11 W. R., Cr., 54**

4. DISMISSAL OF COMPLAINT.

(*a*) GROUND FOR DISMISSAL.

41. ——— **Discretion of Magistrate.**—*Criminal Procedure Code, 1861, s. 67.—Discretion of Magistrate to dismiss case.*—A Magistrate has a discretion, under section 67 of the Criminal Procedure Code, to dismiss a complaint at once, and is under no obligation to go further. BATOOL NASHYO *v.* BHUGLOO CHOWKEEDAR . **10 W. R., Cr., 50**

SHIBU MANJEE *v.* NOSHEE MOOKERJEE **[17 W. R., Cr., 3**

42. ——— **Acquittal without regular trial.**—*Criminal Procedure Code, 1861, s. 250.*—A Deputy Magistrate has no authority to acquit a prisoner of an offence under Chapter XIV of the Code of Criminal Procedure for which he had not regularly put him upon his trial. He must proceed agreeably to section 250 of that Code. GOONATH MUNDUL *v.* TROYLOCKO CHUCKERBUTTY **[9 W. R., Cr., 15**

43. ——— **Offence disclosed other than that charged.**—*Additional offence.*—A Magistrate is not authorised to dismiss a case because he finds, in course of investigation, that the facts disclose an offence other than, or in addition to, that complained of; but is bound to adjudicate on the original charge. DEGUMBER PAUL *v.* KALLY DOSS DUTT . . . . . **8 W. R., Cr., 82**

44. ——— **Complaint laid by irresponsible person.**—*Servant, Charge by.*—The dismissal of a charge for cutting and carrying away an indigo crop which was in his charge, on the mere ground that a more responsible servant ought to have laid the complaint, was held to be erroneous and was set aside, and the Magistrate directed to hear the case. BOODHOO ROY *v.* RAMDYAL SINGH **[18 W. R., Cr., 55**

45. ——— **Delay in making charge.**—*Want of material evidence of assault.*—The High Court declined to interfere in these cases of dismissal by the Magistrate and Deputy Magistrate referred by the Judge, because the Judge considered that the Magistrate's reasons—*viz.*, (1) want of explanation of the cause of complainant's presence on the spot where the alleged assault was committed, (2) want of explanation of delay in making the complaint, and (3) want of material evidence in the shape of bruises—were not sufficient in law to justify a summary dismissal; and because the Judge considered that delay in making complaint was not of itself a legal ground for dismissal, particularly where an explanation of the delay is tendered. HURNATH DE KHASHKHIL *v.* JOYGOPAL DE SARKAR. AHMUDDY *v.* ANUND MOHUN MOZOOMDAR . . **16 W. R., Cr., 75**

COMPLAINT—*continued.*

4. DISMISSAL OF COMPLAINT—*continued.*

(*a*) GROUND FOR DISMISSAL—*continued.*

Delay in making charge—*continued.*

46. ——— **Delay in prosecution after sanction.**—*False charge.*—Sanction was given by the Magistrate for the institution of criminal proceedings against the defendant for having made a false charge against the complainant. The Magistrate dismissed the complaint on the ground that the complainant had taken no step to prosecute for three months after the sanction was obtained. *Held,* that the Magistrate had power to dismiss the complaint. ANONYMOUS . . . **6 Mad., Ap., 15**

47. ——— **Refusal of complainant to lay complaint.**—A Magistrate is not bound to convict of a charge on which the complainant refuses to lay a complaint, although on the accused's own admission the offence has been committed. ANONYMOUS . . . **5 Mad., Ap., 5**

48. ——— **Non-appearance of complainant.**—*Criminal Procedure Code, 1872, ss. 205, 361.*—Where a complainant is required to pay fees for summoning witnesses under section 361 of the Code of Criminal Procedure and fails to do so, the Magistrate must deal with the case on the evidence before him, and is not justified in dismissing the complaint under section 205 of that Code. KORAPULU *v.* MONAPPA . . **I. L. R., 5 Mad., 160**

49. ——— *Criminal Procedure Code, 1872, s. 208.*—Under section 208, Criminal Procedure Code, 1872, the Magistrate may dismiss the complaint if the complainant does not appear on the day to which the hearing has been duly adjourned, even though the complainant and his witnesses have been examined and their further attendance seems unnecessary. MUDOOSOODUN SHA *v.* HARI DASS DASS . . . . . **22 W. R., 40**

50. ——— *Criminal Procedure Code, 1861, s. 259.*—A Subordinate Magistrate has no power to dismiss a charge of criminal misappropriation under section 403 of the Penal Code for non-appearance of the complainant, under section 259 of the Code of Criminal Procedure. That section only applies to cases which fall within Chapter XV of the Criminal Procedure Code. ANONYMOUS . . . . . **4 Mad., Ap., 41**

51. ——— *Order made in absence of parties.*—When an order for adjournment was not made in the presence of the parties, the dismissal of the complaint, because the complainant

COMPLAINT—*continued.*

4. DISMISSAL OF COMPLAINT—*continued.*

(*a*) GROUND FOR DISMISSAL—*continued.*

Non appearance of complainant—*continued.*

did not appear on the day fixed, was held to be illegal. ANONYMOUS . . . 8 Mad., Ap., 6

52. ——————— *Obstruction in repairing road without leave.*—Where a person for having repaired a public road without having previously asked for leave to repair it was, on simple petition, charged with having obstructed the road, and the complainant never appeared,—*Held* that the Deputy Magistrate ought to have dismissed the complaint. QUEEN *v.* BHOLA NATH BANERJEE [7 W. R., Cr., 31

53. ——————— *Presence of witnesses.*—Where a complaint is preferred before a Magistrate, and the witnesses named by the complainant are summoned and attend, but the complainant is absent, a Magistrate may, if he thinks it unnecessary to carry on the enquiry in the absence of the complainant, discharge the accused. QUEEN *v.* DASSOO MANJEE . . 11 W. R., Cr., 39

54. ——————— *Illegal adjournment.*—The Deputy Magistrate's order dismissing a case for default (after repeated unnecessary adjournments and after the accused was put on his defence) upon a day to which no legal adjournment was made, was set aside as illegal. MAHOMED ALUM *v.* AKIL [16 W. R., Cr., 68

55. ——————— *Discharge of accused.*—In answer to a reference from a Sessions Judge, the Court were of opinion that in a case where the accused has been duly summoned or arrested under a warrant, and is present to meet any charge, and thecomplainant and his witnesses negligently fail to appear against him, if it be not shown to the Magistrate that the case is one in which he ought to adjourn the enquiry under section 224, Code of Criminal Procedure, the accused person ought to be discharged; but also held, that the question did not arise under the circumstances of the case, and the case must go back to the Magistrate for investigation. TAKI MAHOMED MANDAL *v.* KRISHNA NATH RAI . . 7 B. L. R., 7 [15 W. R., Cr., 53

QUEEN *v.* ABDUL BISWAS [7 B. L. R., 8, note

But *see* QUEEN *v.* BHAGABATI SATHRAN [7 B. L. R., 9, note

S. C. NUNDLAL SOOTRODHOR *v.* BHAGIRUTTY SOOTRAN 10 W. R., Cr., 31

56. ——————— *Postponement for further evidence.*—Where the charge was one under section 347 of the Penal Code, and the evidence of the prosecutor and other evidence had been taken, and the case postponed for the evidence of further witnesses which was considered necessary by the Magistrate, and they failed to appear, an order by

COMPLAINT—*continued.*

4. DISMISSAL OF COMPLAINT—*continued.*

(*a*) GROUND FOR DISMISSAL—*continued.*

Non-appearance of complainant—*continued.*

the Magistrate dismissing the case for want of sufficient evidence was held to be illegal. QUEEN *v.* BIDUR GHOSE [7 B. L. R., 9, note: 12 W. R. Cr., 27

57. ——————— *Criminal Procedure Code, 1882, s. 247.*—A case having been transferred from the file of one Magistrate to that of another, was on the day fixed called on for hearing, but the complainant not appearing the case was dismissed under section 247 of the Criminal Procedure Code. It appeared that the complainant and his witnesses, though not in attendance in the Magistrate's Court, were present in another Court in the same Court-house, being under the impression that his case had been transferred to the Magistrate of that Court. *Held,* that the complainant having been present in the Court-house, the provisions of section 247 of the Code of Criminal Procedure had been improperly applied. ROMANATH BAL *v.* BEHARI BOG BAGDI . 13 C. L. R., 303

58. ——————— *Criminal Procedure Code, 1882, s. 247.—Acquittal.—Absence of prosecutor when case called on.—Subsequent appearance on same day.*—A Magistrate, before acquitting a person under the provisions of section 247 of the Code of Criminal Procedure, is not bound to wait until the Court is about to close for the day. KUTTIYALI *v.* PARI MAKDI . . . I. L. R., 7 Mad., 356

(*b*) POWER OF AND PRELIMINARIES TO DISMISSAL.

59. ——————— Power to dismiss case.—*Irregularity in dismissal.—Transfer of case by Magistrate to Deputy Magistrate.—S. T.* brought a charge of theft against *B.* before a Magistrate. The case was made over to the Deputy Magistrate, on whose suggestion the Magistrate ordered that there should be a police enquiry. The Police Superintendent reported that, in his opinion, the charge was false, and that the plaintiff should be summoned for bringing a false charge; and the Magistrate, while declaring that he would not encourage charges of "false complaint," said that the injured party might swear an information if she chose. *S. T.* then petitioned to be allowed to call witnesses in support of her charge of theft, and objected to the police proceedings. The Magistrate recorded the following order: "The case has been dismissed, and the accused, *Mrs. B.,* has received permission to prosecute the woman *S. T.* for false charge; the present petition may be put in defence in that case." *Held,* that the order of the Magistrate must be quashed—(1) because he had no jurisdiction, the case having been made over to the Deputy Magistrate; (2) because the order above was not a judicial dismissal of the case. Case remanded for trial of the original charge as brought by *S. T.* SHANTO TEORNI *v.* BELILIOS [3 B. L. R., Ap., 151

60. ——————— *Dismissal of complaint on police report.—Omission to give com-*

COMPLAINT—*continued.*

4. DISMISSAL OF COMPLAINT—*continued.*

(*b*) POWER OF AND PRELIMINARIES TO DISMISSAL —*continued.*

Power to dismiss case—*continued.*

plainant opportunity to prove case.—After complainant's preliminary examination the case was referred to the police for report, and complainant had notice to appear on 6th November to hear the report. On 31st October the Assistant Magistrate dismissed the case upon the report of the police officer without giving complainant an opportunity to show cause against the dismissal. His order was set aside by the High Court, and he directed to conform to Circular 5 A., dated 7th September 1868. BULLEE SINGH *v.* KANAI CHOWDHRY . . **17 W. R., Cr., 2**

61. ——————— *Failure to show in Magistrate's opinion any criminal offence.—Act XXV of 1861, s. 180.—Act X of 1872, s. 146.—Powers of Magistrate.*—The accused was charged before a Deputy Magistrate with an offence under section 431, Penal Code. The Deputy Magistrate examined the complainant, took bail from the accused, but refused to examine the complainant's witnesses, although present, and delayed the investigation unnecessarily for a long sime. The Magistrate of the district then called for the proceedings, and having looked at them considered that there was no case for the interference of the Criminal Courts, and discharged the prisoner, although he was present and under bail. *Held*, that the Magistrate was not only competent but bound to discharge the prisoner, if his conclusion that no offence was made out was correct. But *held*, also, that the Magistrate's conclusion was wrong, and that the act complained of, if true, did amount to an offence under section 431 of the Penal Code; therefore the Magistrate's order was set aside, and further enquiry ordered. NIAMUTULLA *v.* GOPAL SAHA . **11 B. L. R., Ap., 6: 14 W. R., Cr., 63**

62. ——— **Preliminaries to dismissal.** —*Recording evidence of complainant.—Act XXV of 1861, ss. 66 and 180.—Dismissal of complaint without recording evidence.—Act X of 1872, ss. 144 and 140.*—*A.* charged *B.* before a Magistrate for wrongful confinement of her brother. Previous to the petition to the Magistrate, the charge had been investigated by the police, and reported to be false. The Magistrate, without recording the complaint under section 66 of the Code of Criminal Procedure, sent for the police papers, and under section 180 of the same Code dismissed the case. *Held* that the proceedings were illegal; that the Magistrate was bound, under section 66 of the Code of Criminal Procedure, to record the examination of the complainant before he could, under section 180, dismiss the complaint. DULALI BEWA *v.* BHUBAN SHAHA **[3 B. L. R., A. Cr., 53**

See QUEEN *v.* HABEAKCHAND NOWLAKA. **[8 W. R., Cr., 12**

DINONATH GOPE *v.* SARODA MOOKHOPADHYA . . **7 W. R., Cr., 47**

QUEEN *v.* RAMNATH . **7 W. R., Cr., 45**

COMPLAINT—*continued.*

4. DISMISSAL OF COMPLAINT—*continued.*

(*b*) POWER OF AND PRELIMINARIES TO DISMISSAL —*continued.*

Preliminaries to dismissal—*continued.*

IN THE MATTER OF NILMONY BHUTTACHARJEE . **[16 W. R., Cr., 68**

But section 180 applied to cases under Chapter XIV of the Code by section 249 of Act VIII of 1869, and a Magistrate might dismiss a complaint without calling evidence if he thought there was no sufficient ground for proceeding.

63. ——————— *Examination of complainant.*—A Magistrate is bound at least to examine a complainant before he can exercise the discretionary power to issue process or dismiss the complaint which is given to him by section 67 of the Code of Criminal Procedure. RANGASWAMI GOUNDEN *v.* SABAPATHY GOUNDEN . **4 Mad., 162**

64. ——————— *Examination of complainant.—Refusal to hear complaint.—Criminal Procedure Code, 1872, s. 144.*—A complaint of theft of cocoanuts valued at one anna and eight pies was made to a third class Magistrate, who returned the petition to the complainant, with an endorsement that he should obtain redress from the Village Magistrate. *Held*, under section 144, Criminal Procedure Code, 1872, he was bound to hear the complaint. ANONYMOUS . . . . **7 Mad., Ap., 31**

65. ——————— *Examination of complainant.—Criminal Procedure Code (Act XXV of 1861), s. 67.—Act X of 1872, s. 147.—Dismissal without enquiry.*—Where a Magistrate removed a case from the file of the Joint Magistrate to his own after complaint had been made and warrants issued by the Joint Magistrate upon the footing of the complaint and thereupon suspended the warrant and dismissed the complaint without hearing it in due course of procedure,—*Held*, that it was an improper proceeding; he ought to have proceeded with the case from the stage at which it was when he removed it. IN THE MATTER OF THE PETITION OF RAGHOO PARIBAH **[10 B. L. R., Ap., 26: 19 W. R., Cr., 28**

66. ——————— *Examination of complainant.*—If a Magistrate considers a complaint false and groundless, he is not bound to issue a summons or warrant. The law vests him with a discretion, which discretion it is incumbent on him to exercise. At the same time the Magistrate should always take the examination of the complainant. QUEEN *v.* RAMCHURN . . . **3 N. W., 272**

67. ——————— *Examination of complainant.—Interference by High Court.—Act X of 1872, ss. 144, 147, 295, and 296.—Act XXV of 1861, s. 434.*—Where a Magistrate had examined the complainant under section 56 of Act XXV of 1861, and dismissed the complaint under section 67,—*Held*, that the High Court would not interfere under section 434. QUEEN *v.* FOKTU SHAH **[2 B. L. R., S. N., 6: 10 W. R., Cr., 49**

COMPLAINT—*continued.*

4. DISMISSAL OF COMPLAINT—*continued.*

(*b*) POWER OF AND PRELIMINARIES TO DISMISSAL —*continued.*

Preliminaries to dismissal—*continued.*

68. ——————— *Examination of complainant.—Omission to examine complainant.—Order for prosecution for false charge under s. 211, Penal Code.*—A charge of burglary and theft having been preferred against two persons, the Magistrate before whom the charge was laid, after comparing the petition of complaint with the papers submitted to him by the police, who had made an enquiry and reported the charge to be false, directed, without having taken the examination of the complainant, that the case should be struck out, and that proceedings should be instituted against the complainant under section 182 of the Penal Code. Proceedings were accordingly taken, and the complainant was ultimately tried and found guilty of an offence under section 211. *Held*, on appeal, that the proceedings had been irregular and should be quashed; that the Magistrate should be directed to reopen the enquiry into the charge of burglary and theft, first examining the complainant; and that if after such examination he should be of opinion that the charge was false, the appellant might be proceeded against under section 211 of the Penal Code. IN THE MATTER OF BIYOGI BHAGUT . . **4 C. L. R., 134**

IN THE MATTER OF RUSSICK LALL MULLICK **[7 C. L. R., 382**

69. ——————— *Examination of complainant.—Dismissal without enquiry.*—A charge of theft should be enquired into before deciding it to be false or taking steps under section 211, Penal Code. IN THE MATTER OF BISHOO BARIK **[16 W. R., Cr., 77**

70. ——————— *Examination of complainant.—Criminal Procedure Code, 1872, s. 147.*—A charge of theft was preferred by the petitioner on the 7th October 1878 before the police, who thereupon instituted enquiries which subsequently resulted in their finding the charge unproved. Meanwhile, on the 15th October, the charge was repeated in a complaint before the Magistrate of the district, who directed the complainant and his witnesses to attend on a particular day, but subsequently, without having examined them or the complainant, referred the matter to the Sub-Deputy Magistrate. That officer having reported the charge to be false, the Magistrate, on the 9th November, wrote upon the police report, which had meanwhile, on the 26th October, been submitted to him, the following direction, *viz.*, "show as false." On the 19th November a counter-prosecution under sections 211, 182, and 500 of the Penal Code was sanctioned, and eventually, on the 22nd May 1879, resulted in the petitioner being convicted. While the counter-prosecution was pending, the petitioner, on the 22nd April, applied to the Magistrate to proceed with his complaint according to law, but was informed that his complaint was dismissed. On the following day the Magistrate recorded the following order: "Dismissed in accordance with my decision recorded in the police report under section 147 of the Code of Criminal Procedure." *Held*, that the complaint had been improperly dismissed, and that the order of the Magistrate, dated 23rd April 1879, must be set aside. ERAD ALI *v.* NUSIBUN NISSA BIBEE . . **4 C. L. R., 534**

71. ——————— *Hearing evidence.—Dismissal without hearing evidence.*—A Magistrate ought to hear evidence in support of a charge before dismissing the complaint. A bare assertion by an accused charged with committing theft of a proprietary right in the alleged stolen property, is no reason for a Magistrate to refuse to entertain the charge of theft. QUEEN *v.* KALI CHARAN MISSER **[7 B. L. R., Ap., 55**

S. C. RUNNOO SINGH *v.* KALI CHARAN MISSER **[16 W. R., Cr., 18**

72. ——————— *Hearing evidence.—Dismissal without hearing evidence.—Criminal Procedure Code (Act XXV of 1861), s. 270.—Act X of 1872, s. 209.*—On the day fixed for hearing a complaint of trespass and assault made against three persons named, the complainant appeared with his witnesses, and the defendants also appeared; and on one of them being found to be a child of 8 years of age, the Magistrate dismissed the case without taking any evidence. *Held*, the Magistrate was in error, and should not have dismissed the case merely because one defendant was a child. He should have followed the procedure laid down in sections 265 and 266. BILASH *v.* MAKROO **[2 B. L. R., S. N., 15: 10 W. R., Cr., 61**

73. ——————— *Examination of complainant's witnesses.—Recording reasons.—Penal Code, s. 211, Charge under.*—A Deputy Magistrate was held to have acted irregularly in dismissing a complaint, and directing the trial of the complainant under section 211 of the Penal Code, without recording his reasons for doing so, and without examining all the witnesses tendered by the complainant, or allowing a reasonable time for the attendance of such of the witnesses as were not present. QUEEN *v.* HEERA LALL GHOSE . **13 W. R., Cr., 37**

NISSAR HOSSEIN *v.* RAMGOLAM SINGH **[25 W. R., Cr., 10**

IN THE MATTER OF GANGOO SINGH **[2 C. L. R., 389**

74. ——————— *Examination of complainant's witnesses.—Criminal Procedure Code, 1869, ss. 193, 249.*—Section 193 of the Code of Criminal Procedure applies to cases under Chapter XV of that Code, and a Magistrate cannot dispose of a case under that chapter without examining the witnesses called for the prosecution. KISHORE SAHAI *v.* MUNGERI SAHAI . **16 W. R., Cr., 48**

So also under the Code of 1872.

JITAN KHAN *v.* DURGA SINGH **[20 W. R., Cr., 59**

COMPLAINT—*continued.*

4. DISMISSAL OF COMPLAINT—*continued.*

(*b*) POWER OF AND PRELIMINARIES TO DISMISSAL —*continued.*

Preliminaries to dismissal—*continued.*

75. ——— *Examination of complainant's witnesses.—Criminal Procedure Code, 1861, s. 66.*—A Magistrate cannot refuse a summons to a complainant, even in a case in which the charge might have been laid at the police in the first instance, but is bound, under section 66 of the Code of Criminal Procedure, to examine the complainant on oath and pass orders in the case. AMEER MAHOMED *v.* BRASS . . . . . **14 W. R., Cr., 36**

76. ——— *Examination of complainant's witnesses.—Criminal Procedure Code, 1861, s. 67.—Per* GLOVER, *J.*—Where the Criminal Procedure Code makes it necessary for a Magistrate, before dismissing a charge, to examine both the complainant and his witnesses, it supposes that there has been already a *primâ facie* case made out; and where the complainant makes out such a *primâ facie* case, the Magistrate is bound first to examine all the complainant's witnesses before dismissing the charge; but in a case where there is clearly no *primâ facie* case established, the Magistrate is justified in acting under section 67 of the Code of Criminal Procedure, and in dismissing the case at once. ISSER CHUNDER GHOSE *v.* PEARI MOHUN PALIT . **16 W. R., Cr., 39**

SREENATH MUNDLE *v.* SREERAM RAJPUT **[24 W. R., Cr., 62**

77. ——— *Examination of complainant's witnesses.*—A Magistrate is bound, before he discharges an accused person under section 215 of the Criminal Procedure Code, to examine all the witnesses, and should not refuse to examine witnesses simply because their evidence will be to the same effect as that already taken for the prosecution. EMPRESS *v.* HEMATULLA . **I. L. R., 3 Calc., 389**

78. ——— *Examination of complainant's witnesses.—Discharge of accused without examining all the witnesses.*—Before a Magistrate discharges an accused person under section 215 of Act X of 1872, he is bound, under that section, to examine all the witnesses named for the prosecution. *Empress* v. *Hematulla, I. L. R., 3 Calc., 389,* followed. EMPRESS OF INDIA *v.* KASHI **[I. L. R., 2 All., 447**

QUEEN *v.* PARASURAMA NAIKAR **[I. L. R., 4 Mad., 329**

ANONYMOUS CASE . . **8 Mad., Ap., 5**

But *see* JELDHARI SINGH *v.* SHUNKUR DOYAL **[23 W. R., Cr., 9**

(*c*) EFFECT OF DISMISSAL.

79. ——— **Dismissal for default in appearance of complainant.**—*Criminal Procedure Code, s. 269.—Bar to complaint being again made.*—Dismissal of a complaint under section 269 of the Criminal Procedure Code in consequence of non-

COMPLAINT—*continued.*

4. DISMISSAL OF COMPLAINT—*continued.*

(*c*) EFFECT OF DISMISSAL—*continued.*

Dismissal for default in appearance of complainant—*continued.*

attendance of the complainant, the order of dismissal having been passed before the trial commenced, amounts to a discharge without trial, and does not bar the complaint from being again preferred. ANONYMOUS . . . . **4 Mad., Ap., 8**

ANONYMOUS . . . . **6 Mad., 8**

80. ——— **Dismissal of complaint for default in appearance of complainant.**—*Presidency Magistrate's Act (IV of 1877), s. 124.—Institution of fresh proceedings.*—An order of dismissal under section 124 of Act IV of 1877 does not operate as an acquittal. THE EMPRESS ON THE PROSECUTION OF JOGENDRONATH BOSE *v.* THOMPSON **[I. L. R., 6 Calc., 523: 8 C. L. R., 106**

81. ——— **Dismissal of summary case.**—*Acquittal.—Criminal Procedure Code, 1872, s. 212.*—The dismissal of a case in which a summons issues in the first instance amounts to an acquittal of the accused, against whom, after such an acquittal, no further proceedings in respect of the same act can be taken under a different charge. IRFAN BISWAS *v.* JINNUT BIBEE . . **25 W. R., Cr., 63**

82. ——— **Dismissal after hearing evidence.**—*Further proceedings.—Acquittal.—Criminal Procedure Code, 1872, s. 147.*—The further proceedings allowed by the Code of Criminal Procedure, section 147, can only be taken in cases where the complainant has been alone heard, and not where he has had the advantage of having his witnesses heard. In the latter case a dismissal would amount to a verdict of acquittal against the accused parties, and render a second trial on the facts impossible. NITYANUNDO BUR *v.* KALA CHAND BUR **[24 W. R., Cr., 75**

83. ——— **Dismissal without proper exercise of discretion.**—*Criminal Procedure Code, 1872, s. 205.—Acquittal.*—A woman accused a man of seduction under promise of marriage, and asked for maintenance for their illegitimate child. The Deputy Magistrate summoned the man; but on the day appointed for hearing neither the complainant nor the woman appeared, and the complaint was dismissed. Subsequently the woman petitioned, representing her inability to attend on the day appointed owing to causes beyond her control. The Deputy Magistrate, without enquiring into the allegation, held that his dismissal of the complaint operated like an acquittal. *Held* that the Deputy Magistrate, though competent to dismiss the complaint, ought to have exercised some discretion, more particularly under the circumstances detailed by the prosecutrix, and that the section (Act X of 1872 section 205), contemplated such an exercise of discretion. TAZOONNISSA *v.* WASSIL **[24 W. R., Cr., 64**

84. ——— **Dismissal in exercise of judicial discretion.**—*Criminal Procedure Code, 1872, s. 212.—Acquittal.*—Where the Magistrate dis-

COMPLAINT—*continued.*

4. DISMISSAL OF COMPLAINT—*continued.*

(*c*) EFFECT OF DISMISSAL—*continued.*

Dismissal in exercise of judicial discretion—*continued.*

missed a case in the exercise of a judicial discretion, such dismissal by section 212, Act X of 1872, has the effect of an acquittal of the accused person. The Court has no jurisdiction to entertain any application to interfere with the acquittal of an accused person, except the application be made either by Government or under the sanction of Government. IN THE MATTER OF THE PETITION OF BAGRAM [19 W. R., Cr., 52

85. ——— **Dismissal after adjournment for evidence.**—*Non-attendance of witnesses.—Criminal Procedure Code, 1872, ss. 208, 212.*—The dismissal of a complaint under section 208 operates as an acquittal by reason of section 212, Code of Criminal Procedure. EASTERN BENGAL RAILWAY COMPANY *v.* KALIDASS DUTT [23 W. R., Cr., 63

86. ——— **Dismissal on finding of not guilty.**—*Criminal Procedure Code, 1872, s. 220 (1882, s. 258).—Acquittal.*—An order dismissing a complaint under section 220 of the Code of Criminal Procedure amounts to an acquittal. IN THE MATTER OF JADUBAR MOOKERJEE . 5 C. L. R., 359

87. ——— **Dismissal on finding no offence proved.**—*Criminal Procedure Code, 1882, s. 253 (1872, ss. 215, 216; 1861, 69, s. 250).—Acquittal.*—A discharge under section 250 of the Criminal Procedure Code, 1861, does not amount to an acquittal. QUEEN *v.* HERPERSHAD . 4 N. W., 23

5. REVIVAL OF COMPLAINT.

88. ——— **Power of Sessions Court to direct further enquiry.**—*Criminal Procedure Code, 1861, s. 67 (1872, s. 147).*—A Court of Session had power to direct a Magistrate to enquire into a complaint dismissed by him under section 67 of the old Code of Criminal Procedure, or the corresponding section of the Code of 1872. ANONYMOUS [7 Mad., Ap., 16

89. ——— **Striking out offence on list reported.**—*Criminal Procedure Code, 1872, s. 147.*—A person made a complaint to the police that the accused had enticed away his wife (a non-cognizable offence) and committed theft (a cognizable offence). The police enquired into the latter offence only, and, finding no *primâ facie* case made out, reported to that effect to a Magistrate, who directed that that offence be expunged from the list of reported offences. *Held* that, under the circumstances, there had been no dismissal of the complaint in respect of the former offence, and that there was no bar to the complaint into that offence being taken up and proceeded with. GOVERNMENT OF BOMBAY *v.* SHIDAPA . . I. L. R., 5 Bom., 405

90 ——— **Dismissal of warrant case not compoundable.**—*Revival of prosecution.*—

COMPLAINT—*continued.*

5. REVIVAL OF COMPLAINT—*continued.*

Dismissal of warrant case not compoundable—*continued.*

Discharge under Criminal Procedure Code, 1872, s. 215.—A warrant case of a nature not compoundable under section 214 of the Penal Code was "dismissed" on the parties coming to an amicable settlement. *Held,* that the "dismissal" was equivalent to a discharge under section 215 of the Code of Criminal Procedure, and the composition did not affect the revival of the prosecution, if that should otherwise be thought necessary or expedient. REG. *v.* DEVAMA . . . I. L. R., 1 Bom., 64

COMPOUNDING OFFENCE.

See COMPLAINT—REVIVAL OF COMPLAINT. [I. L. R., 1 Bom., 64

See FALSE CHARGE—PENAL CODE, S. 211. [I. L. R., 11 Calc., 79

See MALICIOUS PROSECUTION, SUIT FOR— [I. L. R., 3 Mad., 6

1. ——— **Adultery.**—*Withdrawal of charge.*—Where the husband of a woman with whom the accused was alleged to have committed adultery professed himself unwilling to proceed with the prosecution and the Assistant Judge thereupon ordered the accused to be discharged, the Court, in the exercise of its discretion, declined to interfere. REG. *v.* RAMLOJERIO . . . . 5 Bom., Cr., 27

2. ——— *Withdrawal of charge.*—The power given to Magistrates to permit complainants to withdraw their complaints is confined to cases falling for disposal under Chapter XV of the Criminal Procedure Code. Consequently a charge of adultery cannot be withdrawn by a complainant with the Magistrates' consent. QUEEN *v.* GUMBHEER [2 N. W., 234

3. ——— *Penal Code, s. 497.—Appeal.*—*N.* charged *T.* with having committed adultery with his wife. On enquiry into the charge by the Magistrate, the case was committed to the Sessions Court for trial, when *T.* was convicted. *T.* appealed to the High Court. After conviction, *N.* and his wife were reconciled, and *N.* at the hearing of the appeal asked for leave to compound the offence. *Held* that at that stage of the case sanction could not be given to withdraw the charge. EMPRESS OF INDIA *v.* THOMPSON . I. L. R., 2 All., 339

4. ——— **Assault.**—*Penal Code, s. 214—Act irrespective of intention.*—The offence of assaulting a man and intentionally causing grievous hurt does not consist of an act irrespective of the intention, and cannot be compounded. The term "assault" used in illustration (*b*) to section 214 of Act XLV of 1860 does not mean assault as defined in the Code. It is to be construed in its general and more ordinary sense. QUEEN *v.* MADAN MOHUN [6 N. W., 302

5. ——— **Cheating.**—*Forgery.—Act X of 1872 (Criminal Procedure Code), s. 188.—Construc-*

COMPOUNDING OFFENCE.—Cheating— *continued.*

tion of Act with reference to Bill before the Legislature.—Cheating and forgery are not offences which may be lawfully compounded. Where a Magistrate decided that certain offences could be lawfully compounded, having regard to a Bill which the Legislature had brought in amending section 214 of the Penal Code,—*Held*, that it was irregular for such Magistrate to allow his decision to be guided by anything in a Bill that had not become law, and it was his duty to have interpreted that section without reference to merely contemplated legislation. IN THE MATTER OF THE PETITION OF RAUNAK HUSAIN *v.* HARBANS SINGH . . . . **I. L. R., 3 All., 283**

6. ——— **Criminal breach of trust.**—*Penal Code, ss. 213, 214, 406.*—The offence of criminal breach of trust, under section 406 of the Penal Code, cannot, under the terms of sections 213 and 214 of the same Code, be lawfully compounded. IN THE MATTER OF A REFERENCE FROM THE CHIEF PRESIDENCY MAGISTRATE **[6 C. L. R., 392**

REG. *v.* MUTHAVAN . **I. L. R., 1 Mad., 191**

7. ——— **Criminal misappropriation.**—*Penal Code, s. 404.*—An offence under section 404 of the Penal Code is not one of the class of offences that may be compounded. ANONYMOUS CASE **[7 Mad., Ap., 34**

8. ——— **Enticing away married woman.**—*Criminal Procedure Code, 1872, s. 188.*—The offence of enticing away a married woman with a criminal intent is not an offence which may lawfully be compounded. REG. *v.* MUTHAVAN **[I. L. R., 1 Mad., 191**

9. ——— **House-trespass.**—*Criminal Procedure Code, 1882, ss. 248, 259.—Case sent up by police.*—A criminal charge under section 448 of the Penal Code having been instituted, the accused was sent up by the police before a Deputy Magistrate of the first class. Previous to any evidence being taken, the complainant intimated to the Magistrate that the case had been amicably settled, and that he did not wish to proceed further in the matter, upon which the Magistrate recorded an order, "Compromised; defendant acquitted." Subsequently the Magistrate of the district, relying upon sections 248 and 259, and professing to act under section 437 of the Criminal Procedure Code, directed the Deputy Magistrate to send up the parties and proceed regularly with the case. *Held*, that sections 248 and 259 had no bearing on the case, and that the mere fact of the accused having been sent up by the police did not prevent the offence, which was legally compoundable, from being compromised, and that consequently the order of the Deputy Magistrate was perfectly correct and legal. QUEEN-EMPRESS *v.* NOWAB JAN **[I. L. R., 10 Calc., 551**

10. ——— **Hurt.**—*Voluntarily causing hurt.—Penal Code, s. 323.—Criminal Procedure Code, 1872, s. 188.*—The offence of voluntarily causing hurt under section 323 of the Penal Code is one which may lawfully be compounded, and the

COMPOUNDING OFFENCE.—Hurt— *continued.*

withdrawal from the prosecution in such a case is therefore permissible under section 188 of the Criminal Procedure Code, 1861. REG. *v.* JETHA BHALA **[10 Bom., 68**

11. ——— *Penal Code, s. 214.—Causing grievous hurt.*—Whenever the words "voluntarily," "intentionally," "fraudulently," "dishonestly," or others whose definition involves a particular intention, enter along with a specified act into the description of an offence, the offence not being one irrespective of the intention, is not one which the exception to section 214 of the Penal Code, by itself, allows to be compounded. The offence, to admit of compromise, must be one in this sense irrespective of the intention, and it must be one for which a civil action may be brought at the option of the person injured, instead of criminal proceedings. The offence of voluntarily causing grievous hurt cannot, accordingly, be compounded. *Reg.* v. *Jetha Bhala, 10 Bom., 68*, disapproved. REG. *v.* RAHIMAT **[I. L. R., 1 Bom., 147**

12. ——— **Kidnapping.**—The offence of kidnapping can be lawfully compounded. QUEEN *v.* GOPEE MOHUN MITTER . **22 W. R., Cr., 26**

13. ——— **Wrongful restraint.**—The causing of wrongful restraint to another may lawfully be compounded. MOTHOORANATH BHOOMICK *v.* KENARAM KURMOKAR . . **7 W. R., 33**

14. ——— **Compounding after committal.**—*Effect of, on committal.*—A committal once made of an accused person by a Magistrate to the Sessions, cannot be annulled by his allowing the prosecutor to file a compromise. QUEEN *v.* SALIM SHEIK . . . . **2 W. R., Cr., 57**

COMPROMISE. Col.

1. CONSTRUCTION, ENFORCING, EFFECT OF, AND SETTING ASIDE DEEDS OF COMPROMISE 987
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——— **Deed of—**

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See HINDU LAW—WIDOW—POWER OF WIDOW—POWER TO COMPROMISE.
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——— **by liquidator's under sanction of Court.**

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[3 B. L. R., P. C., 8: 12 W. R., P. C., 27

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——— **out of Court without knowledge of Attorneys.**

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See LIMITATION ACT, 1877, ART. 84 (1871, ART. 85) . I. L. R., 1 Bom., 505

——— **pending appeal.**

See STAMP-DUTY.
[4 B. L. R., Ap., 96, 96, note

——— **with one partner.**

See CONTRACT ACT, s. 44.
[I. L. R., 4 Calc., 336

1. CONSTRUCTION, ENFORCING, EFFECT OF, AND SETTING ASIDE DEEDS OF COMPROMISE.

1. ——— **Construction.**—*Release.*—"*All present and future liabilities.*"—General words used in a deed of compromise or in a release must be confined to matters of the same nature and forming part of the transaction which the parties had in view. *Directors of the London and South-Western Railway Company* v. *Blackmore, L. R., 4 H. L., 610,* followed. NEELANUND SINGH *v.* HAMIDOODDIN
[I. L. R., 8 Calc., 576

2. ——— *Hindu family.*—*Deed altering proper course of succession according to Hindu law.*—Where a dispute in a Hindu family as to legitimacy and the right to succession resulted in a family arrangement as to the mode in which the estate was to be held by the sons,—*Held,* that such a document ought not to be construed narrowly by a strict interpretation of the literal meaning of the words, but that the object and general spirit are the best keys to the interpretation. Where a family arrangement, if construed strictly, would have given a talook, in the event of the death of a younger son, to such of the lawful widows as should have male issue,—*Held* that, as such a disposition would contravene the ordinary rules of devolution of Hindu property, and be contrary to the usages of Hindus, and as there was no mention of any change of intention as to the proprietary right, a construction which would postpone male issue to their mothers was inadmissible. GAJAPATHI RADHIKA PATTA MAHADEBI GURU *v.* GAJAPATHI HARI KRISHNA DEBI GURU . 6 B. L. R., 202
[S. C. 14 W. R., P. C., 33
13 Moore's I. A., 497

Reversing the decision of the High Court in GAJAPATY HARI KRISHNA DEVI GARU *v.* GAJAPATY RADHIKA PATTA MAHA DEVI GARU and GAJAPATY NILAMANI PATTA MAHA DEVI GARU *v.* GAJAPATY RADHIKA PATTA NEGHA DEVA GARU
[2 Mad., 369

3. ——— *Agreement to relinquish claim.—Continuing suit after agreement.—Liability to repay consideration money.*—Where, during the pendency of a suit, the plaintiff, in consideration of R2,000, executed contemporaneously a farigh-kutti, or relinquishment of the claim made by him in the suit, and an ikrarnamah, or engagement to deliver in a razinamah, or deed acknowledging himself to be satisfied,—*Held,* that the farigh-kutti and razinamah amounted to a decided agreement for the settlement of the action; and that, although the plaintiff sued as a pauper, yet, as it was questionable whether he should have been allowed to sue as a pauper, and as he had failed to perform his duty according to his engagement in entering up a razinamah, he was liable to pay the consideration money of the agreement and the costs incurred in consequence of his unsuccessful and apparently unjust litigation which he had instituted and carried on for the purpose of freeing himself from the obligation incurred by the farigh-kutti. MUNNI RAM AWASTY *v.* SHEO CHURN AWASTY
[7 W. R., P. C., 29:
4 Moore's I. A., 114

4. ——— *Conditional agreement to pay interest.*—Where a compromise embodied in a decree was to the effect that the defendant should pay to the plaintiff the principal sum within a specified period, and that if he were successful in another suit against a different party he could also pay the interest; and the defendant succeeded in his suit in the first Court, but his suit was dismissed on appeal,—*Held,* he was not liable to pay the interest on the proper construction of the compromise. BOLAKEE LALL *v.* MAHOMED HOSSEIN KHAN . . . . . 14 W. R., 63

5. ——— *Mahomedan law.—Estate limited to take effect in favour of a person after another's death.*—It is not consistent with Mahomedan law to limit an estate to take effect after the determination, on the death of the owner, of a prior estate by way of what is known to English law

COMPROMISE—*continued.*

1. CONSTRUCTION, ENFORCING, EFFECT OF, AND SETTING ASIDE DEEDS OF COMPROMISE—*continued.*

Construction—*continued.*

as a vested remainder, so as to create an interest which can pass to a third person before the determination of the prior estate. The parties to a solenamah or compromise were, on the one side, the widow of a Mahomedan, she being in possession of villages in Oudh, which had belonged to him, and of which the summary settlement of 1858 had been made with her; and, on the other side, two brothers, alleged to be his sons. By the compromise, which was made in the course of proceedings at regular settlement, it was agreed that the widow should, during her lifetime, continue to hold possession, and remain proprietor, without power of alienation, and that after her death the two sons should possess each one half of the property. *Held* that, on the true construction of the compromise, the title of the sons to succeed was contingent upon their surviving the widow, and that no interest passed to their heirs on their deaths in her lifetime. ABDUL WAHID KHAN *v.* NURAN BIBI . . . . **I. L. R., 11 Calc., 597**
[L. R., 12 I. A., 91

6. ——————— *Penalty for non-fulfilment of conditions, Suit to enforce.*—A suit for a kabuliat having been brought in the Revenue Court, a deed of compromise was filed in the suit, in which it was stipulated that a certain sum would be paid by the defendants to the zemindar as rent of four kanis of land, including homestead, after mutation of names; that R15-8 on account of outstanding balance and charges connected with the rents would be paid to the plaintiffs within a month; and that in default the defendants would have no right to the lands specified. The defendants having failed to fulfil the conditions, the plaintiffs executed their decree and realised from them the balance above mentioned, and having sued them for the rent obtained a decree. The plaintiffs then brought this suit to recover possession, in virtue of itmami right, of the land, on the ground of non-fulfilment of the conditions of the compromise. The first Court gave them a decree, which the lower Appellate Court reversed, holding that the deed merely imposed a penalty with a view to punctual payment. *Held* that, as what the defendants had to do was of a perpetually recurring nature, and no action which the Court might take would be effectual in preserving the plaintiff from being sued by the zemindar, the intention was that the terms should be strictly enforced on failure to perform the conditions, and that the defendant should be obliged to surrender the lands. MAHOMED HASHIM *v.* HOSSEIN ALI . **19 W. R., 433**

7. ——— **Enforcing compromise.**—*Compromise of family disputes.—Hindu law.—Agreement as to succession to property.—Suit to enforce the agreement.—Mistake in law.*—In 1859, two brothers, *A.* and *B.*, filed a petition in the Collectorate, by which it was agreed that the family property should be divided in certain shares. *B.*, who had only lately attained his age of majority, acted on his own account and as guardian of his minor

COMPROMISE—*continued.*

1. CONSTRUCTION, ENFORCING, EFFECT OF, AND SETTING ASIDE DEEDS OF COMPROMISE—*continued.*

Enforcing compromise—*continued.*

brothers. In a suit by *A.* to carry out the terms of the petition, *B.* contended that undue advantage had been taken of his youth and inexperience; that the agreement was invalid; and that there was no consideration. It appeared that, at the time of the agreement, there was a *bonâ fide* dispute as to the rights of the parties, and no evidence of fraud was adduced. *Held*, that the plaintiff was entitled to a decree. Principles upon which the Court acts in setting aside compromises considered. RAM NIRUNJUN SINGH *v.* PRAYAG SINGH
[I. L. R., 8 Calc., 138 : 10 C. L. R., 66

8. ——————— *Non-performance of ceremonies of worship.—Allegation of breach of.*—Two brothers executed and filed a deed of compromise, dividing between them the family property, and a decree was passed in terms thereof. Under this decree, the elder was to hold possession of certain lands, the rents of which were to go to perform the worship of the family idol. The elder was kept out of possession of these lands by the younger, and he performed the worship at his own expense, and the younger took out execution, objecting that his brother had not performed his trust as family shebait, so that he had been compelled to perform the ceremonies at his own expense: but his objection was overruled. *Held*, on appeal by the younger, that the non-performance of any ceremonies by the elder brother gave him no cause of complaint, unless he could show that such failure was not caused by any default on his own part. RADHAJIBAN MUSTAFI *v.* TARA MANI DASI . . **2 B. L. R., P. C., 79**
[11 W. R., P. C., 31
12 Moore's I. A., 380

9. ——————— *Decree made on compromise.—Review of judgment.—Altering decree.*—The manager of the Court of Wards effected a compromise with claimants on the estate; a decree was passed on the basis of that compromise, but before the parties wished the decree to be made; in the decree, leave was reserved to apply for a review, if the compromise was not sanctioned by the Commissioner, and was prejudicial to the parties. The compromise was sanctioned by the Commissioner, but afterwards the manager found that he had been deceived by his servants, and that the claim had been allowed erroneously. *Held* that, the Court having granted a review, and the claim being proved to be exaggerated, a decree was properly given for the true amount. LALJI SAHU *v.* COLLECTOR OF TIRHOOT . . . . **6 B. L. R., P. C., 648**
[15 W. R., P. C., 23

10. ——— **Effect of compromise.**—*Reconveyance with condition of the gift of property.—Restriction of alienation.—Mahomedan law.—Gift.*—*M.* and her son *S.* departing on a journey, made a conditional gift of their property to *A.* On their return, *A.*, under the award of a punchayat,

COMPROMISE—*continued.*

1. CONSTRUCTION, ENFORCING, EFFECT OF, AND SETTING ASIDE DEEDS OF COMPROMISE—*continued.*

Effect of compromise—*continued.*

restored their property, but by the instrument reconveying it their estate was limited to a life interest, and they were restrained from alienating it. The lower Courts held this instrument to be a deed of gift, and that the conditions attached to the gift were void by Mahomedan law. *Held*, on special appeal, that the lower Courts were wrong in so treating it, as it was in fact a compromise, the terms of which should be carried out, and *M.* and *S.* should be restrained from wasting or alienating the property. ABUBEKAR BIN HAGADA HAJISABA *v.* MAIBIBI **[6 Bom., A. C., 77**

11. ——————— *Subsequently acquired property.*—The late Maharajah Mitterjeet Singh was entitled to the levy of a tax upon pilgrims resorting to the temple at Gya. On the abolition of the tax by the Government a compensation was awarded to the Maharajah in lieu of it in the shape of a perpetual annual payment, which sum, it was settled by an agreement and a decree of a Sudder Court during the Maharajah's lifetime, was on his death to be divided in certain proportions between his two sons, through whom the present appellant and respondents claim as their heirs respectively. *Held* that, in whatever mode the Government might think proper to deal with this sum, with reference to the jumma, the rights of the parties could not be affected thereby without their consent, but would continue to be adjusted according to the proportions originally established. INDERJEET KOOAR *v.* ISMUDH KOOAR . . . . **5 W. R., P. C., 14 [1 Ind. Jur., N. S., 141: 10 Moore's I. A., 329**

12. ——————— *Family agreement as to division of property.—Suit for further share.*—The plaintiff, defendant, and *K.* were brothers. *K.* died, and after his death a division took place, and an agreement was executed by the parties by which one-third of the family property went to the plaintiff, and two-thirds to the defendant, whose son had been adopted by *K.*, the plaintiff giving up his right to more than a third in consideration of the fact of the adoption. Subsequently *K.'s* widow sued for a share on behalf of her own son, but the suit was decided against her and affirmed by the High Court, on the ground that her son was an idiot. The plaintiff now sued for recovery of a moiety of the one-third share still in possession of the defendant which in ordinary course would have fallen to *K.* or his representatives. *Held* that, the plaintiff having by the agreement accepted a third share, and abandoned his claim to the rest, could not recover. SAMY AIYANGAR *alias* RAMASAWMY AIYANGAR *v.* ALAGASINGA AIYANGAR . . . **3 Mad., 33**

13. ——————— *Admission of title in compromise, Effect of.*—A suit having been brought against *R. J.* and others, a compromise was effected, to which *J. D.* (a *pro formâ* defendant) was no party, and a decree was passed on the terms of

COMPROMISE—*continued.*

1. CONSTRUCTION, ENFORCING, EFFECT OF, AND SETTING ASIDE DEEDS OF COMPROMISE—*continued.*

Effect of compromise—*continued.*

the compromise whereby certain land was awarded to the plaintiff. On attempting to take possession, the plaintiff was opposed by *J. D.* The case was taken up under section 230, Code of Civil Procedure, and *J. D.'s* possession was upheld; the plaintiff then brought a suit against *J. D.*, who dying, was represented by the defendants in the former suit who had been parties to the compromise. *Held*, that these defendants were bound by the terms of the compromise in which they had admitted the title of the plaintiff in the lands in dispute, even if their title to the lands accrued to them since the compromise. RAM CHUNDER ADHIKAREE *v.* RAM JEEBUN ADHIKAREE . . . . **12 W. R., 427**

14. ——— **Setting aside compromise.**—*Suit to set aside deed of compromise.—Onus probandi.*—A solenamah or deed of agreement to compromise conflicting claims entered into in the presence of witnesses and solemnly acknowledged in Court, by parties who were mutually ignorant of their respective legal rights, cannot afterwards be set aside upon a plea of ignorance of the real facts when the party seeking to avoid the deed had the means of ascertaining those facts within his reach. Gross fraud and imposition are not to be imputed upon mere suspicion, and unless the charge is proved, a party cannot be released from an agreement entered into by his own solemn act. The onus of showing that a compromise has been fraudulently obtained by intimidation and false representation is cast upon those who seek to impeach the validity of their own deed. RAJUNDUR NARAIN RAE *v.* BIJAI GOVIND SINGH . . . . **2 Moore's I. A., 181**

15. ——————— *Application to set aside compromise.—Review of judgment.—New suit.*—For the purpose of setting aside a decree passed in pursuance of a compromise come to out of Court, there are two available modes of procedure: (1) by suit; (2) by a review of the judgment sought to be set aside; the latter being the more regular mode of procedure. *Lalji Sahu* v. *The Collector of Tirhoot, 6 B. L. R., 649; Mewa Lal Thakur* v. *Bhujun Jha, 13 B. L. R., Ap., 11; Gilbert* v. *Endean, L. R., 9 Ch. D., 259*, followed. AUSHOOTOSH CHANDRA *v.* TARAPRASANNA ROY **[I. L. R., 10 Calc., 612**

16. ——————— *Joint and undivided ancestral property.—Separate property.—Estoppel.*—Certain ancestral estate was recorded as held in equal shares by four brothers, *A.*, *B.*, *C.*, and *D.* On *A.'s* death his son *E.* was recorded as the holder of the share. On the deaths of *B.* and *D.*, *C.* was at first recorded as the owner of their shares. Shortly afterwards *B.'s* widow, *F.*, and *D.'s* widow, *G.*, were recorded as the holders of their husbands' shares. Again, at a later period, the names of *H.* and *I.*, the sons of *E.*, were substituted for those of the widows. The estate was subsequently sold for arrears of Government revenue, but a farm of it

COMPROMISE—*continued.*

1. CONSTRUCTION, ENFORCING, EFFECT OF, AND SETTING ASIDE DEEDS OF COMPROMISE—*continued.*

Setting aside compromise—*continued.*

was given to *E.*, *H.*, *I.*, and *C.* In 1853 the Government, having purchased the estate, proposed to regrant it to the old zemindars and farmers, and a report regarding the ownership of the estate was called for. It was reported that it appeared from the statements of *E.*, and *J.*, the son of *C.*, that the widows of *B.* and *D.* had made a gift of their shares to *H.* and *I.* In 1853 *E.*, *J.*, *H.*, and *I.* were asked by the Collector in what manner they proposed to divide the estate if it were granted to them, and they replied that they would hold it in equal shares. The estate was eventually granted to these persons on payment of the arrears of revenue. Each of them contributed his quota in making such payment. In 1855 an administration-paper was framed in which they were entered, at their own request, as in possession each of equal shares. In 1864 they agreed to a partition of the shares by arbitration. These proceedings were stopped by *J.* advancing a claim to a moiety of the estate. In March 1867 *J.* sued for possession of a moiety of the share originally held by *B.'s* widow, then deceased, and for a declaration of his right to a moiety of the share held originally by *D.'s* widow. In June 1867 the parties to the suit effected a compromise, agreeing to divide the estate into four lots on certain conditions. A decree was accordingly passed in the terms of the compromise. *K.*, *J.'s* son, sued in 1876, in his father's lifetime, to obtain the same relief as his father had sought in 1867, and a declaration that the arrangement effected by the compromise and the decree was ineffectual. *Held* that, assuming that the estate was joint until 1867, *K.* was, in the absence of fraud, bound by the compromise entered into by his father, and his suit was not maintainable. Assuming that the estate was held in separate shares, the shares of *K.'s* great-uncles descended as inheritance liable to obstruction, and *K.* could not have questioned his father's acts. PITAM SINGH *v.* UJAGAR SINGH

[I. L. R., 1 All., 651

17. ——————— *Suit to set aside.* —*Fraudulent representations.—Sanction by Court of compromise entered into by a minor.—Misapprehension or mistake as to material facts.—Contract Act (IX of 1872), s. 20.—Enquiry as to whether it would be for benefit of minor to set aside compromise.*—The plaintiff, a minor, was, as daughter and one of the heirs of *A.*, entitled to 7-24ths of his estate. The value of *A.'s* estate was uncertain, and depended on whether or not *A.* had been a partner in business with *M.*, and whether or not a sum of R30,000 had been paid by *M.* to *A.* in satisfaction of all claims which *A.* had against *M.* in respect of the estate of *K.*, a deceased brother of *A.* and former partner in the same business. *M.* having, on *A.'s* death, possessed himself of all the estate of *A.*, the plaintiff brought a suit against *M.* in which a decree was made ordering an account to be taken of the estate of *A.* which had come into the hands of *M.* Pending such account *M.* died, leaving a will, by which

COMPROMISE—*continued.*

1. CONSTRUCTION, ENFORCING, EFFECT OF, AND SETTING ASIDE DEEDS OF COMPROMISE—*continued.*

Setting aside compromise—*continued.*

he appointed the son of *A.* and another his executors, and the suit was revived against them. In their application for probate they stated that the value of *M.'s* estate, so far as they had been able to ascertain and were aware, was R4,41,000. Shortly after probate was granted, negotiations were entered into between the executors and the advisers of the plaintiff for a compromise, and a petition was, with the concurrence of the executors, presented by the plaintiff to the Court, asking for its sanction to the terms agreed upon by the parties, which were, that the plaintiff should receive R20,000 in full of all demands, and R5,000 for her costs of suit. This petition took, as the value of *M.'s* estate, the amount stated by the executors in their application for probate, and stated that the value of *A.'s* estate, in case the above-mentioned payment by *M.* was proved, would be R30,000, and in case it was not proved, then a moiety of the estate of *M.*; and that, considering the difficulties the plaintiff had to meet in proving her case, and with a view to put an end to further trouble, litigation, and expense, the above terms had been agreed to on her behalf. These terms of compromise were sanctioned by the Court on the 11th September 1876. Shortly afterwards, further property was discovered belonging to the estate of *M.* The plaintiff brought a suit against the executors to set aside the compromise, alleging that the terms had been accepted by her on the faith of the representation made by the executors in their application for probate, and charging them with wilful and fraudulent concealment. There was evidence to show that some of the property subsequently discovered was such that the defendants as executors ought to have known, even if they did not, of its existence at the time of the compromise. *Held*, that even though the executors had no such knowledge, and there was no actual fraud, yet there was such culpable ignorance and neglect of duty on their part as to amount to fraud, and carry with it the consequences of knowledge; and as the compromise had in consequence been entered into by the parties and sanctioned by the Court under a misapprehension of material facts, the plaintiff was entitled to have the compromise set aside, and the parties restored to their rights in the former suit at the time it was effected. *Per* PONTIFEX, *J.*—In cases where the sanction of the Court is required, as where there is an infant concerned, each party is bound to see that the materials on which the sanction of the Court is asked for are unimpeachable. *Per* PONTIFEX, *J.*—*Quære,*—Whether in this suit, if the questions were found to arise, it would be necessary for the Court to consider whether it would be for the benefit of the minor that the compromise should be set aside. *Per* GARTH, *C. J.*—*Semble,*—Even if it only appeared that the compromise had been entered into and sanctioned under an entire mistake of the parties and of the Court with regard to the subject-matter of the agreement, it ought to be seta side under section 20 of the Contract Act. *Per* GARTH, *C. J.*—In a sub-

COMPROMISE—*continued.*

1. CONSTRUCTION, ENFORCING, EFFECT OF, AND SETTING ASIDE DEEDS OF COMPROMISE—*continued.*

Setting aside compromise—*continued.*

stantive suit by a minor to set aside a compromise made with the sanction of the Court obtained by fraud or mistake, it is not the province of the Court to enquire whether it would or would not be for the benefit of the minor that the compromise should be set aside; though it might be otherwise on an application for review to the Court which granted the sanction. SOLOMON *v.* ABDOOL AZEEZ

[I. L. R., 6 Calc., 687: 8 C. L. R., 169

18. ——— *Party subsequently found legally entitled to nothing.—Compromise made on behalf of minors.*—When parties enter into a compromise, or family arrangement, in order to avoid litigating the question as to whether one of the parties is entitled to certain property or not, such compromise will not be set aside, although it should eventually turn out that the party taking something under the compromise was in reality legally entitled to nothing. But where such a compromise was alleged to have been entered into by a mother on behalf of two minor sons on the one hand, and an adult member of the family on the other, agreeing to give the latter more than had been awarded by a judicial decision, it was held that the compromise was not binding on the minors. DHARMAJI VAMAN *v.* GURRAV SHRINIVAS . . . . **10 Bom., 311**

19. ——— *Ground for setting aside compromise.—Consideration.—Estoppel.—Fraud.*—When a claim is once compromised, and a new contract entered into, the promisor is estopped from pleading illegality or absence of consideration for the new contract, the real consideration for it being the withdrawal of the claim itself, irrespective of the possibility of its being prosecuted to a successful issue. The new contract can only be questioned on the ground of fraud, such as want of good faith in making the claim compromised. VARAJLAL SHIVLAL *v.* DALSUKH VARAJLAL

[12 Bom., 196

20. ——— *Ground for setting aside deed.*—A deed of partition between two brothers based on a compromise of suit, ratified by a decree of the Sudder Court, and putting an end to litigation previously entered into by their father, cannot be set aside without strict proof of haste and precipitancy of the settlement, inequality, restraint, coercion, or fraud. HETNARAIN SINGH *v.* MODNARAIN SINGH

[3 W. R., P. C., 51: 7 Moore's I. A., 311

21. ——— *Effect of setting aside compromise on right of appeal.*—In a suit brought on behalf of an infant daughter by her mother as guardian, a decision was given partly for and partly against the defendant, who thereupon filed an appeal, which he afterwards withdrew in accordance with the terms of a compromise purporting to have been made with the mother and daughter. Subsequently, at the suit of the daughter, the compromise was set aside as fraudulent and collusive, and a review of the original decision, in so far as it was adverse to the plaintiff's interest, was allowed. The defendant then applied that his appeal might be revived, but his application was rejected by the High Court, on the ground that he had deprived himself of his opportunity of appeal by his own fraudulent conduct. *Held*, by the Judicial Committee, that the effect of setting aside the compromise was to remit both parties to their original rights, and that if the plaintiff was to be allowed to be heard against so much of the original judgment as was unfavourable to her, the defendant must similarly be heard against so much of the same judgment as was unfavourable to him. KHAJOOROONISSA *v.* ROUSHAN JEHAN

[I. L. R., 2 Calc., 184: 26 W. R., 36
L. R., 3 I. A., 291

2. REMEDY ON NON-PERFORMANCE OF COMPROMISE.

22. ——— **Effect of non-performance in accordance with compromise.**—*Suit to enforce compromise.*—A compromise entered into in a former suit, no fraud being alleged, is not annulled by non-performance by one of the parties. The other parties may sue for its enforcement, but they cannot revert to their original right. RAM SAHAI SINGH *v.* DHUNOOKDHAREE SINGH

[1 W. R., 266

23. ——— *Suit to enforce compromise.—Revival of original right.*—A compromise must be treated as a new and positive contract. A breach of its stipulations may be ground of a suit for its enforcement, but not for a revival of the original right. BISHUN COOMAR ROY *v.* HURISH CHUNDER DEB ROY . . . **2 W. R., 209**

24. ——— *Profits of land.*—Where a compromise was made that any deficiency in the plaintiff's seer land was to be made up of assamee land, and, if that were insufficient, from the defendant's seer land, but the compromise was not acted on, and the plaintiff was unable to make up the deficiency,—*Held*, that he was entitled to recover profits from the defendants in proportion to the deficiency in his seer land. HIDAYUT-OOLLAH *v.* DOOKHCHORE RAI . . . **2 Agra, 204**

25. ——— *Revival of original right.—Suit to enforce conditions broken.*—*Held*, in accordance with a ruling of the Calcutta High Court, and in contravention of a ruling of the late Sudder Court in 1850, that, when a compromise has been effected, and a party allowed to withdraw his suit under the provisions of section 98, Act VIII of 1859, if the compromise has not been acted upon, the plaintiff is restored to his original right of action. On the contrary, if acted on, either in whole or in part, the plaintiff cannot be restored to his original right of action, but may bring a suit for the performance of the condition uncomplied with. *Held*,

COMPROMISE—*continued.*

2. REMEDY ON NON-PERFORMANCE OF COMPROMISE—*continued.*

Effect of non-performance in accordance with compromise—*continued.*

also, where a compromise is filed in Court, and a decree passed in accordance therewith, such decree must be first set aside before a second suit can be brought on the original cause of action. AMEER BEGUM *v.* NOOR BEGUM . . . **Agra, F. B., 1**

26. ——— *Compromise after decree.—Denial of compromise in execution of decree.*—Where a compromise is set up, and disavowed by one of the alleged parties thereto, the other party cannot, by an application in the execution department, relying on the compromise, arrest the execution of the decree. Whatever rights may exist under the compromise must be established by a new suit. JHUNDOO *v.* HIMMUT . . **3 N. W., 81**

27. ——— *Compromise pending appeal.*—Where a solenamah was based on the condition that the defendant should at once withdraw his special appeal, but instead of doing so he went on with the appeal and caused notice to be served on the plaintiff and the plaintiff actually appeared, and the special appeal would have come on for hearing but for the accidental absence of the defendant's pleader on the day of hearing,—*Held,* that the defendant having by his own act put an end to the adjustment of the case, the plaintiff was entitled to revert to his original position and execute his decree. RADHA KANT DOSS *v.* AYESH ALI SHAHA **[8 W. R., 109**

See DWARKANATH SURMA MOJOOMDAR *v.* UNNODA SOONDUREE. **[5 W. R., Mis., 30**

3. COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE.

28. ——— **Sanction of Court to compromise.**—*Minors.*—Where a compromise of a suit is made, it ought to be carried out by proper deeds and filed in Court, particularly where infants are concerned, so as to have the assent of the Court at the time, instead of its being totally concealed from them. ABDOOL ALI *v.* MOZUFFUR HOSSEIN CHOWDHRY **[16 W. R., P. C., 22**

29. ——— *Compromise by guardian ad litem.—Decree in terms of compromise.—Civil Procedure Code, 1877, s. 462.*—The conditions of section 462 of the Civil Procedure Code, requiring the sanction of the Court to compromises entered into by the guardian *ad litem* of an infant suitor, are not sufficiently complied with by the Court passing a decree in the terms of a compromise presented by the guardian *ad litem.* A decree passed under such circumstances should be set aside. RAJAGOPAL TAKKAYA NAIKER *v.* MUTTUPALEM CHETTI . . **I. L. R., 3 Mad., 103**

30. ——— *Suit by minor.—Approval of Court.*—Where a compromise of a suit is entered into on behalf of an infant defendant, the approval of the Court to such compromise

COMPROMISE—*continued.*

3. COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE—*continued.*

Sanction of Court to compromise—*continued.*

must be express, and will not be inferred from the subsequent passing of a decree in terms of such compromise. Without such approval, the compromise will not bind the infant, and will be set aside at his instance. *Rajagopal Takkaya Naiker* v. *Subramanya Ayyar, I. L. R., 3 Mad., 103,* cited and followed. SHARAT CHUNDER GHOSE *v.* KARTIK CHUNDER MITTER **[I. L. R., 9 Calc., 810: 12 C. L. R., 455**

31. ——— **Agreement to take oath.**—*Civil Procedure Code, 1859, s. 98.*—An agreement to take an oath by the parties to a suit filed in Court is not an adjustment by mutual agreement of compromise within the meaning of section 98 of the Civil Procedure Code. The defendants agreed that a decree should be passed against them if they failed to perform an agreement by which they bound themselves to take an oath, the terms of which were set forth in the agreement, and one of them failed to take the oath. The lower Court thereupon passed a decree for the plaintiff. *Held,* by the High Court, that the procedure of the lower Court was not sanctioned by law. KONNAPALEN UTHATCHADAYAN HAJE *v.* PEROTTA MELODEN RAMEN NAMBIAR **[4 Mad., 422**

See ANONYMOUS CASE . **4 Mad., Ap., 3**

where it was decided that since the repeal of section 27, Madras Regulation VI of 1816, and section 6, Madras Regulation III of 1802, by Act X of 1861, the mofussil Courts no longer possess the power of settling cases by oath.

32. ——— **Assignment of interest pending suit.**—*Civil Procedure Code, s. 372.*—The "cases of assignment, creation, or devolution" of any interest pending a suit contemplated by section 372 of the Civil Procedure Code, are those in which "the person to whom such interest has come" is arrayed on the same side in the suit as "the person from whom it has passed." *Held,* therefore, that a compromise in a suit for land, between the plaintiff and one of the defendants, whereby the latter consented to a decree being given to the former for half the land, was not a "case of assignment" of an interest in such land within the meaning of that section. RADHA PRASAD SINGH *v.* RAJENDRA KISHORE SINGH . . **I. L. R., 5 All., 209**

33. ——— **Civil Procedure Code, 1882, s. 375.**—*Agreement to compromise suit.—Subsequent disagreement. — Application for decree in terms of agreement.*—After the hearing of a suit had begun, the plaintiffs and defendants came to an agreement by which they settled all the matters in dispute between them in the suit. The agreement was in writing, and dealt in one clause with the dispute, the subject-matter of the suit, and in a second clause with another dispute of long standing between the parties, with which the suit had nothing to do. The plaintiffs subsequently objecting to consent to a

COMPROMISE—*continued.*

3. COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE—*continued.*

Civil Procedure Code, 1882, s. 375—*continued.*

decree being taken in terms of the first clause of the agreement, the defendants took out a rule *nisi*, calling on the plaintiffs to show cause why the agreement should not be recorded in Court, and why the Court should not pass a decree in accordance therewith, under the provisions of section 375 of the Civil Procedure Code (Act XIV of 1882). The rule was argued on affidavits on either side, the plaintiffs objecting that the above section did not apply to such a case as this, and that, in any case, the matter could not be decided on affidavits, but evidence must be gone into. *Held*, that section 375 gave the Court the power to deal with such a case as this in the manner required, and that this was a proper case in which to exercise such a power; and that, in the circumstances of this case, no definite procedure having been enjoined by the Code, the matter might properly be decided on affidavits. Rule made absolute accordingly. RUTTONSEY LALJI *v.* POORIBAI

[I. L. R., 7 Bom., 304

34. ——————— *Consent withdrawn before decree.*—By an agreement made in writing before the hearing, the parties to a suit entered into a compromise by which the plaintiff agreed for consideration to withdraw the suit. When the case came on for hearing, plaintiff refused to fulfil his promise. The defendant having produced the agreement, the Munsif held that it must be enforced, and dismissed the suit. On appeal, the District Judge held that the agreement could not be treated as a compromise, as the plaintiff did not consent, and remanded the suit. *Held* that the agreement could be enforced. *Ruttonsey Lalji* v. *Pooribai, I. L. R., 7 Bom., 304*, approved. KARUPPAN *v.* RAMASAMI . . . **I. L. R., 8 Mad., 482**

35. ——————— *Withdrawal from compromise.—Agreement of parties.—Decree on compromise.—Appeal.*—After suit filed by the plaintiff against several defendants, one of whom was an infant, a petition of compromise entered into between the adult parties was filed in Court. The petition stated the terms of arrangement, and also that an application would be made by the guardian of the minor praying the Court to allow the compromise to be carried out on his behalf. Ten days after the petition of compromise was filed, the first defendant and the plaintiff presented petitions to the Court withdrawing from the compromise, and praying that the suit should proceed. The second defendant presented a petition praying that the compromise should be recorded, and a decree passed according to its terms. The Court made a decreee in accordance with the prayer of the second defendant's petition. The first defendant appealed. *Held*, that an appeal lay, and that the lower Court was wrong in enforcing the compromise at the instance of the second defendant. *Semble*,—That section 375 of the Code of Civil Procedure merely covers cases in which all parties consent to have the terms entered into, carried out, and judgment entered up. *Ruttonsey Lalji* v. *Pooribai, I. L. R., 7 Bom., 304*, questioned. HARA SUNDARI DEBI *v.* KUMAR DUKHINESSUR MALIA

[I. L. R., 11 Calc., 250

36. ——————— *Compromise made notwithstanding dissent of client.—Counsel's powers to compromise.—Consent decree set aside.*—Where counsel, after consulting with his attorney and client as to the advisability of compromising a case, and after receiving instructions from the attorney "to do the best he could for his client," compromised the case, notwithstanding the express prohibition of the client; and the client before the consent decree was drawn up notified her dissent to the other side,—*Held* that the consent decree must be set aside. CARRISON *v.* RODRIGUES . . **I. L. R., 13 Calc., 115**

37. ——————— *Compromise extending beyond the terms of the suit.—Compromise, Modification of terms of.*—The only compromise which a Court can in any case be bound under section 375 of the Code of Civil Procedure to enforce, is one which adjusts, wholly or in part, the suit; matters going beyond the suit cannot, if included in a compromise, be so enforced. A Court refusing to grant a decree on a compromise going beyond the suit, cannot, however, grant a decree modifying the terms of the proposed compromise, but must leave the parties to proceed with the suit as they may be advised. FAJALEH ALI MIAH *v.* KAMARUDDIN BHUYA

[I. L. R., 13 Calc., 170

38. ——————— *Agreement to compromise appeal.—Petition to Court by both parties.—Consent withdrawn before decree by one party.—Remedy.—Transfer of Property Act, s. 59.—Charge on immoveable property.—Oral agreement as to terms of compromise of suit.—Terms of compromise in dispute.—Proof by affidavit and further evidence.—Procedure.*—The parties to an appeal, in which an issue had been remitted for trial to the lower Court, having presented a petition to the lower Court, stating that the suit had been compromised and the terms of the compromise, requested the lower Court to move the Appellate Court to pass a decree in accordance with such terms. Before a decree was passed, one of the parties objected to the compromise being accepted. *Held* that it was open to the Court, such objection notwithstanding, to pass a decree in accordance with the agreement. *Ruttonsey Lalji* v. *Pooribai, L. L. R., 7 Bom., 304*; and *Karuppan* v. *Ramasami, L. L. R., 8 Mad., 482*, followed. *Hara Sundari Debi* v. *Kumar Dukhinessur Malia, L. L. R., 11 Calc., 250*, observed upon. An oral agreement by the parties to a suit that a decree be passed creating a charge on immoveable property above R100 in value is not rendered inoperative by section 59 of the Transfer of Property Act. The parties to an appeal applied to the Court to pass a decree in accordance with the terms of a compromise, and, before decree was passed, one of the parties objected to such decree being passed, on the ground

COMPROMISE—*continued.*

3. COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE—*continued.*

Civil Procedure Code, 1882, s. 375—*continued.*

that certain conditions precedent to be performed by the other party had not been performed. The Court (this being denied by the other party) called for affidavits in proof of the terms of the agreement of compromise, and, these being found not to be sufficiently conclusive, directed the lower Court to take evidence on the point. APPASAMI *v.* MANIKAM [I. L. R., 9 Mad., 103

39. ——— **Refund of Court fees.**—*Power to remit fees.—Civil Procedure Code, 1859, s. 98.*—Section 98, Act VIII of 1859, was applicable only to mofussil Courts, and a Judge exercising the ordinary original jurisdiction of the High Court had no power to remit fees under any circumstances. BARROW v. POLLOCK [1 Ind. Jur., O. S., 57: 1 Hyde, 149

40. ——— *Compromise of suit on day for defendant's appearance.—Refund of stamp duty.*—After service of the summons, and on the day the defendant was required to appear, the parties filed in Court deeds containing terms of compromise. *Held*, that the plaintiff was entitled to a return of the entire amount of the stamp duty, there having been no settlement of issues. BHISTOO CHUNDER ROY CHOWDHRY *v.* PARBUTTY DABEA [Marsh., 274: 2 Hay, 213

41. ——— *Civil Procedure Code, 1859, s. 98.—Return of stamp duty.—Stamp Act, X of 1862, s. 26.*—On the day fixed for the hearing of a suit in a Court of Small Causes, the plaintiff's vakeel appeared and stated on behalf of his client that the defendant had satisfied him in respect of the matter of the suit, which he prayed might be dismissed. The defendant did not appear. *Held*, that the Judge was right in dismissing the suit, but that he should have recorded an order under the first provision in section 98 of Act VIII of 1859. *Held* also that, in such a case, when the plaintiff applies for a return of stamp duty, he must strictly bring himself within the subsequent part of the same section as modified by section 26 of Act X of 1862. ANONYMOUS CASE . . . 1 Mad., 127

42. ——— *Civil Procedure Code, s. 98.—Stamp Act, X of 1862, s. 26.—Refund of stamp duty.*—The rule allowing refund of fees for suits (section 98 of Act VIII of 1859 as modified by section 26, Act X of 1862) is not applicable to appeals which may be compromised. IN THE MATTER OF ZEBUNNISSA BIBEE . 12 W. R., 376

CONCEALMENT OF BIRTH.

——— **Destruction of fœtus.**—*Penal Code, s. 318.*—A person cannot be convicted of concealment of birth of a child under section 318 of the Penal Code, in the case of a miscarriage where the fœtus is only a few months old. ANONYMOUS [4 Mad., Ap., 63

CONCEALMENT OF PROPERTY IN BRITISH TERRITORY AFTER COMMITTING DACOITY OUTSIDE.

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—DACOITY. [I. L. R., 1 Bom., 50

CONCURRENT JUDGMENTS ON FACT.

See CASES UNDER PRIVY COUNCIL, PRACTICE OF—CONCURRENT JUDGMENTS ON FACTS.

CONDITION IMPOSED BY MISTAKE.

See HINDU LAW—ADOPTION—SECOND, SIMULTANEOUS, AND CONDITIONAL ADOPTIONS . I. L. R., 2 Bom., 377

CONDITION PRECEDENT.

See CHARTER-PARTY . 8 B. L. R., 544

See CASES UNDER CONTRACT—CONDITION PRECEDENT.

See GUARANTEE. [1 Ind. Jur., N. S., 412

CONDITIONAL SALE.

See LIMITATION ACT, 1877, ART. 10 (1871, ART. 10) . I. L. R., 1 All., 592
[2 Agra, 164
I. L. R., 3 All., 175
I. L. R., 4 All., 291
2 N. W., 284

See CASES UNDER MORTGAGE.

See MORTGAGE—FORM OF MORTGAGE. [I. L. R., 1 Mad., 1
I. L. R., 3 Mad., 26
I. L. R., 4 Mad., 179

CONDITIONAL SALE, DEED OF—

See ESTOPPEL—ESTOPPEL BY DEEDS AND OTHER DOCUMENTS. [I. L. R., 1 All., 403

See LIMITATION ACT, 1877, ART. 144 (1871, ART. 145)—ADVERSE POSSESSION. [I. L. R., 1 All., 403

CONDITIONAL TRANSFER OF PROPERTY.

See CHAMPERTY . 13 B. L. R., 495

CONFESSION.

Col.
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CONFESSION—*continued.*

1. GENERAL CASES.

1. ——— **"Confession," Meaning of, as used in Evidence Act.**—*Evidence Act, 1872, ss. 26, 30.*—The word "confession," as used in the sections of the Evidence Act relating to confessions, must not be construed as including a mere inculpatory admission which falls short of being an admission of guilt. QUEEN-EMPRESS *v.* JAGRUP [I. L. R., 7 All., 646

2. ——— **Voluntary confession.**—*Proof of guilt.*—A voluntary and genuine confession is legal and sufficient proof of guilt. QUEEN *v.* JHURREE . . . . . 7 W. R., Cr., 41

3. ——— **Confession to be taken as a whole.**—A prisoner's confession must be taken in its entirety. QUEEN *v.* BOODHOO [8 W. R., Cr., 38

GOLOKE CHUNDER CHOWDHRY *v.* MAGISTRATE OF CHITTAGONG . 25 W. R., Cr., 15

QUEEN *v.* SONAOOLLAH . 25 W. R., Cr., 23

4. ——— *Statements of accused inconsistent with each other.*—The ordinary rule of taking confessions as a whole and giving the accused (in the absence of other evidence against him) the benefit of any circumstance that may appear in his favour therefrom, cannot apply to confessions which are diametrically opposed to each other; but only where the more favourable view is not absolutely inconsistent with the general tenor of the confession. QUEEN *v.* NITYO GOPAL DASS BYRAGEE [24 W. R., Cr., 80

5. ——— *Inconsistent statements.*—*Credibility of.*—The words actually used by an accused, who is said to have confessed, ought to be ascertained. The Court should not accept merely the conclusions at which the witnesses deposing to a confession themselves arrived from the answers which the accused gave to questions put by them. Where an accused makes two distinct statements,—the one amounting to a confession of guilt, the other repudiating guilt,—if the one statement is taken against the accused, the other also must be taken, for what it is worth, in his favour. The Court ought to weigh well the relative credibility of the two statements before it accepts the one in preference to the other. QUEEN *v.* SOOBJAN . . . . 10 B. L. R., 332

6. ——— **Confessions of prisoner in one case evidence in another.**—The confessions of the prisoner in one case in which he was convicted cannot be used against him in another case, unless they are deposed to on oath, either by the person who took them down, or by some one else who heard them. IN RE MUNGER BHOOYAN . 10 W. R., Cr., 56

7. ——— **Corroboration of evidence of accomplice by confession of another prisoner.**—The confession of one of the prisoners cannot be used to corroborate the evidence of an accomplice against the others. REG. *v.* MALAPA BIN KAPANA . . . . . 11 Bom., 196

CONFESSION—*continued.*

1. GENERAL CASES—*continued.*

8. ——— **Confessions of co-accused against others in their absence.**—Confessions of two of several accused persons made in the absence of the others are of no weight as against the latter. Such confessions, as well as the statements of approvers, are always regarded as tainted; because, from the position occupied by the persons making them, they are not entitled to the same weight as the evidence of ordinary witnesses. QUEEN-EMPRESS *v.* BEPIN BISWAS . . I. L. R., 10 Calc., 970

9. ——— **Admissibility in evidence.**—*Criminal Procedure Code, ss. 149, 150.*—To make the confession of a prisoner, not uttered in the presence of a Magistrate, admissible in evidence, the fact disclosed must be one which, of its own force, independently of the confession, would be admissible in evidence. QUEEN *v.* CHODA ATCHENAH [3 Mad., 318

2. CONFESSIONS UNDER THREAT OR PRESSURE.

10. ——— **Statement admitting crime, but pleading compulsion by others.**—An admission by *A.* and *B.* that the crime charged against them was committed by *C.* and *D.*, and that whatever share they had in it was under compulsion, is not a confession on which any person ought to be convicted. QUEEN *v.* KISTO MUNDUL [7 W. R., Cr., 8

11. ——— **Proof of circumstances under which confession was made.**—*Warning by Magistrate, Averment of.*—*Allegations of irregularity.*—*Duty of Sessions Court.*—Although the averment on the record of a Magistrate by whom a prisoner is tried, that the accused, before making a confession, was warned that it was optional with him to answer the questions put to him or not, is on appeal conclusive as to the fact of such a warning having been given, it is not conclusive to show that such a confession has not been made under the influence of fear engendered by previous maltreatment, or is not otherwise valueless. Allegations made in a regular and proper manner before a Sessions Court on appeal, that a confession made by the accused before the Magistrate who tried the case was made under such circumstances as to preclude its admissibility in, or diminish its value as evidence, should receive due attention and be enquired into. A Sessions Court refusing to make such enquiry commits a grave error in law and procedure. REG. *v.* KASHINATH DINKAR . 8 Bom., Cr., 126

12. ——— **Record of circumstances under which confession was made.**—*Criminal Procedure Code, 1861, s. 149.*—*Judicial record.*—To give weight to confessions of prisoners recorded under section 149, Code of Criminal Procedure, there should be a judicial record of the special circumstances under which such confessions were received by the Magistrate, showing in whose custody the prisoners were, and how far they were free agents. QUEEN *v.* KODAI KAHAR . 5 W. R., Cr., 6

CONFESSION—*continued.*

2. CONFESSIONS UNDER THREAT OR PRESSURE—*continued.*

13. ——— **Inducement to confess.**—*Person in authority, Statement to.*—*W.*, a travelling auditor in the service of the Great Indian Peninsula Railway Company, having discovered defalcations in the account of the prisoner, who was a booking clerk of the Company, went to him and told him that "he had better pay the money than go to jail," and added that "it would be better for him to tell the truth," after which the prisoner was brought before the Traffic Manager, in whose presence he signed a receipt for, and admitted having received, a sum of R826-8-0. The prisoner was subsequently put on his trial for criminal breach of trust as a servant in respect of this and of other sums. *Held* that the words used by *W.*, the travelling auditor, constituted an inducement to the prisoner to confess, and that *W.* was a person in authority within the meaning of section 24 of the Evidence Act, and that the receipt signed by the prisoner was therefore not admissible in evidence on his trial. REG. *v.* NAVROJI DADABHAI . . . **9 Bom., 358**

14. ——— *Illegal pressure.*—*Presumption.*—*Evidence Act, s. 24.*—In the absence of evidence that a confession of an accused person has been induced by illegal pressure, it is not to be presumed that such confession was so induced. According to section 24 of the Evidence Act, a confession is inadmissible only if the Court considers it to have been induced by illegal pressure. REG. *v.* BALVANT *v.* PENDHARKAR **[11 Bom., 137**

15. ——— **Confession made under threat for a purpose other than to extort confession.**—*Evidence Act, 1872, s. 24.*—A prisoner was tried for wounding with intent to murder, and wounding with intent to do grievous bodily harm. The offence was committed on the high seas on board a ship on which the prisoner was a seaman. At the trial it was proved for the prosecution that the master of the ship had sailed from Calcutta and could not be found, and the Standing Counsel thereupon tendered in evidence his deposition before the committing Magistrate, which contained an admission alleged to have been made to the deponent by the prisoner, when in custody. The Court refused to admit the portion of the deposition containing the admission to be read, as it was stated to have been made immediately after the prisoner with others had been threatened by the witness with a loaded rifle; it was immaterial that the threat was not made to extort a confession, but to suppress an attempt at mutiny. QUEEN *v.* HICKS . . **10 B. L. R., Ap., 1**

16. ——— **Confession to panchayat caused by threat.**—*Evidence Act, 1872, s. 24.*—*Proof of oral confession.*—The matter before a "panchayat" was whether *M.* and *K.* had murdered *B.*, and thereby disqualified themselves from further intercourse with the rest of their brotherhood. *M.* and *B.* made certain statements before the panchayat, which it was afterwards sought to prove against them

CONFESSION—*continued.*

2. CONFESSIONS UNDER THREAT OR PRESSURE—*continued.*

Confession to panchayat caused by threat—*continued.*

on their trial for the murder of *B.* as confessions corroborating the evidence of an approver. The witnesses called to prove these "confessions" did not state specifically what was said by *M.* and *K.* before the panchayat. One witness, a member of the panchayat, said: "*M.* confessed and *K* acquiesced." Another witness, also a member of the panchayat, said: "*M.* and *K.* were taxed with taking *B.'s* house, upon which both admitted having murdered him." The same witness also said: "The admissions were not taken down." It appeared that it was not till at the sixth meeting of the panchayat, and when *M.* and *K.* were threatened with excommunication from caste for life, that they made such statements. *Held* that, if the statements attributed to *M.* and *K.* had been actually made and assented to, and this fact had been duly proved, the provisions of section 24 of Act I of 1872 could not be pleaded against their admissibility, on the ground that such statements had been caused by such threat, for the members of the panchayat were not in authority over *M.* and *K.* within the meaning of that section, nor was there any threat made having reference to any charge against them. The statements, however, could not be accepted as sufficient in themselves to corroborate the evidence of the approver, or to support the conviction of *M.* and *K.* for the murder of *B.* The statements were in general terms and represented only the impression conveyed by what might have been said to the mind of the witnesses. It was always essential that the Court should know as nearly as possible what were the words used by the supposed confessors, and what were the questions or matters in regard to which they were said. It might have been that the words ascribed to *M.* and *K.*, taken with the questions put and the exact subject-matter of the enquiry, did not amount to a confession of the guilt believed by the hearers to have been confessed. EMPRESS *v.* MOHAN LAL **[I. L. R., 4 All., 46**

17 ——— **Warning by Magistrate.**—*Inducement to confess.*—*Criminal Procedure Code, Act X of 1882, s. 163.*—*Evidence Act (I of 1872), s. 24.*—A Deputy Magistrate, before taking down a statement from a person brought before him by the police, noted on the paper on which he was about to take down the statement the following words, which, after excluding the police officers from his presence, he had verbally addressed to the accused: "After excluding from my presence the police officers who brought him, I warned the accused that what he would say would go as evidence against him; so he had better tell the truth." *Held*, that the use of such language was calculated to hold out an inducement to the prisoner to confess, and that such a confession was therefore inadmissible in evidence against him. QUEEN-EMPRESS *v.* UZEER **[I L. R., 10 Calc., 775**

CONFESSION—*continued.*

3. CONFESSIONS SUBSEQUENTLY RETRACTED.

18. ——— **Confession retracted before Sessions Judge.**—A confession before the Magistrate, though afterwards retracted before the Sessions Court, is evidence against the party making it, under section 366 of the Code of Criminal Procedure, 1861. QUEEN *v.* JEMA . **8 W. R., Cr., 40**

19. ——— **Statement to Magistrate afterwards retracted.**—*Evidence.*—*Criminal Procedure Code, 1861, s. 205.*—A detailed confession made by an accused before a Magistrate, but retracted on the examination being read over to him in conformity with section 205 of the Code of Criminal Procedure, does not amount to a confession, although the plea for retracting the confession—*viz.*, ill-treatment of the accused by the police—may be enquired into and found to be untrue. REG. *v.* GARBAD BECHAR . . . . **9 Bom., 344**

20. ——— **Confession to Magistrate.**—*Want of corroboration.*—Where the only evidence in a Sessions trial was a confession made to a Magistrate but subsequently retracted, and it was established that the police misconducted themselves in the search of the houses of the prisoners who confessed and of others under trial, and produced evidence which was rejected as false, it was held that the prisoners could not safely be convicted on their own statements without any corroboration. SOFIRUDDEEN *v.* EMPRESS . . **2 C. L. R., 132**

21. ——— **Statement made after conditional pardon.**—*Evidence Act (II of 1855), s. 32.*—A conditional pardon was tendered to and accepted by the accused. He then, on solemn affirmation, made a statement before the committing Magistrate in which he criminated himself and two other persons. Three days afterwards he voluntarily came forward and made, on solemn affirmation, another statement, in which he retracted and contradicted what he had said in his former statement. The conditional pardon was thereupon cancelled, and the accused was put upon his trial. *Held*, that the first statement was admissible as evidence against the accused, under section 32 of Act II of 1855. REG. *v.* ALIBHAI MITHA . **8 Bom., Cr., 103**

4. CONFESSIONS TO MAGISTRATE.

22. ——— **Practice of taking prisoner before Magistrate to get confession recorded.**—The practice of taking prisoners before Magistrates not having jurisdiction in the case, for the purpose of getting a confession recorded, is not generally desirable, but such a confession is legally admissible in evidence when duly proved. REG. *v.* VAHALA JETHA **[7 Bom., Cr., 56**

23. ——— **Statement made to Magistrate.**—*Criminal Procedure Code, 1861, s. 109.*—Section 109 of the Code of Criminal Procedure refers to cases where the confession of a prisoner has been made to the Magistrate conducting the investigation, and not to the police. It is only when properly made

CONFESSION—*continued.*

4. CONFESSIONS TO MAGISTRATE—*continued.*

Statement made to Magistrate—*continued.*

to the Magistrate that the confession can be used as evidence against the prisoner. The mere standing by of the Magistrate when the confession is being made to the police is not sufficient. QUEEN *v.* DOMUN KAHAR . . **12 W. R., Cr., 82**

24. ——— **Sufficiency of confession.**—*Corroborative denial of statement in Sessions Court.*—The properly attested confession of a prisoner before a Magistrate is sufficient for his conviction without corroborative evidence, and notwithstanding a subsequent denial before the Sessions Court. QUEEN *v.* BHUTTUN RUJWAN . . **12 W. R., Cr., 49**

25. ——— **Statement on preliminary enquiry.**—*Code of Criminal Procedure (Act X of 1872), ss. 122, 193, 346.—Code of Criminal Procedure (Act X of 1882), ss. 342, 364.*—On a certain day a confession by an accused person was recorded by a Magistrate, and on the next day the same Magistrate, having jurisdiction to do so, examined the witnesses for the prosecution and eventually committed the accused. *Held*, following *Empress v. Anuntram Singh, I. L. R., 5 Calc., 954*, that such confession, having been made to a Magistrate competent to hold, and who actually then was holding, an enquiry preliminary to committal, must be regarded as falling within section 193 of Act X of 1872, or section 342 of Act X of 1882, and as such governed by the reservations contained in section 346 of the former Act or section 364 of the latter. Observations on sections 342 and 364 of Act X of 1882 (Criminal Procedure Code). EMPRESS *v.* YAKUB KHAN **[I. L. R., 5 All., 253**

26. ——— **Pardon wrongly tendered to witness.**—*Admissibility of evidence.—Criminal Procedure Code, 1872, s. 344.—Evidence Act, s. 24.*—Where a pardon was tendered by the Magistrate to a person supposed to have been concerned with others in offences none of which were exclusively triable by the Court of Session, and such person was examined as a witness in the case,—*Held*, that the statement made by such person was irrelevant and inadmissible as a confession, with reference to section 344 of Act X of 1872, and section 24 of Act I of 1872. EMPRESS OF INDIA *v.* ASHGAR ALI **[I. L. R., 2 All., 260**

27. ——— **Improper examination of accused person by Magistrate.**—*Criminal Procedure Code, ss. 164, 364, 533.—Evidence Act, ss. 65, 80.—Record rejected.*—The Deputy Magistrate of Malabar, purporting to act under the provisions of the Mapilla Act (Madras Act XX of 1859), recorded a statement in the nature of a confession made by *V.*, who was under arrest on suspicion of being concerned in a Mapilla outrage. This statement, which was made in Malayalam, was recorded in English in the form of a narrative and was signed by the Magistrate only. The same Magistrate shortly afterwards, purporting to act under the Code of Criminal Procedure, before any evidence was recorded against *V.*, exa-

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4. CONFESSIONS TO MAGISTRATE—*continued.*

Improper examination of accused person by Magistrate—*continued.*

mined him as to this statement which was read over and translated to him. In answer to questions, *V.* admitted that he had made it voluntarily. This examination was recorded according to the provisions of section 364 of the Code of Criminal Procedure. After other evidence was recorded, *V.* retracted his statement. He was committed to the Sessions, tried, and convicted mainly on his own recorded statement and examination. The Deputy Magistrate was examined as a witness, and stated that the statement recorded by him was made by *V.*, and was correctly recorded and was made voluntarily. *Held*, that the record of the statement made by *V.* to the Deputy Magistrate was not admissible in evidence against *V.* *Per* PARKER, *J.*—The provisions of section 164 of the Code of Criminal Procedure are imperative, and section 533 will not render a confession admissible where no attempt has been made to conform to the provisions of the former section. If the confessional statement of *V.* was recorded by the Magistrate in his executive capacity, it was not receivable in evidence under section 80 of the Evidence Act. The action of the Magistrate in examining *V.* as to his confessional statement before there was any legal evidence on the record against him was illegal, and therefore the record of such examination could not be used in evidence against *V.* Inasmuch as the record of the statement of *V.* was not admissible, secondary evidence thereof could not be given. QUEEN-EMPRESS *v.* VIRAN [I. L. R., 9 Mad., 224

28. ——— **Record of statement before Magistrate.**—*Certificate of Magistrate.—Criminal Procedure Code, 1861, s. 205.*—A confession before a Magistrate should be recorded in the language in which it was made, and to make it evidence the certificate by the Magistrate required by section 205, Criminal Procedure Code, 1861, must be attached. QUEEN *v.* BHEEBEEKEE . . . 4 N. W., 16

29. ——— *Statement in foreign language.*—It is not necessary that a statement made to a Court by an accused in a foreign language should be taken down in the words of that language. The language in which the statement is conveyed to the Court by the interpreter is the language in which it should be recorded. EMPRESS *v.* VAIMBILEE. VAIMBILEE *v.* EMPRESS [I. L. R., 5 Calc., 826

30. ——— **Improperly recorded confession.**—*Criminal Procedure Code, 1872, ss. 122 and 346.*—A confession not recorded according to the provisions of Act X of 1872, section 346, is inadmissible as evidence. QUEEN *v.* KALA CHAND PAL [24 W. R., Cr., 29

QUEEN *v.* CHUNDER BHUTTACHARJEE [24 W. R., Cr., 42

31. ——— **Defect in confession.**—*Criminal Procedure Code, 1872, ss. 122, 346.*—A defect in a confession taken under section 122 of the Code of Criminal Procedure cannot be remedied, as in the case of an examination of a prisoner under section 346, by evidence taken at Sessions. EMPRESS *v.* HARI KISTO BISWAS . . 5 C. L. R., 209

32. ——— *Unsigned confession.—Criminal Procedure Code, 1872, ss. 122 and 346.—Oral evidence to prove.*—The confession of an accused person, taken by a Magistrate having no jurisdiction to commit or try him, is imperfect, if not signed by the accused person or attested by his mark, and is inadmissible in evidence (sections 122 and 346, Criminal Procedure Code). The term "Preliminary enquiry" in the final clause of section 346 means such enquiries as are the subject of Chapters XIV (of enquiries and trials) and XV (of enquiry into cases triable by the Court of Session or the High Court); and, therefore, that clause does not apply to confessions recorded under section 122, which refers to an enquiry not during a trial, or one held with a view to committal, but an enquiry for the purpose of forwarding confessions, when recorded, to the Magistrate by whom the case of the accused person is enquired into or tried. Consequently, when a confession taken under section 122 is inadmissible in evidence, oral evidence to prove that such a confession was made, or what the terms of that confession were, is inadmissible also (section 91 of the Evidence Act). REG. *v.* BAI RATAN . . . 10 Bom., 166

33. ——— *Confession not taken in proper form nor authenticated by Magistrate.—Criminal Procedure Code, 1872, ss. 122, 346.*—A confession, not taken in the form of question and answer, and not authenticated by the Magistrate's endorsement as to its accuracy, is inadmissible in evidence, even though no objection should be made to its reception: sections 45, 122, 256, and 346 of the Code of Criminal Procedure and section 91 of the Evidence Act. REG. *v.* AMRITA GOVINDA [10 Bom., 497

But *see* EMPRESS *v.* SAGAMBUR [12 C. L. R., 120

34. ——— *Criminal Procedure Code, 1872, s. 346.—Confession improperly subscribed.*—The direction of section 346 of the Code of Criminal Procedure, enjoining that an accused person shall sign the record of his confession, is not satisfied by the following: "Signature of *A. B.* (the accused); the handwriting of *C. D.*" Where the conviction of a person was based upon a confession thus subscribed, the High Court reversed it, and held that the Sessions Judge was bound to prevent the production of such a confession. REG. *v.* DAYA ANAND [11 Bom., 44

35. ——— *Criminal Procedure Code, 1872, s. 346.—Prejudice.—Failure by pleader to take objection.*—An accused person whose signature to a statement made by him to the com-

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4. CONFESSIONS TO MAGISTRATE—*continued.*

Defect in confession—*continued.*

mitting Magistrate is not taken, as provided in section 346 of the Code of Criminal Procedure, is not prejudiced thereby within the meaning of that section, unless he is unfairly affected as to his defence on the merits. Where a prisoner in the Court of Session was represented by a pleader who had opportunity to object to the admissibility of his statement, and did not, the High Court held that he was not prejudiced. REG. *v.* DEVA DAYAL . **11 Bom., 237**

36. ——— Confession taken by Magistrate other than the one investigating the case.—*Certificate of Magistrate.—Criminal Procedure Code, 1872, s. 122.*—Section 122 of the Code of Criminal Procedure, which requires a Magistrate to certify on a confession his belief that it was voluntarily made, does not apply to the case of a confession taken by a Magistrate who is actually investigating the case and examining the witnesses preparatory to commitment, but to a case where some other Magistrate takes a confession and forwards it to the Magistrate by whom the case is enquired into or tried. QUEEN *v.* JETOO . . . **23 W. R., Cr., 16**

37. ——— Memorandum of Magistrate as to voluntariness of confession.—*Criminal Procedure Code, ss. 122 and 346.—Admissibility in evidence.*—A confession recorded under section 122 of the Code of Criminal Procedure to be admissible in evidence must not only bear a memorandum that the Magistrate believed it to have been voluntarily made, but also a certificate, under section 346 of the Code, that it was taken in the Magistrate's presence and hearing, and contains accurately the whole of the statement made by the accused person. No oral evidence can be received to prove the fact of a confession if the confession itself be inadmissible. REG. *v.* SHIVYA . . . **I. L. R., 1 Bom., 219**

38. ——— Attestation of record.—*Criminal Procedure Code, s. 346.—Confession made to trying officer at time of trial.*—The attestation required by section 346 of the Criminal Procedure Code is unnecessary when a confession is made in Court to the officer trying the case at the time of trial. IN THE MATTER OF CHUMMAN SHAH **[I. L. R., 3 Calc., 756 : 2 C. L. R., 317**

39. ——— Evidence of recording officer where confession defective.—*Criminal Procedure Code, s. 122.—Admissibility of secondary evidence of confession.—Confession not taken in accordance with s. 346 of Criminal Procedure Code (X of 1872).*—When the confession of a prisoner under section 122 of the Criminal Procedure Code was not taken in the manner provided by section 346, and was, therefore, defective,—*Held,* that the evidence of the recording officer, that such confession was actually made, was inadmissible to remedy the defect. IN RE EMPRESS *v.* MANNOO TAMOOLEE **[I. L. R., 4 Calc., 696 : 4 C. L. R., 137**

QUEEN *v.* CHUNDER BHUTTACHARJEE **[24 W. R., Cr., 42**

CONFESSION—*continued.*

4. CONFESSIONS TO MAGISTRATE—*continued.*

40. ——— Confession recorded by Magistrate who afterwards holds the preliminary examination.—*Criminal Procedure Code (Act X of 1872), ss. 122, 193, 346.*—A confession recorded by a Magistrate, who afterwards conducts the enquiry preliminary to committal, and has jurisdiction to do so, is to be treated as an examination under section 193 of the Criminal Procedure Code, and not as a confession recorded under section 122, notwithstanding that the prisoner may have been brought before the Magistrate before the conclusion of the police investigation. To such a confession consequently the provisions of the last paragraph of section 346 apply. Section 122 of the Criminal Procedure Code contemplates and provides for cases in which confessions are recorded by a Magistrate other than the Magistrate by whom the case is enquired into or tried. EMPRESS *v.* ANUNTARAM SINGH **[I. L. R., 5 Calc., 954 : 6 C. L. R., 297**

41. ——— Confession to Magistrate during enquiry held previously to committal.—*Criminal Procedure Code, ss. 122 and 346.*—When a confession is made to a Magistrate by an accused person during an enquiry held previously to the case being taken up by the committing officer, and by an officer acting merely as a recording officer, it must be recorded in strict accordance with the provisions of sections 122 and 346 of the Code of Criminal Procedure. If the provisions of these sections have not been fully complied with by the recording officer, the Court of Session cannot take evidence that the accused person duly made the statement recorded; and in cases where evidence can be taken, a Court of Session is not at liberty to treat a deposition, sent up with the record and made by the recording officer before the committing officer, to the effect that the accused person did in fact duly make before him the statement recorded, as evidence of that fact. In such a case the recording officer must himself be called and examined by the Court of Session, except in cases in which the presence of the recording officer cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court of Session considers unreasonable. NOSHAI MISTRI *v.* EMPRESS **I. L. R., 5 Calc., 958 : 6 C. L. R., 353**

42. ——— Confession made during or before investigation by police.—*Statement to Magistrate other than the one holding enquiry.—Criminal Procedure Code, 1872, ss. 122, 346.*—Section 122 of the Criminal Procedure Code (Act X of 1872) does not apply to a confession recorded by a Magistrate acting under Chapter XV or Chapter XVII, but to a confession made to a Magistrate other than the Magistrate by whom the case has to be enquired into or tried; and to a confession made during or before the commencement of an investigation by the police. IN THE MATTER OF BEHARI HADJI . . . . **5 C. L. R., 238**

43. ——— Confession made commencement of proceedings.—*Criminal Procedure Code, 1872, ss. 122, 346.—Prompt record of*

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Confession made commencement of proceedings—*continued.*

confessions.—A confession made by an accused person before a Magistrate who has jurisdiction to deal with the matter to which it relates, may be made the commencement of a trial or enquiry under Chapter XV of the Criminal Procedure Code, and be treated as a confession under section 346, whether or not the case be still under the investigation of the police. *Per curiam,*—The object of section 122 of the Code of Criminal Procedure is to enable any Magistrate, other than the Magistrate by whom the case is to be tried or enquired into, to record a confession promptly. *Behari Hadji, 5 C. L. R., 238;* and *Reg. v. Shivya, I. L. R., 1 Bom., 219,* discussed. KRISHNO MONEE *v.* EMPRESS . . . . **6 C. L. R., 289**

44. ——— Memorandum of Magistrate not in prescribed form.—*Evidence Act, s. 24.—Act X of 1872 (Criminal Procedure Code), ss. 122, 346.*—A confession does not become irrelevant merely because the memorandum required by law to be attached thereto by the Magistrate taking it has not been written in the exact form prescribed. EMPRESS OF INDIA *v.* BHAIRON SINGH **[I. L. R., 3 All., 338**

45. ——— *Criminal Procedure Code, 1872, ss. 122, 346.—Admissibility in evidence.*—Where a Magistrate in taking the confession of a prisoner under section 122 of the Criminal Procedure Code omits to take it in writing, with the formalities prescribed by section 346 of that Code, such confession is not absolutely inadmissible in evidence. Evidence may be taken to show that the prisoner duly made the statement recorded. *Reg.* v. *Shivya, I. L. R., 1 Bom., 219,* dissented from. EMPRESS *v.* RAMANJIYYA . **I. L. R., 2 Mad., 5**

46. ——— Certificate not recorded at time of confession.—*Criminal Procedure Code, 1872, s. 122.—Admissibility in evidence.*—If the certificate required by section 122 of the Code of Criminal Procedure (Act X of 1872), that a confession is voluntarily made, is not recorded by the Magistrate at the time the confession is made, or, at any rate, on the day it is reduced to writing, the confession is bad and inadmissible in evidence. To render the statement of one person jointly tried with another for the same offence liable to consideration against that other, it is necessary that it should amount to a distinct confession of the offence charged. EMPRESS *v.* DAJI NARSU **[I. L. R., 6 Bom., 288**

47. ——— Examination not recorded in proper form.—*Error in recording examination.—Question and answer.—Statement of accused person.—Criminal Procedure Code (Act X of 1872), s. 346.—Admissibility in evidence.*—The confession of an accused person was recorded in a simple narrative form instead of in the shape of question and answer as required by the Code of Criminal Procedure, section 346. There was nothing in the character

CONFESSION—*continued.*

4. CONFESSIONS TO MAGISTRATE—*continued.*

Examination not recorded in proper form—*continued.*

of the confession, or in the circumstances of the case, to lead to the inference that the accused had been prejudiced by the error. *Held,* that the error did not affect the admissibility of the statement in evidence. IN THE MATTER OF THE PETITION OF MUNSHI SHEIKH. EMPRESS *v.* MUNSHI SHEIKH **I. L. R., 8 Calc., 616**

TITU MAYA *v.* QUEEN **[I. L. R., 8 Calc., 618, note: 1 C. L. R., 1**

48. ——— Refusal to sign confession—*Penal Code, s. 180.*—Section 180 of the Penal Code does not apply to statements made under this section in reply to questions put by the Court. EMPRESS *v.* SUSAPPA . . . **I. L. R., 4 Bom., 15**

5. CONFESSIONS TO POLICE OFFICERS.

49. ——— Statement to police constable.—*Inducement to confess.—Confession before Magistrate.*—The accused confessed to a police constable, on being assured by him that nothing would happen to her, that she had killed her new-born child, and had buried it in the enclosure of her house. This statement led to the discovery of some bones of the head of an infant, a stone stained with blood, and a knife, with which stone and knife she said that she had killed her child. Before the committing Magistrate she made the same statement. In her trial before the Sessions Judge, she admitted the birth of the child; she stated that it did not cry, and that she buried it, not knowing whether it was alive or dead. She also stated that the police constable had pressed and threatened her, and told her that if she confessed the truth nothing would happen to her. She denied having killed the child with the stone and sickle, and said that she had merely pressed it on the ground and then buried it. There was no evidence to show that the child was born alive. *Held* that the confession before the Magistrate was irrelevant, and that the Court was not prepared to say that the confession made before the Sessions Judge was made after the impression caused by the promise of the police constable had been fully removed, and that, looking at the fact that a promise of safety had been made, the confession was, even if accepted, of a limited character; that there was nothing to show that the child was born alive, and considering that if the child was born dead, the accused might, under fear of exposure and disgrace, have wished to conceal the body, the accused must be acquitted of murder. QUEEN *v.* LUCHOO . . **5 N. W., 86**

50. ——— Statement to police officer also a Magistrate.—*Evidence Act, ss. 25, 26, and 167.—Admissibility in evidence of confession.—Deputy Commissioner of Police in Calcutta.—Letters Patent, 1865, s. 26.—Case certified by Advocate General.*—The prisoner, on his arrest, made a statement in the nature of a confession which was reduced

CONFESSION—*continued.*

5. CONFESSIONS TO POLICE OFFICERS—*continued.*

Statement to police officer also a Magistrate—*continued.*

into writing by one of the inspectors in whose custody the prisoner was, and subsequently signed and acknowledged by the prisoner in the presence of the Deputy Commissioner of Police at the police office, the Deputy Commissioner receiving and attesting the statement in his capacity as Magistrate and Justice of the Peace. At the trial of the prisoner at the Criminal Sessions of the High Court, this statement was tendered in evidence against him, and admitted by the Judge, who overruled an objection on behalf of the prisoner that, under section 25 of the Evidence Act, it was inadmissible. On a case certified by the Advocate General under clause 26 of the Letters Patent,—*Held*, that the confession was, under section 25 of the Evidence Act, not admissible in evidence. *Per* GARTH, *C. J.*—Section 26 of the Evidence Act is not to be read as qualifying the plain meaning of section 25. In construing section 25 the term "police officer" is not to be read in a technical sense, but in its more comprehensive and popular meaning. *Per* GARTH, *C. J.* (PONTIFEX, *J.*, doubting).—The Court which under that section is to decide upon the sufficiency of the evidence to support the conviction is, in a case coming before the Court and under section 26 of the Letters Patent, the Court of review, not the Court below. Such decision is to be come to on being informed by the Judge's notes, and, if necessary, by the Judge himself, of the evidence adduced at the trial. *Per curiam*,—Apart from section 167, the Court has power, in a case under clause 26 of the Letters Patent, to review the whole case on the merits, and affirm or quash the conviction. QUEEN *v.* HURRIBOLE CHUNDER GHOSE

[I. L. R., 1 Calc., 207: 25 W. R., Cr., 36

51. ——— Confession to police officer by one of accused persons tried jointly.—*Evidence Act, 1872, ss. 25 and 167.—Admissibility in evidence of confession.—High Court's Criminal Procedure Act (X of 1875), ss. 23 and 101.—Letters Patent, 1865, cl. 25.—Power of the High Court on a point of law reserved to consider the merits of the case.*—Section 25 of the Evidence Act (I of 1872) does not preclude one accused person from proving a confession made to a police officer by another accused person tried jointly with him. Such a confession is not to be received or treated as evidence against the person making it, but simply as evidence on behalf of the other. The High Court, on a point of law as to the admissibility of rejected evidence, reserved under clause 25 of the Letters Patent, 1865, and section 101 of the High Court's Criminal Procedure Act (X of 1875), has power to review the whole case and determine whether the admission of the rejected evidence would have affected the result of the trial; and a conviction should not be reversed unless the admission of the rejected evidence ought to have varied the result of the trial (Evidence Act, section 167). EMPRESS *v.* PITAMBER JINA

[I. L. R., 2 Bom., 61

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5. CONFESSIONS TO POLICE OFFICERS—*continued.*

52. ——— Admission made to police officer before arrest.—*Evidence Act, ss. 25, 26.*—An admission made by an accused person to a police officer before arrest is admissible in evidence. EMPRESS *v.* DABEE PERSHAD

[I. L. R., 6 Calc., 530: 7 C. L. R., 541

53. ——— Circumstances rendering confession admissible.—*Evidence Act, ss. 24-26.*—The circumstances which will render a confession objected to under sections 24-26 of the Evidence Act (I of 1872) admissible in evidence discussed. EMPRESS *v.* RAMA BIRAPA

[I. L. R., 3 Bom., 12

54. ——— Self-exculpatory statement to police officer in police custody.—*Re-trial.*—A statement made to a police officer by an accused person while in the custody of the police, although intended to be made in self-exculpation and not as a confession, may be nevertheless an admission of a criminating circumstance, and, if so, under sections 25 and 26 of the Evidence Act I of 1872, it cannot be proved against the accused. After excluding evidence improperly admitted and put before the jury, the High Court found that the remaining evidence was not of such a character that a conviction might reasonably be based upon it. It accordingly reversed the conviction and sentence of the accused, declining to order his re-trial. EMPRESS *v.* PANDHARINATH . . . **I. L. R., 6 Bom., 34**

55. ——— Statements of prisoner to police officer on being accused.—*Evidence Act, ss. 25, 26, 27.—P.*, accused of the murder of a girl, gave to a police officer a knife, saying it was the weapon with which he had committed the murder. He also said that he had thrown down the girl's anklets at the scene of the murder and would point them out. On the following day he accompanied the police officer to the place where the girl's body had been found, and pointed out the anklets. *Held* that such statements, being confessions, made to a police officer, whereby no fact was discovered, could not be proved against *P.* Observations on the use of confessions made to police officers. *Reg.* v. *Jora Hasji, 11 Bom., 242*, and *Empress* v. *Rama Birapa, I. L. R., 3 Bom., 12*, referred to. EMPRESS *v.* PANCHAM

[I. L. R., 4 All., 198

56. ——— Statement to police officer investigating case.—*Evidence Act, ss. 25, 27.*—Under section 25 of the Evidence Act, I of 1872, a confession made to a police officer is inadmissible in evidence except so far as is provided by section 27. It is immaterial whether such police officer be the officer investigating the case—the fact that such person is a police officer invalidates a confession. IN THE MATTER OF HIRAN MIYA . **1 C. L. R., 21**

57. ——— Confession before Village Magistrate.—*Criminal Procedure Code, s. 164.—Village Cess Act, s. 7.—Evidence Act, s. 25.*—A Village Magistrate is not a police officer, and, therefore, a confession made to a Village Magistrate

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5. CONFESSIONS TO POLICE OFFICERS—*continued.*

Confession before Village Magistrate—*continued.*

is not inadmissible in evidence by reason of section 25 of the Evidence Act. QUEEN-EMPRESS *v.* SAMA PAPI . . . . I. L. R., 7 Mad., 287

58. ——— Incriminating statement by prisoner to police officer.—*Evidence of police constable.*—A policeman, on being cross-examined, stated that when he arrested the prisoner, the prisoner said to him, "Some Chinamen *at the time of the occurrence* came out with hatchets." On re-examination the policeman so far altered the words stated to have been used by the prisoner as to substitute for the words *at the time of the occurrence* the words *at the time*, and on being asked if the prisoner had explained "what time," answered, "he said at the time I struck the deceased." Counsel for the prisoner interposed and objected to the evidence. The Standing Counsel contended that he was entitled to clear up a matter which had been left in doubt by the cross-examination. *Held* that the evidence could not be given. QUEEN-EMPRESS *v.* MATHEWS [I. L. R., 10 Calc., 1022

59. ——— Confession made to police officer, Admissibility of, for other purposes than as a confession.—*Evidence Act, s. 25.—Criminal Procedure Code (Act X of 1882), ss. 517 and 523.—Evidence of ownership.*—Statements made to the police by accused persons as to the ownership of property which is the subject-matter of the proceedings against them, although inadmissible as evidence against them at the trial for the offence with which they are charged, are admissible as evidence with regard to the ownership of the property in an enquiry held by the Magistrate under section 523 of the Criminal Procedure Code (X of 1882). The High Court declined to interfere with an order, made by a Magistrate under section 523 of the Criminal Procedure Code, for the delivery of property, where the Magistrate made such order upon the mere evidence of a confession of the accused to the police that the property was stolen from the adjudged owner. QUEEN-EMPRESS *v.* TRIBHOVAN MANEKCHAND [I. L. R., 9 Bom., 131

60. ——— Information as to offence charged.—*Evidence Act, ss. 26, 27.—Confessions of persons charged.—Information as to offence.*—When a fact is discovered in consequence of information received from one of several persons charged with an offence, and when others give like information, the fact should not be treated as discovered from the information of them all. It should be deposed that a particular fact has been discovered from the information of *A. B.*, and this will let in, under section 27, Evidence Act, so much of the information as relates distinctly to the information therein discovered. QUEEN *v.* RAM CHURN CHUNG [24 W. R., Cr., 36

61. ——— *Evidence Act, ss. 25, 26, 27.*—*B.* and *R.*, accused of offences under section 414 of the Penal Code, gave information to the police which led to the discovery of the stolen property. This information was to the effect that the accused had stolen a cow and calf, and sold them to a particular person at a particular place. *Held*, by the Full Bench (MAHMOOD, *J.*, dissenting), that section 27 of the Evidence Act is a proviso not only to section 26 but also to section 25; and that, therefore, so much of the information given by the accused to the police officer, whether amounting to a confession or not, as related distinctly to the facts thereby discovered, might be proved. *Empress* v. *Kuarpala, Weekly Notes, All., 1882, p. 225*, dissented from. *Per* MAHMOOD, *J.*, that section 27 of the Evidence Act is not a proviso to section 25, but only to section 26, and that, therefore, the statements in question were wholly inadmissible in evidence. *Empress* v. *Pancham, I. L. R., 4 All., 198*, referred to by STRAIGHT, *Offg. C. J.*, and MAHMOOD, *J.* *Per* STRAIGHT, *Offg. C. J.*, that where a statement is being detailed by a constable as having been made by an accused, in consequence of which he discovered a certain fact or certain facts, the strictest precision should be enjoined on the witness, so that there may be no room for mistake or misunderstanding. Observations by STRAIGHT, *Offg. C. J.*, as to the mode in which the testimony of witnesses should be recorded in cases where two persons are being tried. Observations by STRAIGHT, *Offg. C. J.*, and DUTHOIT, *J.*, upon the nature of confessions by accused persons in India, and the circumstances in which such confessions are made. EMPRESS *v.* BABU LAL . I. L. R., 6 All., 509

62. ——— *Confession made while in custody of police.—Evidence Act, ss. 25, 27.*—No judicial officer dealing with the provisions of section 27 of Act I of 1872 should allow one word more to be deposed to by a police officer detailing a statement made to him by an accused, in consequence of which he discovered a fact, than is absolutely necessary to show how the fact that was discovered is connected with the accused so as in itself to be a relevant fact against him. Section 27 was not intended to let in a confession generally, but only such particular part of it as set the person to whom it was made in motion, and led to his ascertaining the fact or facts of which he gives evidence. *Empress of India* v. *Pancham, I. L. R., 4 All., 198; Queen-Empress* v. *Babu Lal, I. L. R., 6 All., 509*, discussed and commented on. Thus, when a police officer deposed that an accused had told him that he had robbed *K.* of R48, whereof he had spent R8 and had got R40, and that he had made over the R40 to him,—*Held*, that the statement that he robbed *K.* of R48 was not necessarily preliminary to the surrender of the R40, and was inadmissible in evidence against him. When also a police officer deposed to the fact that the accused, who was charged with murder, had stated to him that he and *K.* had stolen some hides from *C.*, and upon such statement he had

CONFESSION—*continued.*

5. CONFESSIONS TO POLICE OFFICERS—*continued.*

Information as to offence charged—*continued.*

sent for *C.* and recorded his information, and when it appeared that *C.* had already informed the police of the fact of the theft, though the witness was not aware of it,—*Held*, that the statement was inadmissible upon the ground that it would be most dangerous to extend the provisions of section 27, and allow a police officer, who is investigating a case, to prove an information received from a person accused of an offence in the custody of a police officer, on the ground that a material fact was thereby discovered by him, when that fact was already known to another police officer. ADU SHIKDAR *v.* QUEEN-EMPRESS **[I. L. R., 11 Calc., 635**

63. ——————— *Confession while in custody of police.—Evidence Act, ss. 25, 26, 27.*—The accused were charged with theft of some jwari. During the police investigation they admitted before the police that they had taken the grain and concealed it in a jar, which they forthwith produced. The identity of the jwari recovered with that stolen was not proved to the satisfaction of the trying Magistrate, except by these admissions, and upon these admissions they were convicted of theft. *Held*, that as the prisoners themselves produced the jwari, it was by their own *act*, and not from any *information* given by them, that the discovery took place. Section 27 of the Evidence Act, therefore, did not apply; and though the fact of the production of the property might be proved, the accompanying confession made to the police was inadmissible in evidence. *Empress* v. *Pancham, I. L. R., 4 All., 198*, and *Queen-Empress* v. *Babu Lal, I. L. R., 6 All., 509*, followed. QUEEN-EMPRESS *v.* KAMALIA **[I. L. R., 10 Bom., 595**

6. CONFESSIONS OF PRISONERS TRIED JOINTLY.

64. ——— **Evidence Act, 1872, s. 30.**—*Admissibility of confession of one against others.*—A prisoner who pleads guilty at the trial, and is thereupon convicted and sentenced, cannot be said to be jointly tried with the other prisoners, committed on the same charge, who plead not guilty. Where, therefore, one of eight prisoners before the committing Magistrate made a confession affecting himself and five others, and afterwards, at the trial before the Assistant Sessions Judge, pleaded guilty, and was thereupon convicted and sentenced, and the Judge then proceeded to take his evidence on solemn affirmation, and recorded his confession as evidence in the case against the other prisoners,—*Held*, that the Judge was wrong in taking the confession into consideration against those prisoners who pleaded not guilty. The proper course for the Judge was either to have sentenced the prisoner who pleaded guilty, and then put him aside, or to have waited to see what the evidence would disclose. REG. *v.* KALU PATIL . . . . . **11 Bom., 146**

CONFESSION—*continued.*

6. CONFESSIONS OF PRISONERS TRIED JOINTLY—*continued.*

Evidence Act, 1872, s. 30—*continued.*

65. ——————— *Amendment of charges.—Criminal Procedure Code, 1872, ss. 447-449.*—While *A.* and *B.* were being jointly tried before a Court of Session, the first for murder and the second for abetment of murder, a confession made by *A.* that he himself had committed the murder at the instigation of *B.*, was put in as evidence against *A.* Subsequently the charge against *A.* was altered to one of abetment of murder, and the Sessions Judge, under the authority of section 30 of the Evidence Act, used the confession against both and convicted them. The High Court held that the original and amended charges were so nearly related that the trial might, without any unfairness, be deemed to have been a trial on the amended charge from the commencement; and that no objection having been taken by *B.*, who was represented by a vakeel, to the admissibility of *A.'s* confession against him when the charge against *A.* was altered, the Sessions Judge was justified in using the confession against *B.* also. REG. *v.* GOVIND BABLI RAUL . . **11 Bom., 278**

66. ——————— *Statement of person tried jointly with others.*—The statement of a person tried jointly with other persons for the same offence is not made less of an admission, as to all that the person knew concerning the offence, affecting himself and the other persons, by the fact of the Court not thinking him guilty of the offence charged. QUEEN *v.* BAKUR KHAN . . **5 N. W., 213**

67. ——————— *Confession of co-prisoner.—Corroboration.*—The confession of one prisoner cannot be used as corroborative evidence against another person. Corroboration as to the details of the crime, without corroboration as to the person of the accused, is worthless. QUEEN *v.* DURBAROO DASS SIRDAR . . . . . **13 W. R., Cr., 14**

68. ——————— *Confession of co-prisoner.—Trial for substantive offence and for abetment.*—The confessions of persons tried jointly for the same offence may, by section 30, Act I of 1872, be "considered" as against other parties then on their trial with them, but such confessions, when used as evidence against others, stand in need of corroboration, and cannot be used as corroborating in any way the evidence of approvers against such other parties. Section 30, Act I of 1872, ought to be construed with great strictness, and the confession of one person is not admissible in evidence against another, although the two are jointly tried, if one is tried for the abetment of the offence for which the other is on his trial. QUEEN *v.* JAFFIR ALI . **19 W. R., Cr., 57**

69. ——————— *Statements of accused persons as evidence against other co-accused.*—Statements made by one set of prisoners criminating another set of prisoners, when each individual prisoner made a case for himself in which he was free from any criminal offence, ought not to be taken into consideration under section 30 of the Evidence Act against the prisoners of the second set,

CONFESSION—*continued.*

6. CONFESSIONS OF PRISONERS TRIED JOINTLY—*continued.*

Evidence Act, 1872, s. 30—*continued.*

when the two sets, although tried together, were tried upon totally different charges . QUEEN *v.* BUNWAREE LALL . . . **21 W. R., Cr., 53**
QUEEN *v.* KHUKREE OORAM
[21 W. R., Cr., 48

70. ——————— *Confessions of prisoners tried jointly as evidence.*—Confessions of prisoners tried simultaneously with the accused for the same offence, which are in a very qualified manner made operative as evidence by Act I of 1872, section 30, are only to be rated as evidence of a defective character, and require especially careful scrutiny before they can be safely relied on. QUEEN *v.* SADHU MUNDUL . . **21 W. R., Cr., 69**

71. ——————— *Statements made by prisoners before committing officer.*—Statements made by a prisoner before the committing officer, which implicate his fellows and exculpate himself, cannot be regarded as evidence under the Evidence Act, section 30 . QUEEN *v.* KESHUB BHOONIA
[25 W. R., Cr., 8

72. ——————— *Defects of confessions by co-prisoners.*—The confession of co-prisoners cannot, under the Evidence Act I of 1872, section 30, be treated as evidence of ordinary character not distinguished by any special infirmity or qualifications against the other prisoners, as, in addition to the infirmity inherent in an accomplice's testimony, they are not given on oath, and are not liable to be tested by cross-examination. QUEEN *v.* NAGA . . . . **23 W. R., Cr., 24**

73. ——————— *Confession of co-prisoner in criminating himself.*—The statement of one prisoner cannot be taken as evidence against another prisoner under section 30 of the Evidence Act, unless the confessing prisoner implicates himself to the full as much as his co-prisoner whom he incriminates. QUEEN *v.* BAIJOO CHOWDRY
[25 W. R., Cr., 43

74. ——————— *Confession by co-prisoner implicating himself.*—Where more persons than one are being tried for the same offence, and a confession made by one affecting himself and some of the others is proved, the Evidence Act, section 30, does not provide that such confession is evidence, but that it may be "taken into consideration:" the intention of the Legislature being that when, as against any person implicated by such confession, there is evidence tending to his conviction, the circumstance of such person being implicated by the confession of one of those who are being jointly tried with him shall be taken into consideration as bearing upon the truth or sufficiency of such evidence. QUEEN *v.* CHUNDER BHUTTACHARJEE . **24 W. R., Cr., 42**

75. ——————— *Confession of co-prisoner who has withdrawn from associates before offence.*—The confession of a person who says he abetted a murder, but withdrew before the actual perpetration of that murder by his associates cannot be used as evidence against those associates, though the person confessing is tried with them jointly on a charge of murder. REGI *v.* AMRITA GOVINDA
[10 Bom., 497

76. ——————— *Confession of co-prisoner.*—Section 30 of Act I of 1872 is an exception, and its wording shows that the confession is merely to be an element in the consideration of the evidence. Unless there is something more, a conviction on it will still be a case of no evidence, and bad in law. ANONYMOUS . . **7 Mad., Ap., 15**

77. ——————— *Confession of a prisoner when admissible against co-prisoner.*—To render the confession of one prisoner jointly tried with another admissible in evidence against the latter, it must appear that that confession implicates the confessing person substantially to the same extent as it implicates the person against whom it is to be used in the commission of the offence for which the prisoners are being jointly tried. QUEEN *v.* BELAT ALI . **10 B. L. R., 453: 19 W. R., Cr., 67**
QUEEN *v.* MOHESH BISWAS
[10 B. L. R., 455, note: 19 W. R., Cr., 16

78. ——————— *Confession of co-prisoner.—Illegal conviction.*—A conviction based solely on the evidence of a co-prisoner is bad in law. QUEEN *v.* AMBIGARA HULAGU
[I. L. R., 1 Mad., 163
QUEEN *v.* BUDHU NANKU
[I. L. R., 1 Bom., 475

79. ——————— *Conviction on uncorroborated confession.*—A conviction of a person who is being tried together with other persons for the same offence cannot proceed merely on an uncorroborated statement in the confession of such other persons. EMPRESS OF INDIA *v.* BHAWANI. EMPRESS OF INDIA *v.* RAM CHAND
[I. L. R., 1 All., 664, 675

80. ——————— *Confession of one prisoner implicating himself and another, Effect of.—"Court," Meaning of.*—Under section 30 of the Evidence Act, the confession of a prisoner affecting himself and another person charged with the same offence is, when duly proved, admissible as evidence against both, but such second person cannot, when it is uncorroborated as against him, be legally convicted on it. *Per* GARTH, *C. J.*—Such evidence must be dealt with by the Court in the same manner as any other evidence. The weight, however, to be attached to such evidence, and the question, whether taken by itself it is sufficient in point of law to justify a conviction, is a question for the Judge. Unsupported by other evidence, it, however, should be taken as evidence of the very weakest kind, being simply a statement of a third person not made upon oath or affirmation. If such confession is corroborated by other evidence, it is immaterial whether, in proving

CONFESSION—*continued.*

6. CONFESSIONS OF PRISONERS TRIED JOINTLY—*continued.*

Evidence Act, 1872, s. 30—*continued.*

the case at the trial, the confession precedes the other evidence, or the other evidence precedes the confession. *Per* JACKSON, *J.* (MCDONELL, concurring).—Such evidence is not sufficient to support a conviction, even if corroborated by circumstantial evidence, unless the circumstances constituting corroboration would, if believed to exist, themselves support a conviction. *Per curiam.*—The word "Court," in section 30 of the Evidence Act, means not only the Judge in a trial by a Judge with a jury, but includes both Judge and jury. EMPRESS *v.* ASHOOTOSH CHUCKERBUTTY

[I. L. R., 4 Calc., 483: 3 C. L. R., 270

81. ——————— *Statement of prisoner exculpating himself.*—A prisoner, charged together with others with being a member of an unlawful assembly, made a statement before the committing Magistrate implicating his fellow-prisoners and another person. He subsequently withdrew this statement, and made another, in which he endeavoured to exculpate himself. *Held*, that this statement was not evidence against the other prisoners under section 30 of the Evidence Act. It was not a confession, nor did it amount to any admission by the prisoner that he was guilty in any degree of the offence charged; but it was simply an endeavour on his part to explain his own presence on the occasion in such a manner as to exculpate himself; and any mention made by him in such a statement of other persons having been engaged in the riot, was altogether irrelevant, and not evidence against them. NOOR BUX KAZI *v.* EMPRESS

[I. L. R., 6 Calc., 279: 7 C. L. R., 385

82. ——————— *Confession not implicating prisoner confessing.*—Where the confession of a person being tried jointly with other persons did not implicate him to the same extent as it implicated such other persons, and was not sufficient of itself to justify his conviction,—*Held*, that such confession could not be taken into consideration under section 30 of Act I of 1872 against such other persons. *Queen* v. *Belat Ali, 10 B. L. R., 453*, followed. EMPRESS OF INDIA *v.* GANRAJ

[I. L. R., 2 All., 444

83. ——————— *Confession of prisoner exculpating himself.*—Where a person being tried jointly with other persons made a statement deprecating any guilty knowledge and seeking to clear himself at the expense of such other persons,—*Held*, that such statement could not be taken into consideration under section 30 of Act I of 1872 against such other persons. *Queen* v. *Belat Ali, 10 B. L. R., 453*, and *Empress* v. *Ganraj, I. L. R., 2 All., 444*, followed. EMPRESS OF INDIA *v.* MULU

[I. L. R., 2 All., 646

84 ——————— *Trial for dacoity and receiving stolen property.*—*A.* and *B.* were committed for trial, the former for dacoity under section 395 of the Penal Code, and the latter under section 412 for receiving stolen property, knowing it to be such. *A.* made two confessions, and in both he stated he had handed over to *B.* some pieces of gold and silver stolen at the dacoity. When *B.* was arrested, a gold ring and a silver wristlet were found in his possession. At the trial *A.* pleaded guilty, and *B.* claimed to be tried. A goldsmith deposed that he had made the ring and wristlet found with *B.* out of pieces of gold and silver given to him for the purpose by *B.* On this evidence, and on the confessions made by *A.*, the Sessions Judge convicted *B.* On appeal to the High Court,—*Held*, that *A.* and *B.* not having been tried jointly for the same offence, the confession of *A.* was inadmissible as evidence against *B.* There was, therefore, no evidence of the identity of the goods stolen at the dacoity with those found in *B.*'s possession, and the case against him failed. Conviction quashed. EMPRESS *v.* BALA PATEL

[I. L. R., 5 Bom., 63

85. ——————— *Statement by prisoner in absence of co-prisoners.—Confession.*—Several persons were charged together with offences under sections 148, 302, 324, and 326 read with section 149 of the Penal Code. The Sessions Judge, when about to examine the prisoners, required all but the prisoner under examination to withdraw from the Court, until his turn for examination came round, and convicted each prisoner chiefly upon what was said by his co-prisoners during his absence from the Court. —*Held*, that the evidence so given was inadmissible. IN THE MATTER OF THE PETITION OF CHANDRA NATH SIRKAR. EMPRESS *v.* CHANDRA NATH SIRCAR

[I. L. R., 7 Calc., 65: 8 C. L. R., 353

CHAKOWRI LALL *v.* MOTI KURMI

[13 C. L. R., 275

86. ——————— *Statement by prisoner in absence of co-prisoners.—Code of Criminal Procedure (X of 1872), s. 250.*—The two accused persons were jointly tried before the Sessions Judge on a charge of murder. The Sessions Judge examined each of the accused in the absence of the other, making the latter withdraw from the Court during the examination of the former, though without objection from the pleaders of the accused persons.—*Held*, that the examination of each accused could be used only against himself, and not against his fellow-accused. EMPRESS *v.* LAKSHMAN BALA

[I. L. R., 6 Bom., 124

87. ——————— *Distinct confession of offence charged.*—To render the statement of one person jointly tried with another for the same offence liable to consideration against that other, it is necessary that it should amount to a distinct confession of the offence charged. EMPRESS *v.* DAJI NARSU

[I. L. R., 6 Bom., 288

88. ——————— *Statements of co-prisoners pleading guilty.*—Several prisoners being charged together with house-breaking, some of them pleaded guilty. The Sessions Judge used the

CONFESSION—*continued.*

6. CONFESSIONS OF PRISONERS TRIED JOINTLY—*continued.*

Evidence Act, 1872, s. 30—*continued.*

confessions made by those who pleaded guilty as evidence against a prisoner who was tried. *Held*, that such confessions were not evidence under section 30 of the Evidence Act, 1872. VENKATASAMI *v.* QUEEN [I. L. R., 7 Mad., 102

89. ——— *Offence of same definition arising out of single transaction.—Inculpation through separable acts.—Counterfeit coin.—Penal Code (Act XLV of 1860), s. 239.*—*A.* and *B.* were tried together, under section 239 of the Penal Code (XLV of 1860), on a charge of delivering to another counterfeit coins, knowing the same to be counterfeit at the time they became possessed of them. *A.* confessed that he had got the coins from *B.*, and had passed them to several persons at his request.—*Held* that the confession of *A.* was relevant against *B.* When two persons are accused of an offence of the same definition arising out of a single transaction, the confession of the one may be used against the other, though it inculpates himself through acts separable from those ascribed to his accomplice, and capable, therefore, of constituting a separate offence from that of the accomplice. QUEEN-EMPRESS *v.* NUR MAHOMED . . I. L. R., 8 Bom., 223

90. ——— *Confession of co-prisoner used against abettor.*—Upon the trial of *A.* for murder, and *B.* for abetment thereof, a confession by *A.* implicating *B.* cannot be taken into consideration against *B.* under section 30 of the Evidence Act, 1872. BADI *v.* QUEEN-EMPRESS [I. L. R., 7 Mad., 579

91. ——— *Confession if taken to be taken against all co-accused.—Admissibility of confession against co-accused.*—When more persons than one are jointly tried for the same offence, the confession made by one of them, if admissible in evidence at all, should be taken into consideration against all the accused, and not against the person alone who made it. EMPRESS *v.* RAMA BIRA . . . . . I. L. R., 3 Bom., 12

92. ——— *Want of corroboration.*—A conviction of a person who is tried jointly with other persons for the same offence cannot proceed merely upon the uncorroborated confession of one of such other persons. QUEEN-EMPRESS *v.* DOSA JIVA . . I. L. R., 10 Bom., 231
QUEEN-EMPRESS *v.* KRISHNA BHAT [I. L. R., 10 Bom., 319

93. ——— *House-breaking.—Production of stolen property.*—Where the accused was convicted of house-breaking by night with intent to commit theft, and the only evidence against him was the confession of a fellow-prisoner, and the fact that he pointed out the stolen property some months after the commission of the offence,—*Held*, that the mere production of the stolen property by the accused was not sufficient corroboration of the confession of the other prisoner. QUEEN-EMPRESS *v.* DOSA JIVA . . I. L. R., 10 Bom., 231

CONFESSION OF JUDGMENT.

1. ——— *Confession at filing of plaint.—Discretion of Judge to hear the case.*—An insolvent defendant appeared and confessed judgment, at the suit of one of his creditors at the filing of the plaint. There were other suits filed by other creditors. The Judge (Recorder of Moulmein) gave a decision for the plaintiff, but declined to sign judgment, pending a reference to the High Court, under Act XXI of 1863, section 22, on the following question: Is the plaintiff entitled to a decree as of the date on which the defendant appeared and confessed judgment? *Held*, that the Judge has a discretion when parties have come to a mutual agreement, or when the defendant has confessed judgment, to decide the suit at once in accordance with such agreement or confession. He is not bound to do so till the time fixed for the regular hearing of the suit; and he cannot exercise that discretion where there is any doubt as to the good faith or identity of the parties. BANK OF BENGAL *v.* CURRIE [3 B. L. R., A. C., 396: 12 W. R., 432

2. ——— **Conditional confession of judgment.**—The confession of judgment must be unconditional unless the plaintiff consents to a conditional one,—*e.g.*, a decree on payment of instalments. ATMA RAM *v.* CHUNDUN SINGH [2 Agra, 77

CONFISCATION.

See ACT OF STATE . 10 B. L. R., 345
[12 B. L. R., 167

See CASES UNDER FORFEITURE OF PROPERTY.

CONFISCATION OF PROPERTY IN OUDH.

1. ——— **Limitation.**—*Release of Government rights.—Settlement.—Cause of action.*—House property in Lucknow, of which the Government had assumed possession as confiscated under the proclamations issued by Lord Canning and Sir James Outram in March 1858, was released under an order passed on the 6th July 1863, whereby the Government abandoned the confiscation and left former owners to their rights. This property had, previously to the confiscation, belonged to one *M. K.* Lands in Oudh confiscated under Lord Canning's proclamation were, in October 1863, directed to be settled with the heirs of *M. K.* In a suit brought in March 1875 by a plaintiff, who claimed a share of the house property and lands as one of the heirs of *M. K.* against a defendant who was an heir of *M. K.*, and who had obtained possession of the houses and lands under the orders passed for the release of the one and the settlement of the other, the defendant pleaded that the entire property had come into her possession in 1856 under a gift from *M. K.*, and that the plaintiff's suit was barred by limitation. *Held* (first), in respect of the house property, that if the defendant was in possession at the time when the proclamations were issued, the question of limitation must be decided as if there never had been a confiscation; and (second), in respect of the lands, that no question of limitation could arise, since the suit was brought

CONFISCATION OF PROPERTY IN OUDH.—Limitation—*continued.*

within twelve years from the date of the Government order for settlement, under which alone any title to the lands could have been acquired by either of the parties. JEHAN KADR *v.* ASSUR BAHU [I. L. R., 4 Calc., 727

2. ——— **Lord Canning's proclamation, 1858, Effect of.**—*Re-grant of confiscated lands.*—The effect of Lord Canning's proclamation of the 15th March 1858 was to divest all the landed property from the proprietors in Oudh and to transfer it to, and vest it in, the British Government. Consequently all who since that date claim title to such property must claim through the Government. Where a re-grant is made to a former owner, the new title will depend entirely on the terms of the re-grant; and if such re-grant is made for life only, no suit can be maintained to rectify an alleged mistake, and for declaration of an absolute title according to the tenor of the sunnuds by which the property was held under the old dynasty and prior to the confiscation. MULKA JEHAN SAHIBA *v.* DEPUTY COMMISSIONER OF LUCKNOW . . L. R., 6 I. A., 63

3. ——— **Property standing and registered in name of one party, but admitted to belong to another.**—*Registration for fiscal purposes.*—In Oudh, before its annexation to the British rule, a Rajah was a talookdar of a large talook. A younger branch of his family had a separate mehal in the possession of *A.* wholly distinct from, and independent of, the talook the Rajah possessed as representing the elder branch of the family. The Oudh Government for fiscal purposes included *A.'s* mehal with the Rajah's talook, so that the Rajah as the elder branch of the family represented *A.'s* mehal at the Court at Lucknow, notwithstanding that *A.* remained in undisturbed possession as absolute owner, paying through the Rajah for his mehal a proportion of the jumma fixed on the talook. This relation between the Rajah and *A.* subsisted up to the time of the annexation of Oudh by the British Government. While the Government was making a settlement with the land-owners, and *A.* was about to apply for a distinct settlement of his mehal, he, and after him his widow, was induced by the Rajah not to do so, the Rajah in letters fully recognising *A.'s* absolute right to the mehal. After the suppression of the rebellion in Oudh, and the Government had recognised the talookdari tenure with its rights, a provisional settlement of the talook including *A.'s* mehal was made with the Rajah; but before a sunnud was granted to him, Government confiscated half his estates for concealment of arms. The Rajah suppressed the fact of the trust relation of the mehal of *A.*, and contrived that it should be included in the half part of the estate the Government had confiscated; which mehal the Government as a reward granted to Oudh loyalists. *A.'s* widow brought a suit against the Government and the grantees for the restoration of the mehal and for a settlement. The Chief Commissioner held that as the Rajah was the registered owner of the mehal of *A.* included in his talook, it had been properly forfeited. Such finding reversed on appeal on the ground that *A.* was the acknowledged

CONFISCATION OF PROPERTY IN OUDH.—Property standing and registered in name of one party, but admitted to belong to another—*continued.*

cestui que trust of the Rajah, and that *A.'s* widow, as equitable owner, was not affected as between her and the Government by the act of confiscation of half the Rajah's talook. THUKRANI SOOKRAJ KOOWAR *v.* GOVERNMENT . 14 Moore's I. A., 112

4. ——— **Confiscation and restoration of lands in Oudh in 1858 and of immoveables in Lucknow.**—*Gift.—Title.*—On a claim for a share in property consisting of (*a*) immoveables in Lucknow, and (*b*) revenue-paying land in a district of Oudh, the defence was title by gift, with possession, from the former owner, a member of the family through which the plaintiff claimed. As to the immoveables in Lucknow, they having been included in the confiscation which, having followed the capture of the town in 1858, was subsequently abandoned without any intention on the part of Government to make a re-grant in favour of any person, the result in regard to the present question was the same as if no such event had occurred. The other property (*b*) came under the general confiscation of Oudh lands in 1858, and also was restored through subsequent settlement operations in which the final order, relating to the land in question, was to the effect that settlement should be made with the "heirs" of the previous owner. *Held*, that the above did not preclude the defence of exclusive title by gift; the order last mentioned, on its true construction, only designating all those who might take under and through the previous owner (deceased at the time of settlement), without excluding any claimant, save those who might claim adversely to such title. The Government did not, in the settlement which followed the confiscation, make any arbitrary or wholly new re-distribution of estates, or proceed as if the existence of previous titles (although they had been brought to an end) was to go for nothing. The enquiry in most cases was as to who would have been entitled had there been no confiscation. As to both classes of property the gift was maintained. JEHAN KADR *v.* AFSAR BAHU BEGUM [I. L. R., 12 Calc., 1: L. R., 12 I. A., 124

CONFISCATION OF SALT.

See CASES UNDER SALT, ACTS AND REGULATIONS RELATING TO.

CONNIVANCE.

See DIVORCE ACT, S. 14. [I. L. R., 3 Calc., 688
7 Mad., 284

CONSENT.

See EVIDENCE—CIVIL CASES—MODE OF DEALING WITH . . 12 W. R., 244
[19 W. R., 248

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[3 Agra, 143

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See CASES UNDER JURISDICTION—QUESTION OF JURISDICTION—CONSENT OF PARTIES, &c.

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[17 W. R., 475: 8 B. L. R., Ap., 98

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[I. L. R., 4 Calc., 79

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[I. L. R., 4 Calc., 142

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[1 Ind. Jur., N. S., 395

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See CASES UNDER COURT FEES ACT, 1870, S. 7, CL. 4, AND SCH. II, ART. 17, CL. 3.

See CASES UNDER DECLARATORY DECREE, SUIT FOR—

See VALUATION OF SUIT—SUITS—DECLARATORY DECREE, SUITS FOR.
[I. L. R., 1 All., 360

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See CASES UNDER CONTRACT ACT, S. 25.

See DAMAGES—SUITS FOR DAMAGES—BREACHES OF CONTRACT.
[I. L. R., 2 Bom., 273

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[I. L. R., 1 Bom., 23

See MAHOMEDAN LAW—GIFT—VALIDITY.
[I. L. R., 2 Calc., 184

See NEGOTIABLE INSTRUMENTS, SUMMARY PROCEDURE ON.
[3 B. L. R., O. C., 130

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——— **Illegal—**

See CONTRACT ACT, S. 23—ILLEGAL CONTRACTS.
[I. L. R., 1 All., 478, 618, 751
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See PROMISSORY NOTE—CONSIDERATION.
[9 B. L. R., 441
8 Bom., A. C., 131

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See CASES UNDER EVIDENCE—SECONDARY EVIDENCE—UNSTAMPED OR UNREGISTERED DOCUMENTS.
[I. L. R., 3 Calc., 314

CONSIDERATION—*continued.*

——— **Want of—**

See CONTRACT ACT, S. 127.
[I. L. R., 1 All., 487

See HINDU LAW—GIFT—POWER TO MAKE AND ACCEPT GIFTS.
[I. L. R., 1 All., 734

1. ——— **Practice of Courts in India.**—*Contract.—Consideration, Proof of.*—It is the established practice of the Courts in India, in cases of contract, to require satisfactory proof that consideration has been actually received according to the terms of the contract, and a contract under seal does not of itself, in India, import that there was a sufficient consideration for the agreement. A plaintiff, however, suing to set aside a security admittedly executed by himself, must make out a good *primâ facie* case before the defendants can be called on to prove consideration. PRAHLAD SEN *v.* BODHU SING. KALIPRASAD TEWARI *v.* PRAHLAD SEN. PRAHLAD SEN *v.* DURGA PRASAD TEWARI. PRAHLAD SEN *v.* RUN BAHADUR SING. PRAHLAD SEN *v.* RAJENDRA KISHOR SING.
[2 B. L. R., P. C., 11: 12 W. R., P. C., 6
12 Moore's I. A., 275—286

See RAJU BALU *v.* KRISHNARAV RAMCHANDRA . I. L. R., 2 Bom., 273

2. ——— *Proof of consideration.*—It is the practice of the Courts to receive evidence as to the actual payment of consideration-money, notwithstanding the sale deed may contain an admission of the receipt thereof. It being generally, if not universally, the case, that the consideration-money is not paid at the time of the execution of the deed, gross injustice would be committed if such evidence were excluded. SURM RAE *v.* UBHMAN RAE . . . . 2 N. W., 209

RAJENDRA NATH BANERJEE *v.* JODOO NATH SINGH . . . . 7 W. R., 441

RAJU BALU *v.* KRISHNARAV RAMCHANDRA.
I. L. R., 2 Bom., 273

3. ——— *Document importing consideration.*—A bond, although under seal, does not in India of itself import that there has been a sufficient consideration for it. MAHOMED ZAHOOR ALI KHAN *v.* RUTTA KUNWOOR . 2 N. W., 481

4. ——— **Sufficiency of consideration.**—*Contract Act, s. 2, cl. (d).—Consideration moving indirectly from promisee.—Stranger to consideration.*—*L.* granted an estate to *C.* and directed her to make an annual payment to *L.'s* brothers. *C.* by agreement of even date made with *L.'s* brothers promised to carry out *L.'s* directions. *Held*, by INNES, *J.*, following *Dutton* v. *Poole*, 2 *Lev.* 210, that the agreement was enforceable against *C.* by *L.'s* brothers. *Held*, by KINDERSLEY, *J.*, that the grant by *L.* and the promise by *C.* to the brothers of *L.* being one transaction, there was a sufficient consideration for the promise within the meaning of the Contract Act, section 2. CHINNAYA RAU *v.* RAMAYA
[I. L. R., 4 Mad., 137

CONSIDERATION.—Sufficiency of consideration—*continued.*

5. ——————— *Contract Act, s. 2, cl. (d).*—The administratrix of an estate having agreed to pay *S.* his share of the estate if *S.* would give a promissory note for portion of a barred debt claimed by *A.* from her, *S.* executed a promissory note in favour of *A.*, gave it to the administratrix, and received his share of the asset. *Held*, that there was consideration for the promissory note within the meaning of section 2, clause (*d*), of the Contract Act, 1872, and that *A.* could recover upon it. SAMUE PILLAI *v.* ANANTHANATHA PILLAI [I. L. R., 6 Mad., 351

6. ——————— *Promissory note.—Good consideration.*—In an action on a promissory note, in which the defence was want of consideration, it appeared that the note was given by the defendants to the plaintiff in respect of a transaction in which it was arranged that the plaintiff was to find sureties in a certain appeal case in which the defendant was acting as mooktear or agent; the sureties were to be approved by the Collector, and were to be paid R10,000. The plaintiff found the sureties; they were duly approved by the Collector, but the plaintiff paid them a much less sum than R10,000. *Held*, that there was good consideration for the note. GUNGA NARAIN DOSS *v.* SIB CHUNDER SEN [I Ind. Jur., N. S., 409

7. ——————— *Execution of letter of license by creditors to insolvent.*—The execution of a letter of license to an insolvent by all the creditors mentioned in the schedule to his petition in the Insolvent Court, upon which his petition in the Insolvent Court was dismissed, was held to be sufficient consideration to enforce the contract to forbear against one of the creditors, although all the creditors were designated together as one party in the deed, and there was no express declaration that each creditor executed in consideration of all the others executing. BUNDSEEDHUR PODDAR *v.* RAMJEE MORARJEE . . . 2 Ind. Jur., N. S., 243

8. ——————— *Verbal promise for interest.—Nudum pactum.*—Where a contract of loan stipulated that the legally demandable rate of interest should be five per cent., it was held that a claim by the creditor of interest at eight per cent. founded upon a bare promise of the debtor to pay eight per cent., or upon the fact that the debtor had in account voluntarily debited himself with eight per cent. in lieu of five per cent., could not be maintained in law for want of consideration, amounting merely to *nudum pactum.* GUTHRIE *v.* LISTER [6 W. R., P. C., 59 11 Moore's I. A., 129

9. ——————— *Assignment of debt.—Transfer of mortgage.*—*A.* mortgaged to his brother *B.* his twelfth share in the immoveable estate of the family. *C.* at *B.'s* request became surety for *A.* to Government. *A.* having become a defaulter, *C.* became liable to Government in respect of his defalcations. *B.*, with a view to indemnify *C.*, transferred to him *A.'s* mortgage; *C.* at the same time assigning to *B.* a debt due by *D.* to *A.* which had been previously assigned by *A.* to *C.* In a suit by *C.* against *B.* for possession of *A.'s* share,—*Held*, that the assignment by *C.* to *B.* of *D.'s* debt was a sufficient consideration for the transfer by *B.* to *C.* of *A.'s* mortgage, and that a sale which was made by the Government of *A.'s* share was subject to such pre-existing valid charge. YASHAVANT SUBAJI KULKARNI *v.* GOPAL LADKO BHANDARKAR . 2 Bom., 202: 2nd Ed., 194

10. ——————— *Illegal consideration.—Account stated.—Mortgage.—Construction of agreement.*—An agreement reciting that in consideration of the care which the plaintiff took of the defendant and her property during her infancy, and of the instruction given to her for which the plaintiff expended her own money, the defendant had mortgaged her house to the plaintiff; and stipulating that in the event of the defendant going to live with any man, and similarly after her death, the house would become the plaintiff's property. *Held*, that there was no illegal consideration shown, but the contract was good in law and in substance an account stated, with a mortgage to secure the amount due; and the usual decree for redemption was made, reversing the decrees of the Courts below which threw out the plaintiff's claim. HEIRS OF HUSEN BEG BAI *v.* AKUBAI . . 2 Bom., 357: 2nd Ed., 337

11. ——————— *Want of consideration.—Agreement to avoid further litigation.*—A mutual agreement to avoid further litigation is not an agreement void for want of consideration. BHIMA VALAD KRISHNAPPA *v.* NINGAPPA BIN SHIDAPPA TUSE . . . . . 5 Bom., A. C., 75

12. ——————— *On demand promissory note given for interest on mortgage deed, with interest on such interest.*—A promissory note payable on demand, given for interest due on a mortgage deed, with interest on such interest, cannot be enforced by suit, there being no consideration for the making of such a note. RUSTAMJI ADESIR DAVAR *v.* RATANGI RUSTAMJI WADIA . 7 Bom., O. C., 9

13. ——————— *Marriage.—Valuable consideration.*—Marriage is a valuable and not merely a good consideration. CHINTALAPATI CHINNA SIMHADRIRAJ *v.* ZEMINDAR OF VIZIANAGRAM [2 Mad., 128

14. ——————— *Servant employing particular broker on his master's behalf.—Void agreement.*—Where a mehta, without the knowledge of his master, agreed with his master's brokers to receive a percentage (called *sucri*) on the brokerage earned by such brokers in respect of transactions carried out through them by the mehta's master, and no express consideration was alleged or proved by the mehta, the Court refused to imply, as a consideration, an agreement by the mehta to induce his master to carry on business through such brokers, and was of opinion that such an agreement would be inconsistent with the relation of master and servant. But where the same brokers agreed with the mehta not to charge him brokerage on such private transactions as he should carry on through them, and the mehta carried

CONSIDERATION.—Sufficiency of consideration—*continued.*

on private transactions through the brokers, it was held that the brokers were bound by that agreement, and could not maintain a claim for such brokerage. VINAYAKRAV GANPATRAV *v.* RANSORDAS PRANJIVANDAS . . . . **7 Bom., A. C., 90**

15. ——————— *Debt due.—Consideration for power.—J. M.* executed in favour of *P.* an instrument (authorising *P.* to recover by suit or otherwise from *W.* and *N.* a sum of R22,500) which contained this clause: "From whatever sum *P.* may recover from *W.* and *N.* he is to pay himself the sum of R8,640 which is due to himself, and also the expenses he may incur in making recovery, and he is to hand over the surplus to me." *Held,* that the above instrument was made on a good consideration and was irrevocable. PESTANJI MANCHARJI WADIA *v.* MATCHETT . **7 Bom., A. C., 10**

16. ——————— *Mutuality of obligation.—Want of consideration.*—An agreement whereby the defendant undertook to pay the plaintiff and two other co-creditors of an insolvent a share in any sums which he might recover from the insolvent, in consideration of receiving a share in any sums which might be recovered by the other creditors, is not, though the plaintiff has passed no similar agreement in favour of the defendant, invalid for want of consideration or mutuality of obligation. BHAGTIDAS BHAGVANDAS *v.* OLIVER . **9 Bom., 418**

17. ——————— *Mutual consideration.—Agreement to pay rent for ever.*—Where there was a written agreement between the first defendant's father and the Collector, in which the first defendant's father undertook to pay a certain rent "for ever," but these general words were qualified by the words that he is to pay the rent "as long as the village remains in his possession," and the document did not contain any express agreement or undertaking on the part of the Collector,—*Held,* that the enjoyment of the land by the first defendant's father at a certain rent as long as he retained possession of it was ample consideration and motive for his agreement to pay the rent; and that it was not necessary, in order to prevent the consideration and motive for his agreement from being wholly defeated, to imply on the part of the Collector an agreement that he should hold the land for ever at that rent and no more. SUBUPALAYI AMMAL *v.* APPAKUTTI AIYANGAR **[3 Mad., 106**

18. ——————— *New contract imposing fresh liability.*—The defendants entered into a contract with the plaintiff in writing, by which, in consideration of the trouble taken and large sums of money advanced by the plaintiff on behalf of the defendants, the defendants promised that they would, from generation to generation, pay to the plaintiff R100 per annum out of a specified fund. *Held,* that the undertaking of the plaintiff to forbear from enforcing the debt due to him prior to the contract was a sufficient new consideration to support the contract. CHETU NARAYANA PILLAY *v.* AYAMPERUMAL AMBALOM . . . . . **4 Mad., 447**

CONSIDERATION.—Sufficiency of consideration—*continued.*

19. ——————— *Contract to pay sum in event of pleader winning a case.*—A suit is not maintainable on a rookha for shukrana given after the terms of a pleader's remuneration have been agreed upon, and when his services are already engaged; there being no consideration for the contract. FULLER *v.* BISHOON KOOER . . **3 N. W., 25**

20. ——————— *Debt due on decree barred by limitation.*—A debt due on a decree is a sufficient consideration for the making of a promissory note, although execution of the decree be barred by limitation at the time the note is made. MULLINS *v.* BEDDY . . . **6 N. W., 150**

21. ——————— *Advance of money to save reputation of family.—Moral obligation.—Assignment of share in family estate.*—Where a Hindu parcener voluntarily advanced money to his brother and co-parcener for the purpose of his defence against a charge of forgery, without any previous request, and merely to save the reputation of the family, the obligation, being no more than a moral obligation, was held not to be a sufficient consideration to support an assignment to the former by the latter of his share in the undivided family estate. VASUDEV BHAT *v.* VENKATESH SANBHAV **[10 Bom., 139**

22. ——————— *Moral consideration.—Promise to pay at majority debt during infancy.—Promise to pay barred debt.*—The general rule of law is that a consideration merely moral is not valuable consideration, such as would support a promise. But there are instances of enforceable promises which formerly were referred to the now exploded principle of previous moral obligation, and which are still held to be binding, although that principle has been rejected. Amongst those instances is a promise after full age to pay a debt contracted during infancy, and a promise in renewal of a debt barred by the law of limitation. The efficacy of such promises is now based upon the principle that where the consideration was originally beneficial to the party promising, and he be protected from liability by some provision of the statute or common law meant for his advantage, he may renounce the benefit of that law, and if he promise to pay the debt, he is bound by the law to perform that promise. *D.* executed a razinama in favour of the plaintiff on 20th August 1868 transferring certain lands to the latter. The plaintiff, after giving the usual kabuliat to the Collector, was put in possession of the lands. On the 7th April 1869 *T.* obtained a money decree against *D.*, and on the 3rd July 1869 attached the lands as belonging to *D.* *Held,* that a decree of 1862, which plaintiff held against *D.*, though time-barred, in 1868, was (being then still unsatisfied), a good consideration for *D.'s* razinama in 1868 in plaintiff's favour. TILLACKCHAND HINDUMAL *v.* JITAMAL SUDARAM **[10 Bom., 206**

SEEENATH BANERJEE *v.* DOORGA DOSS NUNDY **[9 W. R., 216**

23. ——————— *Suit on hundi.—Indorsement of hundi.*—A hundi was drawn out of

CONSIDERATION.—Sufficiency of consideration—*continued.*

Bombay upon a person in Bombay, indorsed and delivered out of Bombay to one who out of Bombay indorsed and sent it to the plaintiff in Bombay, who received it, got it accepted, and presented it for payment to the drawee, by whom in Bombay it was dishonoured. The plaintiff, who was the agent and banker of an Ajmir constituent, on its acceptance by the drawee, credited the Ajmir constituent with the amount as of the date when the hundi would become payable. In a suit against the first indorser,—*Held* that, as between the Ajmir constituent and the first indorser (the defendant), the giving by the Ajmir constituent to the defendant of another hundi, which was never presented in Bombay for acceptance or payment, was a consideration for the indorsement by the defendant to the Ajmir constituent of the hundi sent by the latter to the plaintiff and sued on by him. SUGANCHAND SHIVDAS *v.* MULCHAND JOHARIMAL **[12 Bom., 113**

Affirmed on appeal in MULCHAND JOHARIMAL *v.* SUGANCHAND SHIVDAS . **I. L. R., 1 Bom., 23**

24. ——————— *Contract to give lease.—Proof of consideration.*—In a suit for a declaration of right to, and to obtain possession of, a ryoti jote by virtue of an amaldari pottah granted to plaintiff by defendant, where the terms of the pottah were substantially that the plaintiff was to have a ryoti jote at a certain jumma, and that on there being a measurement and re-assessment the plaintiff was to be liable to pay higher (*i.e.*, pergunnah) rates, there being no mention of consideration or any reference to a right of occupancy,—*Held*, that plaintiff could not urge that the written contract conveyed to him a right of permanent possession for due consideration, nor could defendant be legally called upon to prove payment of consideration. BUNGO CHUNDER CHUCKERBUTTY *v.* NUZMOODEEN AHMED . . . . . **11 W. R., 156**

25. ——————— *Contract to pay maintenance.*—Plaintiff was brought from his native place by defendant's adoptive father, *D.*, who had no one to inherit his property, except his daughter's daughter, with a view to give her to plaintiff in marriage, and confer on him all he possessed. After marriage *D.'s* grand-daughter died; but owing to defendant's being adopted, plaintiff was deprived of all the cherished hopes of his wife's future inheritance. Accordingly the adoptive mother and defendant executed a moshairah-patra in plaintiff's favour, promising him, in consideration of the above facts, a monthly allowance for maintenance. The present suit was to recover a balance due of this allowance. *Held* that, whether the English law was applied, or the principles of justice, equity, and good conscience, the deed disclosed a good and sufficient consideration for the promise to pay, and defendant was bound to pay, the stipulated allowance. SHIB NUNDUN ROY *v.* SREE NARAIN ROY . **11 W. R., 415**

26. ——————— *Suit for land under pottah.—Question of consideration.*—In a suit to recover certain land alleged to have been granted under a pottah; the Judge, finding that no consideration had been given by the plaintiff, pronounced the contract a *nudum pactum* on which no action would lie. *Held* that, as defendant had admitted the grant of the pottah, and contended that the whole of the lands had been made over to plaintiff's possession, no question of consideration could arise. ROOP NARAIN SINGH *v.* CHATOORSE SINGH **[12 W. R., 283**

27. ——————— *Contract to grow indigo.—Extinguishment of original debt which was the consideration.*—Where a ryot, in consideration of an advance of money, has stipulated to grow indigo for a certain number of years, the contract is not void as being without consideration because, during the period it had to run, the debt due from the ryot is extinguished by the delivery of indigo leaves. The contract is one entire contract upon one entire consideration, and a contract which was at its commencement based upon a valid consideration cannot become void for want of consideration by any change whatever in the situation of the parties. LEDLIE *v.* GOPAL MUNDUL . . . . **17 W. R., 91**

28. ——————— *Appointment of agent.—Remedy in case of revocation of authority. — Suit for specific performance.*—The defendant, by an agreement in the nature of a letter of attorney, constituted the plaintiff and his descendants the hereditary agents of the defendant, gave him authority to collect the rents of his share in an inam village, and promised to pay him an annual salary out of the rents. *Held* that, as between the parties and during their lifetime, the appointment was valid and binding, whether or not any valuable consideration passed; the mere acceptance of the office by the plaintiff being a sufficient consideration for the appointment. If the defendant had revoked the agency improperly, the remedy lay, under ordinary circumstances, in a suit by the plaintiff for damages for breach of contract. Where, however, the plaintiff chose to sue for specific performance and demanded arrears of salary, —*Held* that, without a valuable consideration for the defendant's promise, the agreement passed by him to the plaintiff would be *nudum pactum*, and the plaintiff would not be entitled to recover, except for work and services actually rendered. VISHNUCHARYA *v.* RAMCHANDRA . . . . **I. L. R., 5 Bom., 253**

29. ——————— *Promise to refrain from suing.—Suit found to be barred.*—Where, by reason of a promise, the promisee refrains from bringing a suit which, but for the promise, he might have brought, there is good consideration for the promise but, if at the time of the promise no remedy remained to the promisee by reason of limitation, there is no valid consideration, and the promise cannot be enforced at law. PETER *v.* VARDON **[23 W. R., 62**

30. ——————— *Want of consideration.—Decree, Adjustment of, out of Court.—Civil Procedure Code (XIV of 1882), s. 258.—Contract.*—The plaintiff held a decree against the defendant, and in execution of it attached the defendant's property. A compromise was then made by

CONSIDERATION.—Sufficiency of consideration—*continued.*

which the defendant executed to the plaintiff the bond sued upon, in satisfaction of the judgment-debt. The compromise, however, was not certified to the Court. *Held*, that the bond was without consideration. The adjustment of the decree not having been certified to the Court, was not binding on the plaintiff, and, therefore, constituted no valid consideration. PANDURANG RAMCHANDRA *v.* NARAYAN **[I. L. R., 8 Bom., 300**

31. ——— *Uncertified adjustment of decree.—Civil Procedure Code, ss. 244 (c), 258.—Contract Act, IX of 1872, ss. 2, 10, 23, 28.*—The consideration for a mortgage consisted partly of the amount of two decrees held by the mortgagee, against the mortgagor. The mortgagee having sued to enforce the mortgage, the mortgagor pleaded failure of consideration as a bar to the enforcement of the mortgage. This plea was based on the allegation that the mortgagee had not certified the adjustment of the decrees as provided by section 258 of the Civil Procedure Code, and they were still in force under the terms of that section. *Per* DUTHOIT, *J.*, that the failure of the mortgagee to certify the adjustment of the decrees did not constitute a failure of consideration because he did not covenant to certify such adjustment, and it was not in fact necessary for him to do so; because he could not seek execution of the decrees on the ground that, though unsatisfied, they were still in force under section 258 of the Civil Procedure Code, without becoming liable to penalties; and because, if the mortgagor considered the entering up of the adjustment of the decrees to be imperative, he had his remedy by application to the Court in the terms of section 258. *Per* MAHMOOD, *J.*, that the adjustment of a decree out of Court, if never certified to the Court, is, under section 258, ineffectual only so far as the execution of the decree is concerned; that there is nothing in the Contract Act to make such an adjustment invalid as the consideration for an agreement; that an agreement founded on such consideration may be enforced without defeating the objects of section 258; and that consequently there was, in respect of the amount of the decrees, valid consideration for the mortgage. *Gunamani Dasi* v. *Pran Kishori Dasi, 5 B. L. R., 223; Meer Mahomed Kazem Jowharry* v. *Khetoo Bibee, 20 W. R., 150; Gani Khan* v. *Koonjoo Behary Sein, 3 C. L. R., 414; Davlata* v. *Ganesh Shashtri, I. L. R., 4 Bom., 295; Shadi* v. *Ganga Sahai, I. L. R., 3 All., 538*; and *Sita Ram* v. *Mahipal, I. L. R., 3 All., 533*; followed. *Patankar* v. *Devji, I. L. R., 6 Bom., 146*, and *Pundurang Ramchandra Chowghule* v. *Narayan, I. L. R., 8 Bom., 300*, dissented from. RAMGHULAM *v.* JANKI RAI **[I. L. R., 7 All., 124**

32. ——— **Inadequacy of consideration.**—*Suit to set aside deed.*—Party seeking to set aside a transaction on the ground of inadequacy of consideration must show such inadequacy as will involve the conclusion that he either did not understand what he was about, or was the victim of some imposition. ADMINISTRATOR GENERAL OF BENGAL *v.* JUGGESWAR ROY **[I. L. R., 3 Calc., 192 : 1 C. L. R., 107**

CONSIDERATION.—Inadequacy of consideration—*continued.*

33. ——— *Evidence of mala fides.*—Inadequacy of consideration is not conclusive proof of *mala fides*. KOMOLA PERSAD NARAIN SINGH *v.* NOKH LALL SAHOO . **6 W. R., 30**

CONSIGNEE OF WEST INDIAN ESTATE.

See LIEN .. . **I. L. R., 2 Calc., 58**

CONSOLIDATION OF JUMMAS.

See ENHANCEMENT OF RENT—EXEMPTION FROM ENHANCEMENT BY UNIFORM PAYMENT OF RENT, &c.—VARIATION OF NATURE OF RENT BY ALTERATION OF TENURE, &c. **1 B. L. R., S. N., 8**

CONSOLIDATION OF SUITS.

1. ——— *Consolidation of suits on application of plaintiffs.*—Consolidation of suits on application of plaintiffs allowed. PEACOCK *v.* BYJNATH **[I. L. R., 10 Calc., 58**

2. ——— **Appeal.**—Two suits having been instituted by a purchaser of two different portions of the same tenure for enhancement of the rent of the respective portions, the first Court treated them as if they constituted one suit and gave one decision in both,—*Held*, that in doing so the Court acted sensibly and reasonably, and that there could be no objection to one appeal being filed from what was substantially one decree. ENAYETOOLLAH *v.* RADHA CHURN ROY . . . . **15 W. R., 395**

3. ——— *Irregularity in bringing appeals.*—Where there were two suits separately instituted in the Collector's Court for partition of two mouzahs, and defendants appeared in both cases, but preferred only one appeal relating to both mouzahs instead of appealing separately,—*Held*, that the Collector's decision as to one mouzah, of which no notice was taken by the Judge, must virtually be deemed as unappealed. ALUP RAI *v.* SHEO DYAL **[2 Agra, 142**

4. ——— **Application for leave to appeal to Privy Council.**—*Quære*,—Whether the Court has power to consolidate two suits on an application for leave to appeal to the Privy Council. AJNAS KOOER *v.* LATEEFA . . **18 W. R., 21**

5. ——— **Power of Court to consolidate without consent of parties.**—When several cases are before a Court and the subject of suit and the defendants vary with each case, the Court has no authority to order them to be tried as one case against the will of the parties; and without the consent of all the parties no such consolidation can be effected by the Court as to make the evidence given by any party in one case evidence in all the cases. SOORENDRO PERSHAD DOBEY *v.* NUNDUN MISSER **[21 W. R., 196**

CONSTRUCTION, 1341 OF 17TH JUNE 1842.

See FRAUD—EFFECT OF FRAUD
[B. L. R., Sup. Vol., 345

CONSTRUCTIVE TRUST.

See LIMITATION ACT, 1877, s. 10.
[I. L. R., 2 All., 361
I. L. R., 5 Mad., 91

See CASES UNDER TRUST.

CONSTRUCTIVE TRUSTEE.

See INSOLVENCY—ORDER AND DISPOSITION . . I. L. R., 2 Bom., 542

CONSUL'S COURT AT ZANZIBAR.

——— *Registration of British subjects at Zanzibar.—Stat. 6 & 7 Vic., c. 94.—Order in Council of 9th August 1866, articles 1, 6, 25, 30, 32, 35.—Stat. 39 & 40 Vic., c. 46.—Attachment, Effect of.*—The jurisdiction of the British Consul at Zanzibar to hear and determine suits of a civil nature between British subjects, depends upon whether the causes of action in such suits have arisen within the dominions of the Sultan of Zanzibar, and not upon the question whether parties to such suits are resident within those dominions. Under the treaty made in 1839 between Her Majesty the Queen and the Sultan of Muscat, British subjects are liable to be sued in the British Consular Courts at Zanzibar by Americans as being subjects of another Christian nation; and by convention with the Rao of Cutch, made with the acquiescence of the Sultan of Zanzibar, natives of Cutch, having been subjected to the British Consular Court in the same manner as if they were British subjects, may be sued by Americans and others in that Court. When the British Consul at Zanzibar has permitted persons, who have not been registered as under British protection, to bring and continue suits in his Court, that circumstance must be accepted as a sufficient indication that they have excused to his satisfaction their neglect to register under article 30 of the Order in Council of 9th August 1866. *Quære,*—Whether Statute 39 and 40 Victoria, Cap. 46, deals with the order in Council of the 9th August 1866, except so far as that order relates to the slave trade. WAGJI KORJI *v.* THARIA TOPAN
[I. L. R., 3 Bom., 58

CONTEMPT OF AUTHORITY OF PUBLIC SERVANT.

See COMPLAINANT.
[I. L. R., 2 Bom., 653

——— **Penal Code, s. 185.**—*Bidding at auction without intending to purchase.*—A person is guilty of contempt under section 185, Penal Code, who bids for the lease of a ferry sold at public auction by a Magistrate without intending to perform the obligation under which he lays himself by such bidding. QUEEN *v.* REAZOODEEN
[3 W. R., Cr., 33

CONTEMPT OF COURT.

	Col.
1. CONTEMPTS GENERALLY . . .	1040
2. PENAL CODE, SECTION 174 . .	1043
3. PENAL CODE, SECTION 228 . .	1046
4. PROCEDURE	1047
5. EFFECT OF CONTEMPT . . .	1049

See CASES UNDER CRIMINAL PROCEDURE CODE, 1882, s. 476 (1872, s. 471).

See CASES UNDER CRIMINAL PROCEDURE CODE, 1882, s. 487 (1872, s. 473).

1. CONTEMPTS GENERALLY.

1. ——— **Sending officer to Judge to ask for explanation of language used on the Bench.**—A barrister, offended by the use of a strong expression on the part of a Judge while sitting in Court, sent an officer to the Judge's private residence upon a pacific errand to ask for an explanation.—*Held,* by nine Judges out of eleven, that the party sending the message and the party conveying it were guilty of contempt of Court. IN THE MATTER OF PIFFARD . . . . . 1 Hyde, 79

2. ——— **Communication with Judge.**—It is contrary to the practice of all Courts of Justice, unfair to an adversary, and a contempt of Court, for a suitor, under any pretext whatever, to communicate with a Judge, except by public proceedings in open Court, respecting the merits of any case in which he is interested, and which is either pending in the Court of such Judge or likely to come before him. TAYLER *v.* ASMEDH KOONWAR
[4 W. R., 86

3. ——— **Resistance of process of Civil Court.**—*Jurisdiction of Criminal Court.—Penal Code, s. 186.*—The resistance of process of a Civil Court is punishable, under the Code of Criminal Procedure, by a Court of criminal jurisdiction. QUEEN *v.* BHAGAI DAFADAR
[2 B. L. R., F. B., 21: 10 W. R., Cr., 43

IN RE CHUNDER KANT CHUCKERBUTTY overruled
[9 W. R., Cr., 63

4. ——— *Criminal Procedure Code (Act XX of 1861), ss. 163 and 168.—Jurisdiction of Small Cause Court.*—A Judge of a Small Cause Court in the mofussil found a judgment-debtor guilty of resisting an officer of the Court in attaching property in satisfaction of a decree, and fined him. *Held,* that the Judge acted without jurisdiction. He ought to have sent the judgment-debtor before the Magistrate. IN THE MATTER OF MANI CHANDRA DASS . 2 B. L. R., A. C., 188
[11 W. R., 62

5. ——— **Carrying off crops pending suit for rent.**—*Ground for dismissal of suit.*—During the pendency of a suit for rent the plaintiff procured an attachment of the growing crops; and afterwards, and without authority, and before th suit was determined, carried off some of the crops.—*Held* that, although this was an act properly punished by the Court below as a contempt with a fine, it

CONTEMPT OF COURT—*continued.*

1. CONTEMPTS GENERALLY—*continued.*

Carrying off crops pending suit for rent —*continued.*

was no ground for dismissing the suit. CHUTTOONATH SINGH *v.* SOOBOON SINGH [Marsh., 21: 1 Hay, 56

6. ——— **Turning out the Sheriff's officers.**—*Officers in possession by order of Court.*—Land belonging to *N. B.* had been seized by the Sheriff under a writ of *fieri facias*, which expressly directed him to take that particular land; while in possession his officers were turned out by *A.*, who knew that they were in possession by order of the High Court. *A.* had purchased the right, title, and interest of *N. B.* in the land at a sale held in the Court of the Zilla Judge of the 24-Pergunnahs, in execution of a decree of that Court against *N. B.* *A.* was put in possession by an officer of that Court. *Held*, that the turning out of the Sheriff's officers was a contempt of the High Court. BHUGGOBUTTY DASSEE *v.* NOBIN CHUNDER BOSE [2 Ind. Jur., N. S., 99

7. ——— **Refusal of witness to sign deposition.**—*Criminal Procedure Code, 1861, s. 163.*—The defendant was convicted of contempt of Court under section 163 of the Code of Criminal Procedure for having refused to sign a deposition given by him as a witness in the course of a revenue inquiry. The High Court set aside the conviction. ANONYMOUS [6 Mad., Ap., 14

8. ——— **Officer of Court accepting bribes.**—*Person offering bribes to officers.—Power of High Court.*—The High Court, as a Court of Record, has the power of summarily punishing for contempt. Any officer of the High Court who asks for or accepts a present from any person in whose favour judgment is pronounced by the Court, is guilty of a gross breach of duty and a contempt of Court. So also any person who offers or gives such present is guilty of a contempt of Court. IN RE ABDOOL [8 W. R., Cr., 32

9. ——— **Refusal to pay money under order of Civil Court.**—*Imprisonment.—Jurisdiction of High Court.—Civil Procedure Code, 1877, ss. 341, 342.*—The decree in an administration suit directed *A.*, a party to the suit, to pay over a sum of money, which she admitted was in her hands, to her own attorney in the suit, to be applied by him as directed by the decree. *A.* refused to pay over the money, and she was imprisoned for disobedience to the Court's order. After she had been in prison for six months, she applied to the Judge of the Court below, under section 341 of the Civil Procedure Code, to be discharged. This order was refused. *Held*, on appeal, that the proceeding under which *A.* had been imprisoned was not in execution of a decree; but that she was imprisoned under process of contempt, and that the provisions of sections 341 and 342 did not apply to the case. *Per* WHITE, *J.*—The jurisdiction of the High Court to imprison for contempt, is a jurisdiction that it has inherited from the old Supreme Court, and was conferred upon that Court

CONTEMPT OF COURT—*continued.*

1. CONTEMPTS GENERALLY—*continued.*

Refusal to pay money under order of Civil Court—*continued.*

by the Charters of the Crown, which invested it with all the powers and authority of the then Court of King's Bench and of the High Court of Chancery in Great Britain, and this jurisdiction has not been removed or affected by the Civil Procedure Code. MARTIN *v.* LAWRENCE . I. L. R., 4 Calc., 655

10. ——— **Jurisdiction of High Court.**—*Civil Procedure Code, 1882, s. 136.—Committal for contempt.—Power to commit for contempt.—Procedure.*—Under the authority conferred by the Charters of the Supreme Courts and continued by their own Letters Patent, the High Courts in India possess the power of enforcing obedience to their orders by committal for contempt. As regards the High Courts in India, the remedies provided by section 136 of the Civil Procedure Code (Act X of 1877) in cases of disobedience to an order of Court may be regarded as cumulative. They subject the offender to particular liabilities for his contumacy, but do not extinguish the Court's power of constraining him to obedience. An application may properly be made in Court to commit for contempt of an order made in Chambers. HASSONBHOY *v.* COWASJI JEHANGIR [I. L. R., 7 Bom., 1

11. ——— *Civil Procedure Code, 1882, ss. 136 and 591.—Committal for contempt.—Power to commit for contempt.*—The High Courts in India possess the power of enforcing obedience to their orders by attachment for contempt. An order for attachment for contempt is not an order in exercise of the High Court's civil jurisdiction, and therefore, does not come within the provision of section 591 of the Civil Procedure Code. NAVIVAHOO *v.* NAROTAMDAS CANDAS . I. L. R., 7 Bom., 5

12. ——— *Publication of libel reflecting upon a Judge in his judicial capacity.—Offence not included in Penal Code.—Defamation.—Criminal Procedure Code (X of 1882), s. 5.—Power of Courts of Record under common law.—Jurisdiction of High Court to punish summarily.*—The High Courts in the Indian Presidencies are superior Courts of Record. The offence of contempt of Court, and the powers of the High Courts to punish it, are the same in such Courts as in the superior Courts in England. Those powers, which formed part of the common law, were conferred upon the Supreme Courts, when they were established in the Presidency Towns. The Penal Code does not provide against a contempt of Court committed by the publication of a libel out of Court, when the Court is not sitting, and neither in chapter XXI "of Defamation," nor elsewhere, provides for the punishment of a contempt of Court committed by the publication of a libel reflecting upon a Judge in his judicial capacity, or in reference to his conduct in the discharge of his public duties. Because the publisher can be punished for "defamation" under the Code, it does not follow that he cannot be punished summarily by the High Court for a contempt of Court.

CONTEMPT OF COURT—*continued.*

1. CONTEMPTS GENERALLY—*continued.*

Jurisdiction of High Court—*continued.*

He can be so punished with fine, or imprisonment, or both. The provisions of section 5 of the Code of Criminal Procedure, 1882, relating to the procedure under which "all offences under the Indian Penal Code," and "all offences under any other law," are punished, do not include a contempt of the High Court committed by the publication of a libel out of Court, when the Court is not sitting, although such contempt may include defamation. Such a contempt is more than mere defamation, and is of a different character. The jurisdiction of the High Court to commit for contempt has not been affected by the Code of Criminal Procedure, 1882. By the common law every Court of Record is the sole and exclusive judge of what amounts to a contempt of Court. SURENDRA NATH BANERJEE *v.* THE CHIEF JUSTICE AND JUDGES OF THE HIGH COURT, CALCUTTA **[I. L. R., 10 Calc., 109**

2. PENAL CODE, SECTION 174.

1. ——— **Penal Code, s. 174.**—*Non-attendance in obedience to a summons.—Summons what it should contain.—Omission to state time and place of attendance.*—A summons should be clear and specific in its terms as to the title of the Court, the place at which, the day, and the time of the day when, the attendance of the person summoned is required, and it should go on to say that such person is not to leave the Court without leave, and, if the case in which he has been summoned is adjourned, without ascertaining the date to which it is adjourned. Where a summons did not mention the place at which, or the time of the day when, the attendance of the person summoned was required,—*Held,* that such person could not lawfully be punished under section 174 of the Penal Code for non-attendance in obedience to such summons. EMPRESS OF INDIA *v.* RAM SARAN . **I. L. R., 5 All., 7**

2. ——— *Defendant escaping from custody under civil warrant.*—Section 174 of the Penal Code does not apply to the case of a defendant escaping from custody under a warrant in execution of a decree of a Civil Court. REG. *v.* SARDAR PATHU . . . . **1 Bom., 38**

3. ——— *Chairman of Municipal Commissioners.—Act XXVI of 1850.—Disobedience of order of public servant.*—The Chairman of Municipal Commissioners appointed under Act XXVI of 1850, although a public servant, is not legally competent as such to issue an order for attendance before him. *Held,* accordingly, that disobedience of such an order was not an offence within section 174 of the Indian Penal Code. REG. *v.* PURSHOTAM VALJI . . **5 Bom., Cr., 33**

4. ——— *Order of Malhakari in revenue case.*—A conviction under section 174 of the Penal Code for having intentionally omitted to attend the Malhakari's Court to give evidence in a revenue case in accordance with a summons duly issued and served under Regulation XVII of 1827 was held not illegal. REG. *v.* NARAINAPPA COMTE . . **5 Bom., Cr., 39**

CONTEMPT OF COURT—*continued.*

2. PENAL CODE, SECTION 174—*continued.*

Penal Code, s. 174—*continued.*

5. ——— *Verbal order to attend, disobedience to.*—The defendant was arrested by a warrant, and was released on bail to appear before the Magistrate on a specified day. The defendant appeared on that day, but the Magistrate being unable to take up the case, a verbal order was given to the defendant to appear on the following day. This he omitted to do, and was convicted under section 174 of the Penal Code,—*Held,* that the conviction was good. ANONYMOUS . **5 Mad., Ap., 15**

But *see* VENKATAPPOA *v.* PAPAMMAH **[5 Mad., 132**

and ANONYMOUS . . **6 Mad., Ap., 10**

6. ——— *Criminal Procedure Code, 1861, s. 219.—Forfeiture of recognizance.*—In consequence of the default in the appearance by the person bailed, the surety was compelled to pay the penalty mentioned in the recognizance. *Held* that, notwithstanding section 219 of Act XXV of 1861, the accused might have been proceeded against for contempt of Court under section 174 of the Penal Code. QUEEN *v.* TAJUMADDI LAHORY **[1. B. L. R., A. Cr., 1: 10 W. R., Cr., 4**

7. ——— *Disobedience of order of Mahalkari.—Summons under s. 8, Act XI of 1843, power of Mahalkari to issue.*—A Mahalkari invested with the powers of a second class Subordinate Magistrate cannot issue a summons under section 8 of Act XI of 1843, nor can a person be convicted under section 174 of the Penal Code for having disobeyed such a summons so issued. REG. *v.* VENKAJI BHASKAR . . **8 Bom., Cr., 19**

8. ——— *Judge of Small Cause Court.—Act XXIII of 1861, s. 21.—Sentence of fine or imprisonment.*—The Judge of a Court of Small Causes is only empowered, by section 21 of Act XXIII of 1861, to inflict fine or imprisonment in cases where offences under section 174 of the Penal Code occur in the presence or view of the Court. The power of the Judge does not extend to cases in which the witness fails to attend, or the failure to comply with an order of the Court is merely inferred from other circumstances. EX-PARTE PAVADAY CHETTI . . . . **2 Mad., 319**

9. ——— *Subordinate Magistrate.—Mad. Act I of 1863.*—A Subordinate Magistrate who issues a summons may take cognizance of the offence of disobedience to that summons under section 174 of the Penal Code, notwithstanding the repeal of Madras Act I of 1863. ANONYMOUS **[4 Mad., Ap., 52**

Correcting the decision in ANONYMOUS CASE **[4 Mad., Ap., 51**

10. ——— *Disobedience to verbal order.*—A conviction under section 174 of the Penal Code for disobeying a verbal order of a Village Magistrate is good. ANONYMOUS . **7 Mad., Ap., 3**

CONTEMPT OF COURT—*continued.*

2. PENAL CODE, SECTION 174—*continued.*

Penal Code, s. 174—*continued.*

11. ——————— *Omission to state place of attendance in order.*—The summons must state the place where the person's attendance is required, otherwise no penalty can be attached to any disobedience of the order to attend. ANONYMOUS [7 Mad., Ap., 14

ANONYMOUS . . 7 Mad., Ap., 43

12. ——————— *Wilful disobedience.—Absence and consequent non-receipt of summons.*—The non-attendance must be in the nature of wilful disobedience to attend. Where a witness was summoned for a certain day, and being absent from home did not receive the summons until after the day had passed, he could not be fined for non-attendance because he did not appear afterwards and state his reason for not attending. QUEEN *v.* UNGUN LALL [1. N. W., Ed., 1873 : 303

13. ——————— *Non-attendance in obedience to order of public servant.*—A conviction for non-attendance in obedience to an order from a public servant, under section 174, Penal Code, cannot be had unless the person summoned was legally bound to attend, and refused or intentionally omitted to attend. IN THE MATTER OF SREENATH GHOSE [10 W. R., Cr., 33

14. ——————— *Summons to give information.—Census, &c.—Mad. Act III of 1869.*—A summons issued by a tahsildar to a village karnam to appear and give information required for the preparation of census, jummabundi, and dowle accounts is not within the purview of Madras Act III of 1869, and disobedience of such a summons is not an offence under section 174 of the Penal Code. QUEEN *v.* SUBRAMANYAM . I. L. R., 5 Mad., 377

15. ——————— *Disobedience of summons.—Revenue inquiry.—Power to issue summons.*—Under Act III of 1869 (Madras) Collectors and their subordinate officers may issue a summons for the purpose of any inquiry, however general, which they are empowered to make for the purposes of administration. *Queen* v. *Subramanyam, I. L. R., 5 Mad., 377,* overruled. QUEEN-EMPRESS *v.* SUBBANNA [I. L. R., 7 Mad., 197

16. ——————— *Summons.—Disobedience.*—A man who, in obedience to a summons to appear and answer a criminal charge, attends a Magistrate's Court, but, finding the Magistrate not present at the time mentioned in the summons, departs without waiting for a reasonable time, is guilty of an offence under section 174 of the Penal Code. QUEEN-EMPRESS *v.* KISHAN BAPU [I. L. R., 10 Bom., 93

17. ——————— *Mad. Act III of 1869.—Power to order subordinate to carry out sale for arrears of revenue.*—Madras Act III of 1869 confers no authority upon revenue officers to summon a subordinate to attend for the purpose of carrying out a sale of land for arrears of revenue, and therefore on failure to attend he cannot be convicted under section 174 of the Penal Code. ANONYMOUS [5 Mad., Ap., 28

ANONYMOUS . . 7 Mad., Ap., 11

18. ——————— *Mad. Act III of 1869.*—A Subordinate Magistrate convicted certain persons under section 174 of the Penal Code, of disobedience to summonses issued by him as tahsildar.—*Held,* that the convictions under the first part of section 174 were sustainable. Madras Act III of 1869 gives a tahsildar power to issue summonses. ANONYMOUS . . . . . [6 Mad., Ap., 44

This is the only law under which he can issue summonses, and on disobedience to them the persons summoned may be convicted under section 174 of the Penal Code. ANONYMOUS . 7 Mad., Ap., 11

But he may not issue them to any person to appear before any one but himself, therefore, a conviction for disobedience to a summons issued by him to appear before a revenue officer is illegal. ANONYMOUS [7 Mad., Ap., 10, 11

19. ——————— *Disobedience to summons served.*—In order to make a person summoned as a witness liable under section 174 of the Penal Code, the fact must be that he intentionally omitted to attend at the place or time mentioned in the summons, or that he wilfully departed from the place where he had attended before the time at which it was lawful for him to depart. QUEEN *v.* SUTHERLAND. QUEEN *v.* NARAIN SINGH 14 W. R., Cr., 20

20. ——————— *Evidence of notice to attend.*—Before convicting a person under section 174 of the Penal Code, it is necessary to prove that he had notice to appear at a certain time and place, and that he did not do so. IN THE MATTER OF SHIB PERSHAD CHUCKERBUTTY. 17 W. R., Cr., 38

21. ——————— *Mad. Reg. IV of 1816, ss. 15, 16.—Disobedience of Summons.—Concurrent jurisdiction.*—The provisions of section 174 of the Penal Code are not in conflict with the special provisions of sections 15 and 16 of Regulation IV of 1816 (Madras). In ordinary cases disobedience to the summons of a Village Munsifs should be dealt with under the Regulation. But if a charge is laid under the Penal Code, the Criminal Court must deal with it. QUEEN *v.* RAMACHANDRAPPA [I. L. R., 6 Mad., 249

3. PENAL CODE, s. 228.

22. ——— Penal Code, s. 228.—*Jurisdiction to try.*—An officer before whom, whilst acting in a particular capacity, an offence under section 228 of the Penal Code is committed, cannot, in another capacity, take up and try the offence. QUEEN *v.* CHUNDER SEEKUR ROY [12 W. R., Cr., 18

23. ——————— *Prevarication.—Refusing to answer questions.—Held,* that prevari-

CONTEMPT OF COURT—*continued.*

3. PENAL CODE, SECTION 228—*continued.*

Penal Code, s. 228—*continued.*

cation while giving evidence does not constitute the offence under section 228 of the Penal Code of intentionally causing interruption to a public servant sitting in a judicial proceeding. REG. *v.* AUBA BIN BHIVRAV . . . . . 4 Bom., Cr., 6

24. ——————— *Prevarication.*—Prevarication may, though it does not necessarily, amount to contempt of Court within section 228, Penal Code, and section 435 of the Criminal Procedure Code, 1872. REG. *v.* JAIMAL SHRAVAN [10 Bom., 69

25. ——————— *Prevarication.—Refusing to answer questions.—Held,* that refusing or neglecting to return direct answers to questions does not constitute the offence under section 228 of the Penal Code of intentionally offering insult, or causing interruption to a public servant sitting in a judicial proceeding. REG. *v.* PANDU BIN VITHOJI [4 Bom., Cr., 7

26. ——————— *Giving evidence reluctantly and inconsistently.*—No conviction can be had under section 228 of the Penal Code, simply because witnesses in a case give inconsistent evidence, and give their evidence reluctantly, and take up the time of the Court. QUEEN *v.* HURRY PARAMANICK TANTEE . . . 15 W. R., Cr., 5

27. ——————— *Obstruction of public servant.*—A party who bids for an estate at a sale in execution, knowing that he is not able to deposit the earnest money, obstructs the business of the Court, and is guilty of contempt of Court, punishable under section 228 of the Penal Code. IN RE MOHESH CHUNDER MOOKERJEE [W. R., 1864, Mis., 3

28. ——————— In a conviction under section 228, Penal Code, it ought to be stated that the Judge was sitting in a stage of a judicial proceeding, the nature of which should also be stated. IN THE MATTER OF THE PETITION OF PROKASH CHUNDER DOSS . . [12 W. R., Cr., 64

29. ——————— *Intention to insult, proof of.*—Before a conviction can be had under section 228 of the Penal Code of offering an insult to a public servant, it must be proved that there was an intention to insult. QUEEN *v.* HURRI KISHEN DASS . . . 15 W. R., Cr., 62

4. PROCEDURE.

30. ——— **Record of statement.**—*Contempt by witness.—Act XXIII of 1861, s. 21.*—In a proceeding for contempt it is, under section 21, Act XXIII of 1861, fatal to the conviction if the Judge fail to record, with the finding and sentence, the statement of the offender. LEKH RAJ *v.* PALEE RAM [1 N. W., 162: Ed. 1873, 241

31. ——— **When sentence of imprisonment necessary.**—*Criminal Procedure Code,*

CONTEMPT OF COURT—*continued.*

4. PROCEDURE—*continued.*

When sentence of imprisonment necessary—*continued.*

1861, s. 163.—Penal Code, s. 179.—Under section 163 of the Code of Criminal Procedure, if a Court before which the offence of contempt, under section 179 of the Penal Code, is committed, considers that a sentence of imprisonment is called for, it should record a statement of the facts constituting the contempt, and the statement of the accused, and forward the case to a Magistrate. QUEEN *v.* RUTTON SAHOO [11 W. R., Cr., 49

32. ——— **Omission to call on party to make defence.**—*Criminal Procedure Code, 1861, s. 168.—Omission to follow directions of.*—When a Civil Court omitted (as directed by section 163 of the Code of Criminal Procedure) to call upon a person who was charged with contempt of Court to make any statement he might wish to make in his defence, it was held that this irregularity was fatal to the order, and that the High Court would exercise its extraordinary jurisdiction and reverse an order so made. KASHINATH VITHAL *v.* DAJIGOVIND . . . 7 Bom., A C., 102

33. ——— **Omission to state reasons and facts.**—*Fine for contempt of Court.*—A Criminal Court inflicting a fine for contempt of Court should specifically record its reasons and the facts constituting the contempt, with any statement the offender may make, as well as the finding and sentence. Where this course was not adopted, the High Court set aside the order inflicting a fine. PANCHANADA TAMBIRAN . . . 4 Mad., 229

34. ——— **Sending case for investigation.**—*Penal Code, s. 174.—Criminal Procedure Code (Act XXV of 1861), s. 171.—Power of Subordinate Magistrate.*—A Subordinate Magistrate has no power to try an offence punishable under section 174 of the Penal Code committed against his own Court, but is bound, under section 171 of the Code of Criminal Procedure, to send the case, if in his opinion there is sufficient ground, for investigation to a Magistrate having power to try or commit for trial. QUEEN *v.* CHANDRA SEKHAR ROY [5 B. L. R., 100: 13 W. R., Cr., 66

CHUTTOORBHOOJ BHARTHEE *v.* MACNAGHTEN [15 W. R., Cr., 2

IN THE MATTER OF TARAPROSHAD SAHOO [15 W. R., 88

35. ——— **Sending case for investigation.**—*Criminal Procedure Code, 1861, s. 171.*—A Civil Court may, under section 171 of the Code of Criminal Procedure, transfer a case to the Criminal Court for investigation, without specifying the particular officer by whom it is to be investigated, and the deposition of the Civil Court officer setting forth the charge on which he transferred the case to the Criminal Court is a sufficient complaint. QUEEN *v.* MADHUB CHUNDER MISSER . 13 W. R., Cr., 45

36. ——— *Criminal Procedure Code, 1861, s. 171.*—Under section 171 of the

CONTEMPT OF COURT—*continued.*

4. PROCEDURE—*continued.*

Sending case for investigation—*continued.*

Criminal Procedure Code, a Court has no power to send a case to be investigated by the Magisterial authorities, but must specify the Magistrate by whom the investigation is to be made. QUEEN *v.* NURPUT SINGH . . . . **4 N. W., 86**

37. ——— Duty and power of Collector.—*Criminal Procedure Code, 1861, s. 171.—Act X of 1859, s. 147.*—It is not necessary that the preliminary enquiry contemplated by section 171 of the Code of Criminal Procedure should be conducted in the presence of the accused. All the Court (Revenue in this case) making the enquiry has to do, is to satisfy itself that there are *primâ facie* grounds for sending the case for investigation to a Magistrate; and the Collector is not bound to dispose of a case of contempt of the lawful authority of a public servant under section 147, Act X of 1859, but it is discretionary with him to proceed under section 171 of the Code of Criminal Procedure. CHOTA SADOO *v.* BHOOBUN CHUCKERBUTTY . **9 W. R., Cr., 3**

38. ——— Mode of arrest for contempt in foreign territory.—*Punishment for contempt of Court.*—The High Court will not send a special bailiff into the Gaikvad's territories to arrest a defendant who has been guilty of a contempt of Court, but the Court will send a special bailiff for such purpose beyond the local limits of the High Court to a place within the Presidency of Bombay. A defendant guilty of contempt of Court is liable to imprisonment on the criminal side of the Bombay Jail. HARIVALLABHDAS KULLIANDAS *v.* UTAMCHAND MANIKCHAND . . . . . **7 Bom., O. C., 172**

39. ——— Application for discharge.—*Practice.*—When a person is in custody for contempt of Court, any application for release should be made to the committing Judge. It is advisable, but not necessary, to limit the period of commitment to a fixed time. IN THE MATTER OF SITTARAM ATMARAM **[1 Ind. Jur., N. S., 23**

5. EFFECT OF CONTEMPT.

40. ——— Person under contempt.—*Privilege from arrest.—Party to suit proceeding to Court.*—Where a writ of attachment for contempt was issued by the Court against a party to a suit in that Court,—*Held,* he could not claim privilege from arrest while proceeding to Court for the purpose of attending the hearing of his suit. JOHN *v.* CARTER **[4 B. L. R., O. C., 90**

CONTINUING BREACH OF CONTRACT.

See LIMITATION ACT, 1877, s. 23. **[I. L. R., 2 Bom., 273**

CONTRACT.

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1. CONSTRUCTION OF CONTRACTS .	1051
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See FOREIGN COURT, JURISDICTION OF— **[I. L. R., 1 Mad., 196**

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——— Alteration of, by the Court.

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See CASES UNDER ACT XIII OF 1859.

See CASES UNDER DAMAGES—SUITS FOR DAMAGES—BREACH OF CONTRACTS.

See CASES UNDER DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES—BREACH OF CONTRACTS.

——— incapable of division.

See PRINCIPAL AND AGENT—AUTHORITY OF AGENTS . . **10 Bom., 319**

——— of indemnity.

See COSTS . . **I. L. R., 5 Calc., 811**

See LIMITATION ACT, 1877, ART. 83. **[I. L. R., 5 Calc., 811**
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——— to supply labourers and get labour performed.

See ACT XIII OF 1859.

[I. L. R., 1 Mad., 280

1. CONSTRUCTION OF CONTRACTS.

1. ——— Printed form of contract.—*Writing and printing.—Sale of goods to arrive.*—The defendants contracted to purchase certain piece goods from the plaintiffs, who were dealers in those goods. The contract of sale was written out on one of the printed forms of the plaintiffs' firm, which forms contained in print the words "now in course of landing or in the said godowns" and "now on board ship." As a matter of fact, well known to both parties, the goods contracted for were neither in the godowns nor on board ship. *Held* that, under the circumstances, the printed words above set out formed no part of the contract entered into between the parties. CARLISLE NEPHEWS AND COMPANY *v.* HURMOOK ROY

[I. L. R., 9 Calc., 679: 13 C. L. R., 120

2. ——— *Contract partly written and partly printed.*—Where a contract is partly printed and partly written, and there is a conflict between the printed and written part, the written part must be taken to control the printed part. CARLISLE *v.* NUTHMULL NOWLUCKEE . . 2 Hyde, 242

3. ——— "Tallow," Contract to deliver.—A contract for "tallow" is fulfilled by the delivery of the fat of sheep, goats, and other animals besides oxen. MAHOMED IBRAHIM *v.* LAUDER

[Cor., 42

4. ——— Rope, Contract to purchase.—A contract in writing to "take all your rope and Manilla rope at the following prices," construed to mean all the vendor's rope in a certain godown on a particular day. TARRACKNAUTH PAULIT *v.* SHERBOURNE . . . . . Cor., 62

5. ——— Duration of contract.—*Effect of recital in regard to control over operative words.*—The parties during several years had transactions consisting of the deliveries of produce by the defendants to the plaintiff's agent, under advances, upon separate contracts, specifying prices, and of consignments by the defendants through the plaintiffs. A "purchase account" and an "interest account" kept between them resulted in a "general account;" and in 1872 a large sum was due thereon to the plaintiffs, to whom, in 1873, the defendants sent letters mortgaging property with instruments of title accompanying. In the beginning of 1874 the parties entered into a written agreement, which described the balance due in respect of previous advances as the "block account," comprising also an "interest account," and the transactions proceeded. The intention was shown that the advances should be liquidated "by returns," but the only date mentioned from which an inference could be drawn as to the intended duration of the arrangement between the parties shew at 30th June 1875. In this suit,

CONTRACT—*continued.*

1. CONSTRUCTION OF CONTRACTS—*continued.*

Duration of contract—*continued.*

brought in December 1875, it was contended that the right construction of the agreement of 1874 required that it should continue to subsist (unless rescinded either by mutual agreement, or on breach of its stipulations by one party justifying its rescission by the other) until the liquidation of the balance by returns; at all events, as regarded the "block account." In order to the working of an agreement for a liquidation in such a way, it would have been necessary to imply obligations, for which no express provision had been made; nothing, for instance, having been fixed as to the extent, or duration, of the business, or as to the rates at which produce was to be offered or accepted. *Held*, that such provisions could not now be supplied, and that the stipulations as to the "block account" were binding only during the continuance of the arrangement for the conduct of the business by the parties, such arrangement being terminable at will, after the 30th June 1875. The letters of 1873, and the documents of title deposited with them, were held to constitute a security for the general balance due from the defendants to the plaintiffs, and not only a security for advances on certain of the contracts referred to in a paragraph in the nature of a recital; for the latter was not necessarily repugnant to the wider construction, and the operative words were wide enough to apply to all the transactions between the parties. The construction of an ambiguous stipulation in a written agreement may be governed or qualified by a recital; but, if the intention is clearly to be collected from the operative words, that intention is not to be defeated or controlled because it may go beyond what is expressed in the recital. MARCAR *v.* SIGG

[I. L. R., 2 Mad., 239

6. ——— Extras not mentioned in contract.—*Allowance for extras.*—The plaintiff, in answer to an application to him by the defendant for an estimate of the cost of some surveying tents, replied:—"We send you, as requested, the prices of tents, flags, and poles, &c.," enclosing a memorandum of prices in which there was no allusion to "flies" for the tents. It appeared that no mention had been made about the "flies" in a conversation which subsequently took place between the parties during the progress of the manufacture of the tents. *Held*, that the plaintiff was not entitled to recover an extra price on account of "flies." LAUDER *v.* EASTERN BENGAL RAILWAY CO. . . 1 Ind. Jur., N. S., 320

7. ——— Sale and purchase of indigo.—*Ground for rejection.*—A contract of sale and purchase of indigo, the produce of a certain concern, contained the following clause: "The quality of the indigo to be equal to that usually made at the above concern, and to be delivered in good merchantable order, free from dampness, carefully packed, the contents of each chest to be of one quality, and got up with the usual care of the mark, and if not so delivered such allowance to be made to purchasers as shall be awarded by *J. P. T.*" *Held*, the words "if

CONTRACT—*continued.*

1. CONSTRUCTION OF CONTRACTS—*continued.*

Sale and purchase of indigo—*continued.*

not delivered" referred to all the several preceding stipulations, including the quality: and therefore inferiority of quality below that usually made at the concern was no ground for rejection of the indigo tendered, but only the subject for an allowance to be awarded by *J. P. T.* MACFARLANE *v.* ROBERT [2 Ind. Jur., N. S., 258

8. ——— **Contract for coal on behalf of Government.**—*Default of contractor.*—Where *C.* entered into a contract with the Government to construct a railway feeder, and purchased coal from a coal company, and after the coal had been delivered and deposited at a certain place, *C.* absconded,—*Held*, that the Government had no right to detain or claim the coal, or to take the same out of the possession of the coal company, who were entitled to retain possession of the coal against any claimant but *C.* himself. GORDON, STUART, AND COMPANY *v.* THE EXECUTIVE ENGINEER OF THE CALCUTTA AND JESSORE ROAD DIVISION . . . . 7 W. R., 426

9. ——— **Timber trade in Burma.**—*Tainzahs.*—According to the timber trade in Burma, the holding of what are called tainzahs does not give possession of the timber; and where the parties in a contract use the word "received" and do not think fit to use the word "entered," they must be taken to have intended the word "received" to have the meaning of having obtained possession of the goods and not merely of having entered and got tainzahs for them. BURMA COMPANY *v.* SNADDEN [17 W. R., 120

10. ——— **Delivery by instalments.**—*Tender.—Abandonment of excess.—Sale of goods.*—A contract made between the plaintiffs and the defendant stipulated for the delivery to the defendant of 7,500 bags of Madras Coast castor seed, which were to be shipped "per steamers," and then stated that shipment of 2,500 bags was to be made in December. On the 12th December 1,690 bags arrived by Steamer *Shahjehan* and notice in writing was given to the defendant, who requested that the delivery might be postponed owing to his not having godown room. On the 14th December the defendant refused to take the 1,690 bags, on the ground that he was not bound to take a portion of the 2,500 bags, but only the whole at one time. On the 16th December the defendant tendered the value of 2,500 bags which was refused, and on the same day the plaintiffs resold the 1,690 bags. On the 17th December the plaintiffs informed the defendant that 810 bags, the balance of the 2,500 of the December shipment, were due on the 18th, and they did arrive on the 19th, but were refused by the defendant on the same ground as before, and they were accordingly resold by the plaintiffs. *Held*, that according to the terms of the contract there was a legal and proper tender of the December shipment by the plaintiffs, and that the defendant having committed a breach of the contract in not accepting the bags, the plaintiffs were justified in reselling them at once and suing for damages. SIMSON *v.* GORA CHAND DOS . [I. L. R., 9 Calc., 473

CONTRACT—*continued.*

1. CONSTRUCTION OF CONTRACTS—*continued.*

Delivery by instalments—*continued.*

11. ——— **Delivery in whole of November on seven days' notice from buyer.**—*Breach of contract.*—A contract for delivery by the defendants to the plaintiff of 1,000 bags of ginger stated, that "delivery was to be taken and given in the whole of November on seven days' notice from the buyer." On the 5th November, the plaintiff gave notice to the defendants requiring delivery to be given "within seven days;" and again on the 11th, that he was prepared to take delivery on the following day. On the 12th, the defendants wrote to the plaintiff, stating that they would give delivery on the 28th, 29th, and 30th November. On the 15th, the plaintiff gave notice that he considered the contract at an end. In a suit for damages for non-delivery,—*Held* (affirming the decision of the Court below), that the words "on seven days' notice from the buyer" were intended to give the buyer the right of fixing the particular time in November at which the delivery was to commence, and that the defendants were, therefore, bound to commence delivery on the expiration of the seven days' notice. JUGGERNATH KHAN *v.* MACLACHLAN [I. L. R., 6 Calc., 681: 8 C. L. R., 225

12. ——— **Non-acceptance.**—*Breach of contract.*—The plaintiff entered into a contract with the defendant to deliver sulphur, to be imported by the ship *Michael Angelo.* No sulphur arrived by the *Michael Angelo* consigned to the plaintiff, and he procured it elsewhere, but the defendant refused to accept it. In an action for non-acceptance,—*Held*, reversing the decision of the Court below (MARKBY, *J.*, *2 B. L. R., S. N., 9*), that the defendant was not bound to accept sulphur not imported by the *Michael Angelo.* BIHARI LAL *v.* MADHUSUDUN KUNDU [2 B. L. R., O. C., 154

13. ——— *Breach of contract.*—*"Ex a certain ship."*—By a contract entered into between the plaintiffs and defendant, the plaintiffs agreed to sell certain goods *ex* a specific ship to the defendant, the goods to be taken delivery of within forty-five days, and ten days to be allowed for inspection, and claiming allowance for any damaged goods, the defendant to take the risk of damage from the date of the contract. The period for taking delivery and for inspection dated from the 13th May. The plaintiffs did not receive the whole of the goods until 16th of June, and therefore were not ready to perform their contract by submitting them for inspection within the specified time: the defendant did not call upon them to do so. In a suit for breach of the contract by the defendant in not accepting the goods,—*Held*, that the plaintiffs not being in a position to complete the contract, no cause of action had arisen. *Held*, on appeal, that the goods ought to have been ready for inspection within the ten days stipulated, and the plaintiffs not having shown that they were ready and willing so to perform the contract,

CONTRACT—*continued.*

1. CONSTRUCTION OF CONTRACTS—*continued.*

Non-acceptance—*continued.*

had no right of action, notwithstanding that the defendant never, in fact, called on them to deliver the goods for inspection. The words "*ex* a certain ship" must be taken to mean that the goods are really landed, and not in course of being landed, and therefore, independently of the question of the necessity on the part of the plaintiffs to show their readiness to perform their part of the contract, the defendant was not bound to take goods on board ship, in respect of which, if the contract were binding upon him, he would have been found to take the risk of any damage or loss to the goods on board ship, or in the course of landing. ROBERTSON GLADSTONE & CO. *v.* KUSTURY MULL . . . . **3 B. L. R., O. C., 103**

14. ——— Agreement to share costs of litigation to be prosecuted to its furthest limits.—*Failure on advice to appeal to Privy Council.*—Plaintiffs having sought to recover from defendants their share of the costs of certain litigation which plaintiffs had set agoing at the instance of defendant's father, who was jointly interested with plaintiffs in certain property in suit, but who wanted the means to prosecute the litigation for its recovery, and who, accordingly, executed an ikrarnamah agreeing to share the costs of the necessary litigation proportionably with plaintiffs, provided they furnished the funds for prosecuting that litigation to the furthest limits; and the said litigation having terminated adversely to the interests of both plaintiffs and defendants, without any appeal having been preferred to the Privy Council, and defendants having repudiated all responsibility for costs on the ground of default in prosecution of litigation to the furthest possible limit, —*Held* that, as plaintiffs had merely undertaken to furnish the means for carrying on the litigation, but had not actually undertaken the conduct of that litigation, and as it was not in evidence that defendants had wished to go up to the Privy Council, and to this end had made a demand on, but had been frustrated by, plaintiffs, the plaintiffs were entitled to recover proportionate costs in the concerted litigation, with costs in the present suit proportioned to the amount thus obtained by them. The lower Courts in this case found that it had not been proved, either that the pleaders had advised, or that defendant's father had agreed, that there should be an appeal to the Privy Council. SUSHEE MOHUN SHAHA CHOWDHRY *v.* TARA PURSHAD MOJOOMDAR . **25 W. R., 478**

15. ——— Collateral agreement.—*Contract Act, ss. 21, 65.—Mistake of law.—Agreement to secure repayment of loan, collateral to primary obligation.*—By an agreement in writing, defendants, trustees of a temple, in consideration of an advance of money which they represented was required to pay off debts incurred for the benefit of the temple, granted to plaintiff a lease of the right to manage the temple lands, and plaintiff promised that he would repay himself out of the profits to be derived from the lands, and that neither the defendants nor their family property should be made liable for the debt.

CONTRACT—*continued.*

1. CONSTRUCTION OF CONTRACTS—*continued.*

Collateral agreement—*continued.*

In a suit by plaintiff against a tenant of the temple lands, this lease was held to be void for illegality. Defendants subsequently resumed management and plaintiff sued them to recover the money advanced by him. It was found that the agreement was entered into by both parties under a mistake as to the validity of the lease:—*Held* that, assuming section 65 of the Contract Act was not intended to vary the rule, that a mistake of law is no ground for relieving a party from his own contract, plaintiff was nevertheless entitled to recover on the ground that the agreement which provided for repayment was collateral and had failed. An agreement that an obligation which is contracted shall be discharged in some particular mode is collateral to the primary contract which created the obligation, though the two agreements may be mixed up in one contract. KRISHNAN *v.* SANKARA VARMA . . **I. L. R., 9 Mad., 441**

16. ——— Agreement not to alienate. —*Mortgage.*—Plaintiff sued, as managing trustee of a choultry, to set aside certain mortgages of the lands with which it was endowed, made by the second, third, and fourth defendants to the sixth and seventh defendants, and for an injunction to compel payment of kist, which had been allowed to fall into arrears, contrary to the provisions of the machalka sued upon. The defendants pleaded that the mortgages made were not in violation of the provisions of the machalka. The Court of first instance dismissed the suit. On appeal, the Civil Judge considered the provisions —"Moreover, we are only entitled to cultivate the said four villages and to maintain the said choultry with the income therefrom as above stated; and we have no right to alienate the said lands by sale," &c., —fatal to the right to mortgage advanced by the defendants one to five. Accordingly he reversed the decree appealed from. *Held*, by SCOTLAND, *C. J.*, that the reasonable construction to be put upon that portion of the razinama relating to alienation was that the villages were not to be alienated so as to deprive the choultry of the receipt of the portion of the produce fixed by the razinama for its support: that the security of the cultivation of the land and the application of the fixed portion of the produce to the maintenance of the choultry was all that the parties intended to effect: that there was nothing in the record to show that the payment of that fixed portion had been rendered less certain by the transfer of the villages to the mortgagees: that, consequently, the beneficial interest of the plaintiff, as trustee under the razinama, was not impaired, and the mortgages were not made in violation of the provisions of the machalka. *Per* HOLLOWAY, *J.*—That the right set up was based upon a purely capricious exercise of the plaintiff's will, in the effectuation of which he had no conceivable interest; that contractual words seeking to create a right of this sort are ineffective to create it, and that, consequently, the alienations by mortgage were wrongly declared void. KRISTNA MADALI *v.* SHANMUGA MUDALIAR . . . **6 Mad., 248**

CONTRACT—*continued.*

1. CONSTRUCTION OF CONTRACTS—*continued.*

17. ——— Agreement to give refusal of purchase.—*Contract between purchaser from Hindu widow and reversioners.—Breach of contract in leasing to others.*—*W.* purchased an estate from a Hindu widow. On her death the reversioners brought a suit to set aside the sale and recover possession. Upon this *W.* entered into an ikrar or undertaking, in which he agreed, on consideration of their desisting from the suit, that he would remain in possession as long as he pleased, and when he had occasion to sell the property would give them the refusal. Several years after, *W.* entered into negotiations with third parties for the sale of the concern to which the property was annexed, but not being able to come to terms with them, he broke off the negotiation, and the property was subsequently leased to others. Upon this the reversioners sued to have the property conveyed to them. *Held*, that *W.'s* promise not to alienate the property, coupled with the promise that he would personally retain possession, amounted to an undertaking which was violated by what had taken place. Plaintiffs were therefore entitled to the conveyance sought for upon payment of the price. RAM NATH SEN LUSHKUR *v.* RASH MOHUN MOOKERJEE . **24 W. R., 214**

18. ——— Contract to cultivate indigo.—By a contract for the cultivation of indigo the defendant agreed, in consideration of certain payments, to prepare the land, sow the seeds that should be supplied, reap the crop, &c. And it was stipulated that in case the defendant should neglect to cultivate the lands, the amlah of the factory might cultivate them and deduct the expense from the money payable to the defendant,—*Held*, that it was not obligatory upon the plaintiff to enter upon the lands and cultivate them on default by the defendant. MACRAE *v.* JHOOMUCK MISSER **[Marsh., 386: 2 Hay, 391**

19. ——— *Construction of agreement.—Right of suit to recover advances.*—A ryot took advances from an indigo factory, on condition that he was not to repay any portion of the same until the expiration of the agreement, and even then he was not to be bound to repay the money in cash, but had the option, either to pay the same in cash or continue to cultivate the land with indigo, and deliver the plants grown thereon until the whole of the advances were satisfied. *Held*, that an action would not lie for a refund of the balance in consequence of the plaintiff closing the factory before the expiration of the contract. WATSON AND COMPANY *v.* HURRY NATH SIRCAR . **7 W. R., 388**

20. ——— *Breach of contract.—Non-completion of agreement of compromise as part performance of contract to sow indigo.*—Where a contract for sowing indigo was entered into, and advances made in part performance of an agreement of compromise between the parties to a suit for enhancement of rent,—*Held*, that the non-completion of the agreement of compromise did not exonerate the defendant from performing his

CONTRACT—*continued.*

1. CONSTRUCTION OF CONTRACTS—*continued.*

Contract to cultivate indigo—*continued.*

part of the contract for sowing indigo. SANDYS *v.* SETUL MUNDUL . . . **10 W. R., 420**

2. CONDITIONS PRECEDENT.

21. ——— Intention to execute more formal contract.—*Final agreement, Effect of.*—Where two parties have come to a final agreement, the mere fact that at the time of their doing so they intended to embody the terms of such agreement in a formal instrument does not make such agreement less binding on them. WHYMPER AND COMPANY *v.* BUCKLE AND COMPANY . **I. L. R., 3 All., 469**

22. ——— Intention to make more formal contract.—*Binding effect of preliminary agreement.—Agreement to adjust suit, suit for damages for breach of.*—Even where formalities in the embodiment of contracts are at the option of the parties, there may be a concluded and binding contract, although there is an intention to put its terms into a more formal shape. The existence of such intention is evidence that neither party was to be bound until the intended formalities have been complied with. But when a sale, so as to pass an interest, requires certain formal steps, and nothing turns upon the intention of the parties, no inference against a concluded agreement can be drawn from the non-completion of formalities which are not of their selection. The parties to a suit executed a written agreement, which was duly registered, whereby the plaintiff agreed to accept the property of the defendant, specified in the agreement, in adjustment of the said suit. The agreement was not recorded under section 98, Act VIII of 1859. Plaintiff proceeded with his suit, obtained a decree, and sold the property mentioned in the agreement, in execution of the said decree. The sale-proceeds being insufficient to satisfy the decree, other property belonging to the defendant was attached and sold for R23,360. In a suit for damages brought by the defendant,—*Held*, that the agreements to withdraw the previous suit and to accept the properties of the present plaintiff in discharge of the claim were concluded agreements, and that, therefore, the present plaintiff was entitled, with interest, to the sum which property, not mentioned in the agreement, fetched at the sale under the decree obtained by the defendant. VENKATACHELLASAMI CHETTIAR *v.* KRISTNASAWMY IYER **[8 Mad., 1**

23. ——— Unseaworthiness.—*Breach of contract in not shipping goods.—Part performance.*—In an action for breach of contract in not shipping certain goods, the defendants pleaded the unseaworthiness of the vessel. It was found that the ship was unseaworthy at the time of sailing, and that the defendants had placed part of the goods on board. *Held*, that it is a condition precedent that a vessel shall be in a proper state to take the goods on board for the purpose of the particular voyage; or in such a state that she may be made fit for the voyage

CONTRACT—*continued.*

2. CONDITIONS PRECEDENT—*continued.*

Unseaworthiness—*continued.*

with the goods on board, without such a delay as to frustrate the object of the merchant in shipping his goods. *Held*, that the putting part of the goods on board without knowledge of the unseaworthiness of the vessel was not a waiver of the performance of the condition. *Semble*,—Unseaworthiness at the time of sailing is not a breach of the condition. TURNER MORRISON *v.* RALLI MAVROJANI

[2 B. L. R., O. C., 127

24. ——— Agreement to ship after two country voyages.—*Contract of affreightment, Construction of.*—When a ship-owner has contracted to give a certain notice to a charterer, or to do any other act, with a view to inform the charterer when the ship will be ready, the charterer is not bound to ship his goods until the ship-owner has given him that notice or has done that act. *Held*, therefore, in an action for not shipping goods under the following contract:—"*H. S.* to arrive after completion of two country voyages for London on notice in May or June," it appearing that the plaintiffs had sent the vessel for one country voyage only, that the defendants were entitled to refuse to ship the goods. FLEMING *v.* KOEGLER

[I. L. R., 4 Calc., 237: 3 C. L. R., 297

Affirming decision in S. C. . 2 C. L. R., 169

25. ——— Stipulation not to sell to others same description of goods.—*Suit for breach of contract.*—The plaintiffs on the 4th August 1881 entered into a contract with the defendant for the sale to the latter of a quantity of goods of a certain description "to be delivered up to the 31st December 1881." The plaintiffs stipulated that they would make no sales of goods of the same description to others before the 1st December 1881. The goods arrived in Calcutta between the 4th and 24th November 1881. On the 15th August the plaintiffs entered into other contracts with other buyers for the sale of the same description of goods at a lower price than that at which they had sold to the defendant, these contracts being on terms that the goods were not to arrive in Calcutta until after the 31st December 1881. In a suit to recover damages for breach of the contract by the defendant in not accepting the goods,—*Held*, that the stipulation not to sell the goods to others itself amounted to a condition precedent to the defendant's obligation to accept the goods, and therefore the plaintiffs were not entitled to damages. CARLISLES NEPHEWS AND COMPANY *v.* RICKNAUTH BUCKTEARMULL

[I. L. R., 8 Calc., 809

26. ——— Condition to abide by interested referee.—*Maxim. No man can be judge in his own cause.*—*A.* entered into a contract to supply Government with timber of a certain quality to be approved by *K.*, the superintendent of the gun carriage factory, for which the timber was required, before acceptance. *K. bonâ fide* tested and rejected the timber tendered. *Held*, that it was not open to *A.* to question the reasonableness of *K.'s*

CONTRACT—*continued.*

2. CONDITIONS PRECEDENT—*continued.*

Condition to abide by interested referee—*continued.*

refusal to accept the timber or to show that the timber was of the quality stipulated for. *Per* INNES, *J.*—The rule of civil law that a condition the happening of which is at the will of the party making it is null and void, as being destructive of the contract, is not a rule of the Indian Law of Contracts. *Per* MUTTUSAMI AYYAR, *J.*—The maxim that no man shall be a judge in his own cause does not apply where one party to a contract agrees to abide by the judgment of the other, or where both parties agree to abide by the decision of an interested third party. SECRETARY OF STATE FOR INDIA *v.* ARATHOON

[I. L. R., 5 Mad., 173

27. ——— *Guarantee that casks for shipment are fit for purposes for which they are employed.*—If a party enters into a contract to provide and ship molasses at the risk and expense of the seller, he must be taken to guarantee that the casks are proper casks, and properly coppered for any voyage from Calcutta for which such goods may be reasonably ordered by the plaintiffs to be shipped. PALMER *v.* COHEN . . . 1 Hyde, 123

28. ——— Comparison of Accounts of collection.—*Contract to be liable for outstanding balance.*—The defendant promised that in the event of his obtaining possession of certain land he would be responsible for all balances ascertained to be outstanding, after comparison of the collection accounts for 1259 (1852). *Held*, that the comparison of the accounts was a condition precedent to the defendant's liability, and therefore that the plaintiff was not entitled to recover such arrears, notwithstanding the defendant was let into possession and it was proved that there were such arrears, unless it was also shown that the accounts had been compared, or an opportunity of comparing them had been afforded to the defendant. LUCKHY DASS MUSTOOFEE *v.* JOGESHUR MOOKERJEE

[Marsh., 562: 2 Hay, 667

29. ——— Payment for removal of obstruction.—*Suit on obstruction not being removed.*—By the terms of an arrangement come to by the parties in the proceedings before the Commissioner in a suit for partition of real property it was agreed that "*T.* (one of the parties) is to be paid the price of a privy which is to be pulled down for the purpose of the new pathway to be opened on the west side of the premises, which price is to be ascertained (by the Commissioner) on inspection, and paid by all parties, *T.* being at liberty to take over the materials at a valuation." In a suit by the purchaser from one of the parties to the partition suit against *T.*, charging that he obstructed the pathway, &c., such obstruction being the not removing the privy,—*Held* (reversing the decision of the Court below) that the payment to *T.* of the price of the removal was a condition precedent to the obligation on *T.* to remove the privy. TARRUCK NAUTH GHOSE *v.* KALEE PERSHAD KHETTRY . 2 Ind. Jur., N. S., 210

CONTRACT—*continued.*

2. CONDITIONS PRECEDENT—*continued.*

30. ——— **Tender of payment.**—*Suit on non-delivery of goods.—Mutual obligations.*—The plaintiffs entered into a contract in writing by which the defendant was to deliver 2,450 bundles of gingelly seed on being put in possession of the necessary funds. In a suit for damages by reason of non-delivery,—*Held*, that the plaintiffs, before they could recover, must show that they paid or tendered the amount stipulated, and that the vendor's rights under the contract could not be controlled by the course of dealing between the parties. SHAND AND COMPANY *v.* ATMAKURI ADINARAYANA CHETTI [2 Mad., 193

31. ——— *Suit on non-delivery of goods.—Reciprocal promises.—Damages, Measure of.*—On 6th March 1883 *V.* promised to sell 5,000 bags of gingelly seed at R7-11 a bag to *S.* Two-thirds of the price was paid in advance. *V.* agreed to deliver the 5,000 bags at the end of April and to give *S.* notice as instalments of 1,000 bags were ready for delivery within the stipulated time, and *S.* promised to pay *V.* the balance of the contract price on each instalment when ready for delivery. There was neither delivery nor payment in terms of the contract. 3,000 bags were delivered by *V.* but *S.* did not pay the balance of the price due, and 2,000 bags were never delivered. On 7th May *V.* declined to deliver these bags, on the ground that *S.* had not paid the balance of the contract price for the 3,000 bags delivered when ready for delivery, and, subsequently, repaid to *S.* the balance due to him of the money advanced. In a suit by *S.* against *V.* for damages for non-delivery of 2,000 bags,—*Held*, that *V.* was not excused from performance of his promise by the failure of *S.* to pay the balance due for the bags delivered, and that *S.* was entitled to recover the difference between the market and the contract price on the day the contract was broken by *V.* SIMSON *v.* VIRAYYA . . I. L. R., 9 Mad., 359

32. ——— **Averment of readiness and willingness.**—*Covenant dependent or independent.*—The plaintiff and defendants entered into the following agreement, dated 26th January 1851: "Under the bond executed to *J. M.* by *B.* on the 9th October 1849 for R1,252-13, the balance left due by him in the matter of the jaggery which he undertook to supply to you, R1,360 remain due on this date to the exclusion of what has been paid for the amount of principal and interest; for this balance you have obtained by purchase the *virthi* land possessed by *B.* in Sitaparam Agraharam, and the half *virthi* of land of his elder brother. Under such circumstances we hereby agree to pay you out of the said amount R680 within the end of May in the current year, and the remaining R680 within the end of May of the ensuing year 1852, and then to get the said deeds of sale endorsed by you and the 1½ *virthis* of land put into our possession as purchased by us. We will therefore pay the said amount of R1,360 in two instalments and take back this sanad along with the deeds of sale endorsed." In a suit for recovery of a sum of money alleged to be due under the agreement,—*Held*, that on the true construction of the contract, it was not

CONTRACT—*continued.*

2. CONDITIONS PRECEDENT—*continued.*

Averment of readiness and willingness —*continued.*

incumbent on the plaintiff to deliver, or aver readiness to deliver, the land to the defendants. The question whether covenants are dependent or independent, or whether a certain act is or is not a condition precedent is entirely one of construction and to be determined in each case by educing the intention of the parties from the language they have used. YOUNG *v.* MANGALAPILLY RAMAIYA . . 3 Mad., 125

33. ——— *Independent covenants.*—Where defendants sub-rented an abkar farm for one year, from 31st July 1864, under a machalka, by which the defendants covenanted to pay monthly instalments of rent to plaintiff, and plaintiff covenanted to furnish defendants with the accounts of the farm from the month of July 1864, during which period the managment was in the hands of plaintiff's agent, in an action by plaintiff for rent due to him, and the value of arrack supplied by him,—*Held*, that the covenants were independent, one not being a condition precedent to the other, and that therefore the non-performance by the plaintiff of the covenant to furnish accounts was not sufficient to justify the entire dismissal of his suit against the defendants, there being no obligation on him to allege readiness and willingness to furnish accounts. RAMAIYA *v.* NARAYANASAMY . . 3 Mad., 209

3. PRIVITY OF CONTRACT.

34. ——— **Privity, want of.**—*Goods carried by two companies.*—Plaintiff delivered a certain quantity of jute to the India General Steam Navigation Company at Serajgunge, for delivery at the Eastern Bengal Railway Company's station at Sealdah, and it was arranged by the bill of lading (the contract in the case) that the freight from Serajgunge to Sealdah should be payable to the Eastern Bengal Railway Company at Sealdah, and it was so paid upon the delivery of the goods. A portion of the jute was not delivered, and this suit having been brought against the Eastern Bengal Railway Company for the value thereof, the Small Cause Court Judge was disposed to dismiss the suit without further enquiry, on the ground of want of privity between plaintiff and defendant. *Held*, that it was premature for the Judge to say that the suit could not lie against defendant without proceeding with the further investigation of the case, and that although plaintiff might have a remedy against the India General Steam Navigation Company, it by no means followed that he had none against the defendant company also. GUJENDRO MOHUN SHAHA *v.* EASTERN BENGAL RAILWAY COMPANY . . . 17 W. R., 240
See S. C., after remand . 18 W. R., 145

where it was held that the want of privity of contract was an inference the Judge might legally draw from the facts.

35. ——— **Purchase in one name.**—*Agreement to hold on joint account.*—In an action by *A.* against *B.* for damages for non-acceptance

CONTRACT—*continued.*

3. PRIVITY OF CONTRACT—*continued.*

Purchase in one name—*continued.*

of shares by *B.* alleged to have been bought by him of *A.*, it was shown that the shares were bought by *C.*, who, after the purchase, entered into an arrangement with *B.*, that the purchase should be on their (*B.* and *C.'s*) joint account. *Held*, there was no contract between *A.* and *B.*, and the suit was dismissed. BARROW *v.* STEWART . **1 Ind. Jur., N. S., 226**

4. REPUDIATION OF CONTRACT.

36. ——— Contract entered into by mistake.—*Power to replace parties in their original positions.*—He who would disaffirm a contract entered into by mistake, must do so within a reasonable time, and will not be allowed to do so unless both parties can be replaced in their original position. MUHAMMAD MOHIDIN *v.* OTTAYAL UMMACHE **[1 Mad., 390**

37. ——— Delay.—*Right to have contract set aside.*—One who repudiates a contract and asks to have it treated as void, is bound to take steps for this purpose at the earliest moment without avoidable delay. Although one of the parties to a contract was induced to enter into it by fraud of the other, he is nevertheless bound by the contract until he repudiates it, and this he cannot do when he has allowed that to occur on the footing, or in view, of the contract, which renders it impossible that the parties should be put in *statu quo.* In such circumstances his proper remedy is by an action for damages. TALEB HOSSEIN *v.* AMEER BAKSH **[22 W. R., 529**

5. BOUGHT AND SOLD NOTES.

38. ——— Evidence of contract.—*Material variation.*—*C. & Co.* and *H. & Co.* were merchants at Calcutta. *H. & Co.* sold to *C. & Co.* a large quantity of indigo, through the medium of a broker, who drew up a sold note addressed to *H. & Co.* and submitted it to *H.* for his approval, when *H.* having objected to a particular word remaining, the broker took the sold note to *C.* and informed him of *H.'s* objection. *C.* struck his pen through the word objected to by *H.*, placing his initials over that erasure and returned it to the broker, who, thereupon, delivered it, so altered, to *H. & Co.* The broker delivered to *C. & Co.* on the following day a bought note, which differed in certain material terms from the sold note. In an action brought by *H. & Co.* against *C. & Co.* for non-performance of the contract contained in the sold note, the Supreme Court at Calcutta was of opinion that the sold note alone formed the contract, and found for the plaintiffs. *Held*, by the Privy Council on appeal (reversing that decision), that the transaction was one of bought and sold notes, and that the circumstances attending *C.'s* alteration of the sold note, and affixing his initials, were not sufficient to make that note alone a binding contract: and that there being a material variation in the terms of the bought note with the sold note, they together did not constitute a binding contract. COWIE *v.* REMFRY **[3 Moore's I. A., 448**

CONTRACT—*continued.*

5. BOUGHT AND SOLD NOTES—*continued.*

Evidence of contract—*continued.*

39. ——— *Broker's bought note.*—A broker's bought note is not of itself evidence of a contract. It is signed by one only of the parties. To complete the evidence of the contract, there should also be a sold note signed by the other party showing that the buyer had duly accepted his supposed obligations. MACKINNON *v.* SHIBCHUNDRA SEAL . . . **Bourke, O. C., 354**

40. ——— *Material variation in notes.*—The bought note in a contract for the purchase and sale of silk "chussum" was as follows:—"Bought by your order, and for your account, the following silk chussum, of Messrs. Jardine, Skinner and Co., as much as they may supply of November and March bund," &c. The sold note was in similar terms, but stated that as much "as you can supply" was sold. *Held*, that the bought and sold notes did not constitute a contract binding Messrs. Jardine, Skinner and Co. to supply chussum of either the November or March bund at a loss. TAMVACO *v.* SKINNER . . **2 Ind. Jur., N. S., 221**

6. CONTRACTS FOR GOVERNMENT SECURITIES OR SHARES.

41. ——— Contract to deliver Government paper.—*Wagering.*—*Contract Act XXI of 1848.*—A Court will require strict evidence that a contract, *per se* legal, is intended to operate illegally. It is not necessary, in order to support a contract that the plaintiff should have possession of the Government paper when the contract is entered into; it is sufficient if he is in a position and is ready and willing to deliver it at due date. A letter, stating "the bearer will hand over to you ₹75,000 5½ loan notes" is sufficient to establish the *bonâ fide* nature of a transaction for purchase of Company's paper. MOHINDRO NATH MITTER *v.* KOYLAS NATH BANERJEE . . . **Cor., 1: 2 Hyde, 121**

42. ——— Suit for non-acceptance of Government paper.—*Contract Act, s. 30.*—*Tender.*—*Readiness and willingness.*—*Action for non-acceptance.*—Where a contract for the sale and purchase of Government paper provides for the delivery of the paper on a subsequent date, it is not necessary, in order to sustain an action against the buyer for non-acceptance on the due date, that the plaintiff should have taken the Government paper contracted for to the place of business of the defendant and then and there made an *actual* tender of it. JUGGERNAUTH SEW BUX *v.* RAM DYAL **[I. L. R., 9 Calc., 791**

43. ——— Sale of shares for future delivery.—*Readiness and willingness.*—In a suit to recover damages for the non-acceptance of shares, where the vendor had contracted to execute proper transfers and do all other things necessary on his part to transfer the shares, and to bear the expense of such transfer,—*Held*, on the issue, whether the plaintiff was ready and willing to perform his part of the contract, that it was sufficient to show that

CONTRACT—*continued.*

6. CONTRACTS FOR GOVERNMENT SECURITIES OR SHARES—*continued.*

Sale of shares for future delivery—*continued.*

he had in his possession at the time fixed for the performance of the contract on his part such certificates of the shares contracted to be sold as were required by the law, and that he tendered the same with a deed of transfer to the purchaser, to effect the transfer; but that it was the duty of the purchaser himself, in such case, having accepted the shares, to have the transfer made into his name in the books of the company. MAGANBHAI HEMCHAND *v.* MANCHABHAI KALLIANCHAND . **3 Bom., O. C., 79**

44. ——————— *Obligation to perform.—Delivery and acceptance.—Readiness and willingness.*—Where on the face of the contract, it did not appear that either party was called upon to act first, it was held that the plaintiff was not entitled to recover, unless he proved performance of, or an effort to perform, his part. In the absence of any indication on the part of the plaintiff that he was ready to deliver, the defendant is not liable for non-acceptance. The readiness and willingness on the part of the plaintiff must be substantial, something on which the defendant may act, not a readiness and willingness concealed in the plaintiff's mind. COMMERCIAL BANK *v.* MODOOSOODUN CHOWDHRY **[1 Ind. Jur., N. S., 17**

45. ——————— *Performance of contract.—Held,* that a contract to deliver shares in a public company is sufficiently performed when the vendor placesthe vendee in such a position as enables him to become the legal owner of them. PARBHUDAS PRANJIVANDAS *v.* RAMLAL BHAGIRATH **[3 Bom., O. C., 69**

46. ——————— *Covenants for transfer and payment.—Readiness and willingness.*—*A.* contracts with *B.* to sell him three numbered shares to be transferred upon payment of the price on or before a certain day,—*Held,* that the covenants to transfer and to pay the price are concurrent; and that the ability of *A.* to constitute *B.* the legal owner of the shares contracted to be sold, together with willingness to do so, amounts to "readiness and willingness" on the part of *A.* to fulfil his part of the contract. IMPERIAL BANKING AND TRADING COMPANY *v.* ATMARAM MADHAVJI **[2 Bom., 260: 2nd Ed., 246**

47. ——————— *Performance of contract.—Readiness and willingness.*—Plaintiffs contracted with defendant to sell him 250 shares in the Alliance Financial Corporation, and 10 shares in the Mazagon Reclamation Company, delivery to be made at defendant's option within six months from date of contract, and cash to be paid on due delivery to defendant or his order. On the last day for delivery plaintiff produced allotment receipt papers, all bearing date prior to the date of the contract, for the numbered shares contracted to be sold in both companies. The Alliance Financial papers were endorsed by the original allottees; but neither transfers nor applications for transfers signed by the original allottees were offered, nor had any such been executed, although the Corporation had opened transfer-books long before. Of the Mazagon Reclamation receipts, nine were endorsed by the allottees, one had no endorsement, and over the allottee of it and of another receipt plaintiffs had no power to enforce delivery. The Mazagon Reclamation Company had not opened transfer-books until long after the last day of delivery. On the issue whether plaintiffs were ready and willing to deliver the shares,—*Held,* as to the Alliance Financial shares, that plaintiffs not being in a position to have constituted defendant as owner thereof, must fail in their suit in respect to them; and as to the Mazagon Reclamation shares, that although plaintiffs had done all that they were required to do by the usage of the market to transfer the interest in eight of them, yet the contract being an entire one, they must fail in respect to them also. If a party, bound to do an act upon request, is ready to do it when required, he will have performed his part of the contract, although he might have happened not to have been ready had he been called upon at some anterior period. JIVARAJ MEGJI *v.* POULTON **[2 Bom., 267: 2nd Ed., 253**

48. ——————— *Readiness and willingness.*—Plaintiffs contracted with defendants to sell them two hundred shares, on payment of the price by defendants on or before the 1st of July 1865. Plaintiffs were in possession of the shares at the time of the contract, and continued so until they sold them after default made by defendants, and they were registered as holders of the shares on the 1st July, when the share certificates with transfer deeds in blank were tendered to defendants, who refused to accept them or to pay the purchase-money. On the issue whether plaintiffs were ready and willing to perform the contract on their part,—*Held,* that the acts necessary to be done on the 1st July were concurrent; and that plaintiffs, being able and willing on that day to make a valid transfer, if defendants had been ready to pay the price, were not bound to take any further steps until the purchase-money was paid by defendants. IMPERIAL BANKING AND TRADING COMPANY *v.* PRANJIVANDAS HARJIVANDAS **[2 Bom., 272: 2nd Ed., 258**

49. ——————— *Fraud.—Contracts made with illegal object.*—In a suit brought by a company against a former director of the company for the price of shares bargained and sold to the defendant, but not accepted by him, and for money found to be due on an account stated,—*Held,* that the plaintiffs could not recover, *1st,*—because no shares were really bargained and sold, as the plaint alleged; and what was done was, according to the intention and understanding of the parties, a mere form gone through, for the purpose of deceiving the public, and making it appear that 10,000 shares had been sold at a certain price; and, *secondly,* because the contracts

CONTRACT—*continued.*

6. CONTRACTS FOR GOVERNMENT SECURITIES OR SHARES—*continued.*

Sale of shares for future delivery—*continued.*

were made for the purpose of defrauding other persons. EASTERN FINANCIAL ASSOCIATION *v.* PESTONJI CURSETJI . . **3 Bom., O. C., 9**

7. WAGERING CONTRACTS.

50. ——— Wagers on price of opium at opium sales.—*Stat. 8 & 9 Vict., c. 109.*—By the common law of England, in force in India, an action may be maintained on a wager, although the parties had no previous interest in the subject-matter on which it is laid, if such wager be not against the interest or feelings of third parties, does not lead to indecent evidence, and is not contrary to public policy. The mere circumstance that a wager concerns the public revenue, or creates a temptation to do a wrong, will not render it illegal. A wager upon the average price which opium should fetch at the next Government sale at Calcutta, the plaintiffs having to pay the defendants the difference between such price and a sum named, per chest, and the defendants having to pay the plaintiffs the difference between such price and the sum named, if the price should be above that sum, is not an illegal wager or contrary to public policy, though the proceeds of the opium sold at Calcutta formed part of the Government revenue. So held reversing the judgment of the Court at Bombay. The statutes 8 and 9 Victoria, cap. 109, amending the law relating to games and wagers does not extend to India. RAMLOLL THACKOORSEYDASS *v.* SOOJANMULL DHOONDMULL

[4 Moore's I. A., 339

51. ——— *Conspiracy.*—*Fraud.*—*Act XXI of 1848.*—*Engrossing or Regrating.*—Wager contracts between the plaintiffs and defendants upon the price that Patna opium would fetch at the next Government sale at Calcutta: each party knowing that the other might use means to enhance or depress such price,—*Held*, that the bidding at the sale by one of the plaintiffs, though done colourably, and as it appeared, only to enhance the price, was no fraud on the defendants, or upon the public, as he had a right, in common with all the world, to bid at such sale, and was not precluded from recovering the amount of such wager contracts by the fact that such bidding tended to bring about the event by which the wager was to be won.—*Held* also, that employing agents at such sale (all of whom were cognizant that the object was to enhance the price of opium sold) to bid, there being no *crimen falsi* committed, did not constitute an illegal conspiracy, or such fraud as would vitiate the wager contracts, *Levi v. Levi, 6 C. L. P., 239*, observed upon and questioned. The common law offence of engrossing or regrating applies only with respect to the necessaries of life. By the sixth article of the convention between Great Britain and France, the French Government had a right to demand, out of quantities sold at the Government sale, 300 chests of opium, at the average rate of sale. *Held*, that no fraud on the vendors was committed by inducing the French Consul to exercise that option in favour of the plaintiffs. After the contracts were entered into, and an action commenced in the Supreme Court, wager contracts were declared invalid by the Act of the Indian Legislature, XXI of 1848, which enacted "that all agreements whether made in speaking, writing or otherwise by way of gaming or wagering, shall be null and void, and no suit shall be allowed in any Court of law or equity for recovering any sum of money or valuable thing alleged to be won on any wager, or intrusted to any person, to abide the event of any game, or on which any wager is made,"—*Held*, that this Legislative Act did not affect existing contracts or actions already commenced upon such contracts; there being no words in the Act sufficient to show the intention of the Legislature to affect existing rights. DOOLUBDASS PETTAMBERDASS *v.* RAM LALL THACKOORSEY DASS

[5 Moore's I. A., 109

52. ——— Wager as to price of opium at opium sales.—*Act XXI of 1848.*—A wager contract in India (before the passing of Act XXI of 1848) in the average price opium would fetch at a future Government sale held legal, and an action thereon maintained. RUGHOONAUTH SAHAI CHOTAYLOLL *v.* MANICKCHAND

[6 Moore's I. A., 251

53. ——— Partnership in wagering contracts.—*Act XXI of 1848.*—*Bom. Act III of 1865.*—*Suit by agent for brokerage.*—Act XXI of 1848 simply annuls all contracts by way of wagering, and prohibits any suit in respect of them, but does not declare them to be unlawful; and neither by the provisions of Act XXI of 1848 nor by Hindu law is the agent of a wagerer precluded from maintaining against the latter a suit for moneys paid by the agent to the other wagerer, or his agent, in respect of the loss of the wager, nor from recovering fees and brokerage due to him as agent in effecting, or for services in connection with, the wagering transaction. *Motelall Heeralal* v. *Jumnadas Umrootlal, 2 Barr. Rep., 676*, overruled. Bombay Act III of 1865 has not a retrospective force, and, therefore, applies neither to agreements collateral to wagering contracts entered into prior to its coming into operation, nor to interest subsequently accruing due on such agreements. Where the parties to an agreement (prior to the coming into force of Bombay Act III of 1865), collateral to a wagering transaction, stand to each other in the relationship of partners, and not merely of principal and agent, they are severally liable for contributions proportionate to their several shares, towards the losses incurred by the partnership in respect of such wagering transaction. PARAKH GOVARDHANBHAI HABIBHAI *v.* RANSARDAS DULABHDAS

[12 Bom., 51

54. ——— Transaction in nature of lottery.—*Act V of 1844.*—*Illegal agreement.*—A transaction is not necessarily a lottery within Act V of 1844, simply because a matter of whatever kind

CONTRACT—*continued.*

7. WAGERING CONTRACTS—*continued.*

Transaction in nature of lottery—*continued.*

is agreed to be decided by lot. Where twenty persons agreed that each should subscribe R200 by monthly instalments of R10, and that each in his turn as determined by lot should take the whole of the subscriptions for one month,—*Held*, that the agreement was not illegal, and that a suit might be brought on a bond given by one of the subscribers who had received one month's subscriptions, to secure the payment of his subsequent monthly instalments. KAMAKSHI ACHARI *v.* APPAVU PILLAI **[1 Mad., 448**

55. ——— Account arising from illegal transactions.—*Act XXI of 1848.*—A plaintiff cannot recover on an account stated which springs out of transactions coming under Act XXI of 1848. NOBINCHUNDER MOOKERJEE *v.* PROSUNNO COOMAR BANERJEE . . . **1 Ind. Jur., O. S., 126**

But *see* TRIBHUBANDAS JAGJIVANDAS *v.* MOTILAL RAMDAS . . . . . **1 Bom., 34**

56. ——— Suit to recover deposit paid on wagering contract.—*Contract Act (IX of 1872), ss. 22, 24-30, and 65.—Bombay Act III of 1865, s. 1.—Act XXI of 1848.—In pari delicto potior est conditio possidentis, Application of the maxim.—Plaint, Amendment of.—Deceit.—Unilateral mistake.*—On the 21st of January 1883 the plaintiff contracted to purchase from the defendent the right to receive the dividend on 50 shares of the Empress Mill at R37 *per* share, the plaintiff being under an impression that the dividend was to be declared on some subsequent day. The plaintiff deposited R100 with the defendant as part payment of the purchase-money. Subsequently it was ascertained that the dividend had been already declared on 17th January 1883 (*i.e.*, four days before the contract) at R25. The plaintiff thereupon sued the defendant to have the contract declared cancelled, and sought to recover the deposit of R100, with interest. The Judge of the Court of Small Causes at Broach, being of opinion that the contract was in its nature a *sutta*, or wagering contract, rejected the plaintiff's claim. The plaintiff applied to the High Court, under its extraordinary jurisdiction, to set aside the lower Court's decision. *Held* that, in the first instance, the plaint, as framed, not disclosing any cause of action, ought to have been returned for amendment. It should either have alleged a mistake common to both parties to the contract or should have contained an allegation of fraud, on the defendant's part, inducing the plaintiff to enter into the agreement. The mere circumstance, that the contract was "caused by one of the parties to it being under a mistake as to a matter of fact," would not, under section 22 of the Contract Act (IX of 1872), have made the contract voidable. *Held*, also, that, if the contract was really a wager, the deposit could not be recovered under section 65 of the Contract Act, as its nature must from the first have been known to the parties. To an agreement, so known to be void, section 65 does not apply. If the contract was in the intention of both parties a wager, the suit would be barred by section

CONTRACT—*continued.*

7. WAGERING CONTRACTS—*continued.*

Suit to recover deposit paid on wagering contract—*continued.*

1 of Bombay Act III of 1865 which, though it formed a part of Act XXI of 1848, which is repealed by the Contract Act, is not, being a special Act, applicable to the Bombay Presidency, itself repealed. It must be read with section 30 of the Contract Act. *Held*, also, that, to constitute a wager, the transaction between the parties must "wholly depend on the risk in contemplation," and "neither party must look to anything but the payment of money on the determination of an uncertainty." But if one of the parties has "the event in his own hands" the transaction is not a wager. If the plaintiff's real contention was that defendant was aware of a declaration of dividends, at R25 *per* share, and by keeping plaintiff in ignorance of the facts induced him to enter into a wagering agreement for payment of differences at a contract rate of R37 *per* share, then to a suit for the recovery of the deposit made to the defendant with reference to such an agreement, Bombay Act III of 1885 has no application. Wagering contracts are not illegal. They are simply destitute of legal effect. If fraud was practised on plaintiff, the maxim *potior est conditio defendentis* would not apply. DAYABHAI TRIBHOBANDAS *v.* LAKHMICHAND PANACHAND **[I. L. R., 9 Bom., 358**

57. ——— Illegal consideration in Suit for money paid.—*Contract Act, s. 23 and s. 30.—Betting on a horse race.—Entrance money for horse race.—Agreement by way of wager.*—Where a person who had lost a bet on a horse race requested another to pay the amount of such bet, agreeing to repay him, and the latter paid such amount,—*Held*, that the money so paid was recoverable from the person for whom it was paid, the consideration for the agreement not being unlawful within the meaning of section 23 of the Contract Act, 1872, and the agreement not being one by way of wager, within the meaning of section 30 of the same Act. *Knight* v. *Fitch, 24 L. I., C. P., 122; Knight* v. *Cambers, 24 L. I., C. P., 121; Jessopp* v. *Lutwyche, 10 Exch., 614*; and *Beeston* v. *Beeston, L. R., 1 Ex. D., 13*, referred to. PRINGLE *v.* JAFAR KHAN . **I. L. R., 5 All., 443**

8. ALTERATION OF CONTRACTS.

(*a*) ALTERATION BY PARTY.

58. ——— Addition of words to contract.—*Sale of goods.*—*R. G. G. & Co.* entered into a contract to sell certain goods to *A. S., N. S.*, both Calcutta firms. The contract, which was in a printed English form, was taken on the 18th December 1868, by one *M.*, on behalf of the firm of *R. G. G. & Co.*, to obtain the signature of the vendees' firm. It was signed on their behalf by *A. S.* Neither *M.* nor *A. S.* understood English, and no explanation was given of the terms of the contract to *A. S.* at the time he signed it, but there had been negotiations between *M.* and *A. S.* as to these goods prior to the time when *A. S.'s* signature was obtained. It did not appear that the goods had been identified in any way by the

CONTRACT—*continued.*

8. ALTERATION OF CONTRACTS—*continued.*

(*a*) ALTERATION BY PARTY—*continued.*

Addition of words to contract—*continued.*

purchasers, who had merely seen a sample. After his signature *A. S.* wrote in Nagri, "Goods fresh grenadines five cases at two annas and three pie per yard." *A. S., N. S.*, afterwards, on the 9th February 1869, paid R1,000 as earnest money, which was accepted by *R. G. G. & Co.*, who then allowed further time for taking delivery of the goods, which, however, *A. S., N. S.*, finding some of the goods were stained, declined to do. *R. G. G. & Co.* thereupon brought an action for breach of contract in not taking delivery, and a cross-suit was brought by *A. S., N. S.*, to recover the R1,000 paid as earnest money. *Held*, that the words "fresh goods" after the signature of *A. S.* constituted part of the contract into which the parties entered, and by which they were bound. MADHAB CHANDRA RUDAR *v.* AMRIT SING NARYAN SING [5 B. L. R., 111

ROBERTSON, GLADSTONE AND COMPANY *v.* KASTURY MULL [3 B. L. R., O. C., 103 at p. 106

59. ——————— *Signature.—Repudiation.—Statute of frauds.*—The plaintiffs contracted with the defendant for the purchase from him of a certain quantity of hog's lard. The terms of the contract were contained in a letter, which was drafted by the plaintiffs and sent to the defendant for signature. The defendant returned the letter unsigned, with two additional clauses. The plaintiffs not being able to agree to one of these clauses had an interview with the defendant, when the defendant took the document away with him, and subsequently, on 17th May, returned it signed, but with the additional clauses still remaining. The plaintiffs had another interview with the defendant on 5th June, during which the additional clause objected to by the plaintiffs was struck out, one of the plaintiffs writing the word "cancelled" against that clause, and the defendant putting his initials against the word "cancelled." The plaintiffs then added to the contract the words "approved," together with "*R.* and *C.*," being the initials of their firm. Other alterations had been made in the document, and, it containing many erasures, the plaintiffs on the same day sent a fair copy to the defendant for signature, but the defendant wrote repudiating the alleged contract, and refusing to sign the document. *Held* (confirming the decision of the Court below), there was no binding contract between the parties. The signature of the defendant put to the document on 17th May was not a sufficient signature by the party to be charged, so as to satisfy the statute of frauds. CHARRIOL *v.* SHIRCORE . . . 8 B. L. R., 305

60. ——————— *Signature.*—To a contract between the plaintiffs and the defendant, for the purchase by the defendant of a cargo of salt, the plaintiffs, after the contract had been signed by the defendant, added in the margin: "Ten days' demurrage will be allowed at R250 per diem." *Held*, that the addition of the words in the margin did not amount to an alteration within the rule of English law: the alteration must be either something which appears to be attested by the signature or something which alters the character of the instrument. EDE *v.* KANTO NATH SHAW . I. L. R., 3 Calc., 220

61. ——— **Filling up document after signature.**—*Execution of document.—Sufficiency of signature.*—Where a document, although blank, when signed and put into the hands of one of certain parties, is afterwards filled by the consent of those parties with words which had already been agreed upon by them, and had, in consequence of such consent, been already drafted, the signature to the fair copy, although attached before the words were filled in, is just as binding as if it was attached to the document after the words had been written down in it. AHED HOSSEIN *v.* LALLA RAM SURUN [11 W. R., 216

62. ——— **Addition to document.**—*Material alteration.*—Where a subsequent addition to a document, though unauthorised by the executant, serves only to state explicitly what is already implied in the document, and what the law would infer from it, such addition is immaterial, and does not vitiate the instrument. Interest at a penal rate should not be awarded if there be no demand for it, or for a sum by way of compensation for special damage, on the part of the plaintiff. TIKAMDAS JAVAHIRDAS *v.* GANGA KOM MATHURADAS . . 11 Bom., 203

63. ——— **Alteration of date of bond, Effect of.**—*Suit to enforce altered document.*—In suits upon two hypothecation bonds executed by different defendants, the plaintiffs in the first suit sued for recovery from the defendants personally, and in the second suit for recovery from the defendants and also from the property hypothecated, and in each case obtained a decree. The lower Appellate Court reversed both decrees, on the ground that the bonds were vitiated by a fraudulent alteration of them in the material part, *viz.*, the date fixed for payment. *Held*, that the documents might be used as evidence of the debt between the parties and also of the creation of the charge upon the property hypothecated. It lies upon the parties who seek to enforce an altered instrument to show the circumstances under which the alteration took place. RAMASAMY KON *v.* BHAVANNI AYYAR. RAMASAMY KON *v.* SINTHIWAIYAN *alias* CHINNA BHAVANI AYYAR . 3 Mad., 247

64. ——— **Fraudulent alteration in document, Effect of.**—An alteration made in a deed, without the consent of the parties who originally executed the deed, and with the fraudulent view of benefiting him who propounds it, vitiates the deed only. The materiality or otherwise of the alteration does not affect this rule of law. KALLEE COOMAR ROY *v.* GUNGA NARAIN DUT ROY . 10 W. R., 250

So also as to the alteration in a will. *See* PARAMMA *v.* RAMACHANDRA . I. L. R., 7 Mad, 302

CONTRACT—*continued.*

8. ALTERATION OF CONTRACTS—*continued.*

(*a*) ALTERATION BY PARTY—*continued.*

65. ——— Interpolation of name of witness, Effect of.—*Document not requiring attestation.—Material alteration.*—The interpolation of the name of a witness in a document which need not be attested is not a material alteration that would render the document void. *Suffell v. Bank of England, 9 Q. B. D., 555,* explained; *Sitaram Krishna v. Daji Davaji, I. L. R., 7 Bom., 416,* dissented from. MOHESH CHUNDER CHATTERJEE *v.* KAMINI KUMARI DABIA . . . . **I. L. R., 12 Calc., 313**

66. ——— Alteration of document.—*Effect of, as to admissibility in evidence.*—If an instrument on which a case depends should appear to have been altered, it cannot be received in evidence or be acted upon till it is most satisfactorily proved by all the subscribing witnesses at the least, and other evidence, that the alteration was made antecedently to the signature. PETAMBER MANICKJEE *v.* MOTTEECHAND MANICKJEE

[5 W. R., P. C., 53: 1 Moore's I. A., 420

67. ——— Material alteration, Effect of.—*Bond.—Forgery.—Fraud.*—A person who had a bond executed in his favour by one of three brothers, forged the signatures of the other two brothers to the bond, and brought a suit upon it in its altered form against the three brothers. The forgery having been established, the Court of first instance dismissed the suit as against all the three defendants, and this decision was affirmed on appeal. On second appeal to the High Court,—*Held,* that the decision was correct, as a material alteration in a bond is, if fraudulently made, sufficient to render the bond void. A party who has the custody of an instrument made for his benefit is bound to preserve it in its original state, and any material alteration of it will vitiate the instrument. Where a person brings a suit upon a document which, when produced in evidence, is found to have been fraudulently altered to the knowledge of the plaintiff, no Court ought to allow an amendment to enable him to succeed upon it in its original state. GOGUN CHUNDER GHOSE *v.* DHURONIDHUR MUNDUL

I. L. R., 7 Calc., 616: 9 C. L. R., 257

68. ——— Material alteration.—*Promissory note.—Negotiable instrument.—Alteration of rate of interest.*—An alteration which vitiates an instrument must be such as to cause the instrument on the face of it to operate differently from the original instrument. The alteration of the rate of interest in one of the clauses of a promissory note held to be a material alteration vitiating the note, although the clause so altered was a penal clause to which, even if unaltered, the Court would not give effect. OODEYCHAND BOODAJI *v.* BHASKAR JAGONNATH

[I. L. R., 6 Bom., 371

See ANANDJI VISRAM *v.* NARIAD SPINNING AND WEAVING COMPANY . **I. L. R., 1 Bom., 320**

69. ——— Addition of false attestation.—*Bond.—Material alteration of a document.*—In an action on an attested instrument not required by law to be attested, the obligee, while the instrument was in his possession and custody, got another attesting signature added to it by a man who had not, in fact, witnessed the execution of it by the obligor,—*Held* that, although the alteration did not vary the contract, it was material in the sense of stating a falsehood, either expressly or by implication, by way of increasing the apparent evidence of its genuineness, and that the obligee could not sue upon it. SITARAM KRISHNA *v.* DAJI DEVAJI . **I. L. R., 7 Bom., 418**

CONTRACT—*continued.*

8. ALTERATION OF CONTRACTS—*continued.*

(*a*) ALTERATION BY PARTY—*continued.*

Addition of false attestation—*continued.*

70. ——— Consent of parties.—*Material alteration of document.*—A material alteration made after execution does not vitiate a deed, if it be made with the consent of all the parties. ISAC MAHOMED *v.* BAI FATMA . **I. L. R., 10 Bom., 487**

71. ——— Fraudulent alteration of document.—*Effect of.—English law how far applicable in mofussil.*—In a suit brought to recover R815, principal and interest due according to the terms of a registered mortgage bond, it was found that the plaintiff had fraudulently altered the terms of the bond prior to registration (1) by inserting a condition making the whole sum payable upon default of payment of any instalment, and (2) by doubling the rate of interest. The defendant admitted in his written statement that he had received a certain portion of the consideration for the bond from the plaintiff. At the trial the plaintiff claimed to amend the plaint and recover the first instalment according to the terms of the bond as executed by defendant,—*Held,* by the Full Bench (KERNAN, *Offg. C. J.,* MUTTUSAMI AYYAR, HUTCHINS, PARKER, and HANDLEY, *JJ*)., that the suit must be dismissed. *Per* KERNAN and MUTTUSAMI AYYAR, *JJ.*—The decision in *Ramasamy Kon's case, 3 Mad. 247,* is in conformity with the law of England. *Per* KERNAN, HUTCHINS, PARKER, and HANDLEY, *JJ.*—The rule in *Master* v. *Miller* is in consonance with equity and good conscience and applicable to the mofussil. *Per* MUTTUSAMI AYYAR, *J.*—That rule is more penal than equitable, but having been adopted by the Courts since 1866 must be followed. CHRISTACHARLU *v.* KARIBASAYYA . . **I. L. R., 9 Mad., 399**

(*b*) ALTERATION BY THE COURT (INEQUITABLE CONTRACTS).

72. ——— Power of Court.—*Alteration of, without consent of parties.*—The Court has no power, without the consent of the parties, to alter the contract, or substitute for it terms which the Court may prefer. RAGHO GOVIND PARANJPE *v.* DIPCHAND

[I. L. R., 4 Bom., 96

KOTOO *v.* KO PAY YAH . . **6 W. R., 255**

DIGAMBUREE DABEE *v.* NUNDGOPAL BANERJEE

[1 W. R., Mis., 1

But *see* JUDOBUNSEE BHUGTABE *v.* MUKKIM KOWAREE . . . **1 W. R., Mis., 6**

CONTRACT—*continued.*

8. ALTERATION OF CONTRACTS—*continued.*

(*b*) ALTERATION BY THE COURT (INEQUITABLE CONTRACTS)—*continued.*

Power of Court—*continued.*

73. ———— *Power of Government in its executive capacity.*—It is not within the power of a Court of law, in the face of the contracts originally made between the mula-vargdars (superior holders) and their mul-gainidars (permanent tenants), to relieve the former from the hardship caused to them by reason of the enhancement, by Government, of the assessment on their lands to an amount exceeding or equal to the rent received by them (mula-vargdars) from the mul-gainidars. It is doubtful whether Government, in its executive capacity, has any more power than Courts of law to interfere with contracts made between private persons. The remedy lies rather in the hands of the Legislature. RANGA *v.* SUBA HEGDE [I. L. R., 4 Bom., 473

74. ———— Nature of alteration.—The Court should not by its decree make for the parties a different contract from that which they themselves had entered into. BALA VALAD SANKIA *v.* GABAJI BALVANT KULKARNI [2 Bom., 175 : 2nd Ed., 168

75. ———— Inequitable agreements.—*Alteration of rate of interest.—Act XXVIII of 1855.—Fiduciary relationship.*—The provision contained in Act XXVIII of 1855, that any rate of interest which the parties may have agreed upon shall be awarded, in no way prevents a Civil Court in India, which administers both law and equity, from examining into the character of agreements made between persons, such as mortgagor and mortgagee, trustee and *cestui que* trust, between whom a relation exists, enabling one party to take advantage of the other, and from declining to enforce such agreements when they are shown to be unfair and extortionate. VINAYAK SADASHIV VOZE *v.* RAGHI [4 Bom., A. C., 202

76. ———— Power of Collector to alter contract.—The Collector, when he has to enquire into contracts between the parties, and to determine whether a breach of any such contract has been committed, cannot, upon supposed considerations of equity, set aside that which the parties have deliberately agreed upon between themselves, and substitute further terms of his own. RAM COOMAR BHUTTACHARJEE *v.* RAM COOMAR SEIN . 7 W. R., 132

77. ———— Suit to set aside agreement.—*Failure of consideration.*—A person cannot sue to set aside an agreement under which he has lent money on security of a lease of land subject to extension in the event of deficiency in the assets, unless he shows such gross and excessive deficiency in the assets as amounts to a failure of the consideration and deprives him of the security for his money, and unless he also shows that this deficiency was caused by the representations of the party to whom he lent the money, and in spite of due care and diligence on

CONTRACT—*continued.*

8. ALTERATION OF CONTRACTS—*continued.*

(*b*) ALTERATION BY THE COURT (INEQUITABLE CONTRACTS)—*continued.*

Suit to set aside agreement—*continued.*

his own part. MAHOMED HOSSEIN *v.* OKHOY NARAIN PAUL . . . . . 4 W. R., 70

78. ———— Application to alter contract with regard to payment of rent.—*Fraud.*—An application to have a contract altered in regard to the amount of rent to be paid under it in future, cannot be generally entertained by a Civil Court, which can only reform a contract so as to make its terms accord with the original intentions of the parties. Where a party was induced to agree by fraudulent misrepresentation, this may entitle him to avoid a contract altogether; but if he abides by it, he cannot have its terms altered by the Civil Court NILMONEE SINGH DEO *v.* ISSUR CHUNDER GHOSAL [9 W. R., 92

79. ———— Grounds for setting aside agreement.—*Error in statement of accounts.*—In a written agreement by a debtor to pay his debt by instalments, securing the payment by a mortgage of land, the amount of the debts was erroneously stated to be greater than it actually was. In a suit on the agreement—*Held,* that such an error was ground for reforming the account, but not for setting aside the agreement. SETH GOKUL DASS GOPAL DASS *v.* MUBLI . I. L. R., 3 Calc., 602 : 2 C. L. R., 156

80. ———— Execution of deed obtained by misrepresentation.—*Cancellation of signature.—Contract Act, ss. 18 and 19.—Breach of duty —Ordinary diligence.*—The firm of Nicol and Company having suspended payment, a general meeting of creditors was convened, at which it was unanimously resolved that the business of the firm should be wound up by voluntary liquidation under the supervision of a committee; and that the winding up should be conducted by two trustees under the supervision and control of the said committee. At a subsequent meeting of the creditors the above resolutions were confirmed, and it was further resolved that a composition-deed should be prepared in pursuance of the terms of the above resolutions. The adoption of this last resolution was strongly pressed upon the meeting by the solicitor for the insolvent firm on the ground that the mode of procedure therein proposed was proposed solely in the interests of the creditors. He entirely repudiated the idea that the members of the firm were to obtain any benefit by the proposed measure. No mention was made at either of the meetings of any release to be given to the parties. The plaintiffs were creditors of Nicol and Company, and *R.*, *S.*, and *B.* were their respective agents in Bombay. *R.*, *S.*, and *B.* attended the said meetings on the plaintiffs' behalf, and were appointed members of the committee of supervision and control. A few days after the last mentioned meeting, *M.*, one of the partners of the insolvent firm, called upon *R.*, who at the time was deeply engaged in pressing an important business. *M* produced a deed which had been prepared by the solicitors of the firm, and which contained a clause

CONTRACT—*continued.*

8. ALTERATION OF CONTRACTS—*continued.*

(*b*) ALTERATION BY THE COURT (INEQUITABLE CONTRACTS)—*continued.*

Execution of deed obtained by misrepresentation—*continued.*

by which the creditors, in consideration of the assignment of the estate to trustees, released and discharged the members of the firm from all claims. *M.* was aware of the existence of the release in the deed. He asked *R.* to execute the deed, stating that it was "the trust deed." *R.* requested *M.* to leave the document, saying that he would go over it and return it in the course of the day. *M.* then earnestly pressed him to execute the document at once, stating that it was of the utmost importance that no time should be lost, as the native creditors were coming to his office, and that it was necessary that all the members of the committee of supervision should sign first. *R.* objected to sign the document without reading it, and *M.* thereupon led him to suppose that the deed only carried out what was agreed to at the creditors' meeting. Upon the faith of that assurance, *R.* executed the deed on behalf of the first plaintiffs in the belief that it was nothing more than an assignment to trustees for the benefit of creditors. Subsequently, on the same day, *M.* took the deed to *S.*, and asked him to sign. *S.* was also engaged in pressing business, and asked *M.* to leave the deed for perusal; but *M.* gave the same reason for not doing so that he had given to *R.*, and further stated that *R.* had signed, and that he (*M.*) hoped that *S.* would also sign. *S.* glanced at the deed, and being assured by *M.* that it was in order, thereupon on the faith of that assurance, and believing that the deed was nothing more than an assignment of the estate to the trustees, executed the deed on behalf of the second plaintiffs without reading it. *M.* on the same day took the deed, with the signature of *R.* and *S.* attached thereto, to *B.*, who was also engaged in pressing business, and asked him to sign it. After some conversation, *B.* said to *M.*: "The deed, then, is merely an assignment of the firm's effects for the creditors," and *M.* replied in the affirmative. *B.* then on behalf of the third plaintiffs executed the deed without reading it, believing it to be merely an assignment of the estate to the trustees. On the 15th October, *R.* and *B.* heard that the deed contained a release by the creditors to the debtors, and on the 16th October *S.* was also for the first time informed of it. On the 16th October *R.* and *S.* wrote a letter to *M.*, repudiating their signatures, and refusing to be bound by the deed; and on the 26th October, *B.* caused a similar letter to be written to *M.'s* solicitor. The plaintiffs sued to have the signatures of their said agents and managers severally cancelled, and to have it declared that the deed was not binding on the plaintiffs. *Held* that, having regard to what passed at the meetings of creditors, the deed, so far as it operated as a release, was a different deed from that which *R.*, *S.*, and *B.* either intended to execute, or thought they were executing when they affixed their signatures, and that not having read the deed, but having trusted to *M.* to inform them as to its contents, their signatures could not be held to be a consent to its contents, and that, therefore, so far as the deed operated as a release, their signatures were null. *Held*, also, that under the special circumstances of the case it became the duty of *M.* to communicate to *R.*, *S.*, and *B.* the existence of the release, and that not having done so he committed a breach of duty such as is contemplated by clause 2 of section 18 of the Contract Act (IX of 1872). *Held*, also, that, under the circumstances, *R.*, *S.*, and *B.* had not the means of discovering the truth with ordinary diligence, and that the exception to section 19 of the Contract Act was not applicable. THE ORIENTAL BANK CORPORATION *v.* FLEMING

[I. L. R., 3 Bom., 242

81. ——— Execution of deed obtained by fraudulent misrepresentation.—*Marriage presents,—Suit to recover value of.*—*A.* entered into a contract with *B.* for the marriage of his daughter *C.* The marriage was duly performed, but *C.* was never sent to the house of *B.*, and *B.* thereupon instituted a suit to compel *C.* to live with him; but the suit was dismissed on the ground that the marriage was invalid, it being found that *C.* was of age at the time of the marriage, and that her consent was not given. In a suit brought by *B.* against *A.*, to recover as damages the value of certain presents he alleged he had made to *C.'s* family in consideration of the marriage,—*Held*, that the plaintiff was not entitled to recover unless he could show fraudulent representations on the part of the defendants in consequence of which he was induced to contract the marriage and incur the expenses sought to be recovered. The case was remanded for the trial of the issue of fraud. ASGAR ALI CHOWDHRY *v.* MAHABHAT ALI

[13 B. L. R., Ap., 34: 22 W. R., 403

82. ——— Stipulation by judgment-creditor for additional sum on postponement of sale in execution.—Where a judgment-debtor agreed to pay an additional sum, and obtained postponement of the sale of his property,—*Held*, that the stipulation was not one which the Courts could decline to enforce. SOOKH RAM *v.* NIRPUT SINGH . . . . . **3 Agra, 67**

83. ——— Interest at exorbitant rate.—*Inequitable contract.—Stipulation in ikrar for payment of interest at high rate.*—The plaintiff advanced money to the defendants on an ikrar, by which it was agreed that he was to allow them to draw on him to the extent of R20,000 within three years, the plaintiff to repay himself by having an ijara of the defendants' share in certain property which his loan was to aid them in recovering. A 4-anna share of the profits, after deducting Government revenue and expenses, was to go in payment of interest on the money lent; half of the remaining three-fourths to go towards payment of the principal, and the other

CONTRACT—*continued.*

8. ALTERATION OF CONTRACTS—*continued.*

(*b*) ALTERATION BY THE COURT (INEQUITABLE CONTRACTS)—*continued.*

Interest at exorbitant rate—*continued.*

half to the defendants. If, at the end of the term, any balance remained due to the plaintiff, the defendants were to pay it with interest at 18 per cent. If the defendants failed to give the ijara, they agreed to pay the amount borrowed with interest at 6¼ per cent. per mensem. The plaintiff advanced the money and obtained a receipt therefor from the defendants. The defendants failed to give the plaintiff the ijara. In a suit brought to recover the sum lent by the plaintiff with interest, the first Court gave a decree for the plaintiff for the sum claimed with interest at the higher rate stipulated for in the ikrar, *viz.*, 75 per cent. On appeal by the defendants to the High Court,—*Held*, that, in the absence of evidence of any fiduciary relation between the parties, of any imposition or misrepresentation on the part of the plaintiff, or any want of capacity on the part of the defendants, and there being nothing in the circumstances which led to the execution of the ikrar to show that there was any constructive fraud on the part of the plaintiff, or any undue advantage taken by him, the contract was not one which the Court would set aside as being unreasonable, inequitable, or oppressive in character. OMDA KHANUM *v.* BROJENDRO COOMAR ROY CHOWDHRY

[12 B. L. R., 451: 20 W. R., 317

84. ——————— *Unconscionable agreement.—Usury.*—The defendant borrowed a sum of money from the plaintiff, a professional money-lender, and agreed by his bond to repay the principal with interest at 36 per cent. per annum. The defendant having made default in payment, the plaintiff brought the present suit. The defendant pleaded his minority. The Court found he was not a minor at the time he entered into the contract, but on the merits of the case the lower Court (PHEAR, *J.*) found that the agreement was unconscionable, and one which a Court of Equity would not enforce. *Held*, by the Appeal Court (GARTH, *C. J.*, and MACPHERSON, *J.*) in accordance with the decision of PHEAR, *J.*, that the plaintiff was only entitled to a decree for the amount actually received by the defendant from him, with interest at 6 per cent. MOTHOORMOHUN ROY *v.* SOORENDRO NARAIN DEB . **I. L. R., 1 Calc., 108**

85. ——————— *Unconscionable bargain.—Usurious agreement.—Contract Act, s. 74.*—Plaintiff sued to recover R643-10-6, value of 1,230 paras of paddy, due under an account dated 8th September 1876. The account, on a cadjan, was for R315 payable with 12 per cent. interest within fifteen days, and in default plaintiff to be paid, on 14th November 1876, paddy for the amount due calculated at the rate of 4 annas 7 pies per para. Immediately after the execution of this agreement the price of rice rose, the defendant did not pay within the fifteen days, and in the plaint in this suit the price of rice was calculated at 8 annas per para. *Held*, that the bargain was unconscionable. Under the Contract Act, section 74, in a case falling within its terms only reasonable compensation could be given, which in the present case would be interest at a somewhat high rate. The contract in effect was that, if the principal with 12 per cent. were not paid on 22nd September, double the amount should be payable on the 15th November. Such a contract a Court of Equity would not enforce. VENKITTARAMA PATTAR *v.* KESHAVA MENON . . **I. L. R., 1 Mad., 349**

86. ——————— *Unconscionable bargain.—Purdanashin lady.*—Fraud apart, a loan to a purdanashin woman from her own mukhtear at an exorbitant rate of interest, the security being ample, may be a hard and unconscionable bargain on which the contract for such rate of interest will not be enforced. *Benyon* v. *Cook, L. R., 10 Ch. Ap., 389*, referred to and followed. KAMINI SUNDARI CHOWDHRANI *v.* KALI PROSSUNNO GHOSE

[I. L. R., 12 Calc., 225
L. R., 12 I. A., 215

87. ——— **Undue influence.**—*Ground for setting aside deed.*—In this case an ikrarnamah, whereby the three plaintiffs (two of them being under age) parted with half of their property, without consideration, whilst not fully acquainted with their rights, without professional advice, and during a state of things likely to overawe them and materially affect the free exercise of their will, was set aside PREM NARAIN SINGH *v.* PARASRAM SINGH. PREM NARAIN SINGH *v.* ROODER NARAIN SINGH

[L. R., 4 I. A., 101

88. ——— **Unconscionable bargain.**—*Equitable relief.—Promissory note—Interest deducted in advance from the sum lent.—Inadequacy of consideration.—Grossly exorbitant interest*—The Court will afford no protection to persons who wilfully and knowingly enter into extortionate and unreasonable bargains. It is only where a person has entered into an extortionate bargain, and it is shown that he was in ignorance of the unfair nature of the transaction, that the Court is justified in interfering MACKINTOSH *v.* WINGROVE.

[I. L. R., 4 Calc., 137: 2 C. L. R., 433

89. ——— **Oppressive conditions in deed.**—*Inadequacy of consideration.*—Where money-lenders dealing with ignorant, illiterate peasants made use of the necessitous position of those peasants, who were seeking to raise a sum of money for the purpose of stocking and tilling their lands, to impose upon them a contract in the form of a mortgage, by which they agreed in default of punctual payment of the half produce, and other events, to sell their land at a gross undervalue, *viz.*, one-third of the amount of the mortgage debt, which in itself was not more than equal to half the value of the annual produce of the land, and to remain liable to the remaining two-thirds of that debt with interest, and, even if no default should occur on

CONTRACT—*continued.*

8. ALTERATION OF CONTRACTS—*continued.*

(*b*) ALTERATION BY THE COURT (INEQUITABLE CONTRACTS)—*continued.*

Oppressive conditions in deed—*continued.*

their parts in payment of a moiety of the annual produce, or the performance of their other covenants, and notwithstanding full payment of the principal, to continue for fifteen years to pay the half produce of the lands to the mortgagees. *Held* (reversing the decrees of both the Courts below), that the deed of mortgage should only stand as security for the payment of the principal sum of R300, and interest at 9 per cent., and in all other respects should be set aside as inequitable, fraudulent, and grossly oppressive. *Held*, also, that if in execution of the reversed decrees the lands had been made over to the mortgagees as purchasers, they should be restored to the mortgagors, and that the rents, profits, and produce received by the mortgagees while in possession should be set off on account against the said principal sum and interest, and that the balance should be paid by the party against whom the same might be found. Mere inadequacy of consideration, unless it be so great as to amount to evidence of fraud, is not sufficient ground for setting aside a contract, or refusing to decree specific performance of it. But inadequacy of consideration when found in conjunction with any such other circumstances as suppression of true value of property, misrepresentation, fraud, surprise, oppression, urgent necessity for money, weakness of understanding or even ignorance, is an ingredient which weighs powerfully with a Court of Equity in considering whether it should set aside contracts, or refuse to decree specific performance of them. KEDARI RANU *v.* ATMARAMBHAT. . **3 Bom., A. C., 11**

90. ——— Extortionate claims made by professional persons to litigants.—*Fiduciary relationship.*—All litigants are entitled to the protection of the Court from extortionate claims made upon them by those whose professional aid they seek. Brokers and meddlers in litigation, who avail themselves of the weakness and ignorance of suitors to obtain from them, under a pretence of services to be rendered, engagements for the payment of money, will find that protection will be afforded by the Court against them also. ROOP NARAIN MISR *v.* KUSHI RAM SINGH TANBIRAM **[2 N. W., 67**

91. ——— Parties dealing on unequal terms.—*Inequitable contract.*—Assuming that the same principles are applicable here as in the English Court of Chancery, the High Court held that although in a class of cases without positive fraud a contract may be set aside unless it is shown to have been made upon adequate consideration, yet, as a general rule, before the defendant is called upon to prove that he has given full value for property sold to him, the plaintiff must first make out that the parties to the bargain were dealing on terms so unequal as to render it improper for a Court of Justice to enforce any contract they may have made unless it can be shown that the contract was in

CONTRACT—*continued.*

8. ALTERATION OF CONTRACTS—*continued.*

(*b*) ALTERATION BY THE COURT (INEQUITABLE CONTRACTS)—*continued.*

Parties dealing on unequal terms—*continued.*

fact one which a prudent person with proper advice and assistance might well have made. JUGO BUNDHOO TEWAREE *v.* KARUM SINGH **[22 W. R., 341**

92. ——— *Release by widow, Suit to set aside.—Duress.—Coercion.—Fraud.—Grounds on which relief is granted.*—*B. R.*, the widow of a zemindar, having for valuable consideration released all her claims on her husband's estate in favour of *V. S.*, her husband's brother, by a deed executed five days after the death of her husband, brought a suit against *V. S.* to set aside the deed of release on the ground that it was obtained by threats and fraud, and to recover the estate,—*Held*, that it was not sufficient to find that the consent given by the plaintiff was not caused by coercion, as defined in the Contract Act, nor by duress as known to the English law; but that the questions to be decided were (1) whether undue advantage had been taken of the plaintiff's position; (2) whether the plaintiff had been sufficiently informed as to her rights or had proper advisers; (3) whether the contract was an unconscionable or "catching" bargain. BUCHI REMAYYA *v.* JAGAPATHI **[I. L. R., 8 Mad., 304**

93. ——— *Inequitable contract.*—In a suit brought upon two bonds for R2,000 and R1,000, respectively, where the transaction was found to be that defendant's property having been about to be sold in execution of a decree for a sum much more than R3,000, he was made to appear to borrow from the plaintiff at 75 per cent. interest, R3,000 which were immediately applied to the payment of the debt, the defendant deriving no other benefit, and the plaintiff not binding himself to stay execution. *Held*, that the contract in these bonds was of such a nature as to involve the conclusion that defendant was imposed upon and was not a free agent; and that the transaction was of a kind not to be supported by a Court of Equity. LALL BEHAREE AWUSTEE *v.* BHOLANATH DEY CHAKLADAR **[23 W. R., 49**

9. BREACH OF CONTRACT.

94. ——— Contract to carry coolies by Ship.—*Appointment of master prohibited from taking ship.—Acting against Emigration Act XIII of 1864.*—Where a contract was entered into for the carriage of coolies, the ship-owner was held guilty of breach of contract in appointing a master who was prohibited by an order of Government from commanding a ship carrying emigrants. EALES *v.* RUTTONJEE EDULJEE . . **1 Ind. Jur., N. S., 131**

95. ——— Act alleged to be not a breach of contract.—*Onus of proof.*—An agreement entered into between the plaintiff and defend-

CONTRACT—*continued.*

9. BREACH OF CONTRACT—*continued.*

Act alleged to be not a breach of contract—*continued.*

ants, members of the same caste, contained a stipulation that in the event of the defendant objecting to the receiving of a girl from, or the giving a girl to, the plaintiffs in marriage, the defendant should be bound to return R500 with interest, which the plaintiffs had paid to the defendant under the agreement. It was found by the Civil Judge that the fifteenth defendant's son was engaged to be married to the second plaintiff's daughter, and that the marriage was broken off on the part of the fifteenth defendant. *Held*, on special appeal, that this was *primâ facie* a breach of the agreement which entitled the plaintiffs to recover, and that it was for the defendants to show that it did not bring them within the terms of the agreement. KONI CHETTY *v.* VERIAPPA CHETTI [4 Mad., 325

96. ——— **Time for performance.**—*Reasonable time.—Conditional grant of lease.*—When an agreement to grant a lease was incomplete and conditional upon an advance within eight days or a reasonable time required to meet pressing demands, a delay of nineteen days was held to be unreasonable, and likely to defeat the object of the lease. FISCHER *v.* KAMALA NAICKER [3 W. R., P. C., 33 : 8 Moore's I. A., 170

97. ——— *Contract for sale of seed.—Excess refraction.*—A contract for the sale of seed contained the following provision:—"Refraction guaranteed at four per cent., with usual allowance up to six per cent., exceeding which the seller is to reclean the seed at his expense within a week; failing which buyers to have the option of cancelling that portion of the contract tendered, or of buying against the seller, or of taking the parcel as it stands, with usual allowance for excess refraction. Delivery from seller's godown in pile up to the 15th of July next." On the 10th July, the vendor tendered the seed. On examination the refraction was found to be above the contract rate. It was agreed that the vendor should reclean the seed; and on the 15th July, the purchasers went to take delivery of the seed, which was found still to be not sufficiently cleaned. On the 15th July, the vendor said that he should require a week longer for that purpose. The purchasers then cancelled the contract. In a suit by the vendor for damages for breach of contract,—*Held*, (1), that the breach of the contract was with the plaintiff; (2), that the week allowed for recleaning commenced from the 10th July; and that as the plaintiff had not succeeded in reducing the rate of refraction to the contract rate, the defendants had a right to reject the seed; and that the plaintiff was not entitled to further time to reclean it again. BUDDREE DOSS *v.* RALLI [I. L. R., 6 Calc., 678 : 8 C. L. R., 294

98. ——— **Agreement to deliver goods at specified place.**—*Tender of goods.—Right to rescind contract.*—If a person contracts to deliver goods at a specified place, he must be there in person or by agent, and be ready to deliver them; if

CONTRACT—*continued.*

9. BREACH OF CONTRACT—*continued.*

Agreement to deliver goods at specified place—*continued.*

to deliver them by a certain time, he must tender them so as to allow sufficient time for examination and receipt. But when a thing is to be performed at a certain place, on or before a certain day, to another party to a contract, the tender must be to the other party at that place, and that other party must be present at some particular part of the day before sunset, so that the act may be completed by daylight. Where a thing is to be done anywhere, a tender at a convenient time before midnight is sufficient. In case of violation of a contract, by one party, the other party may ordinarily rescind it totally or partially, provided he himself is guilty of no default or violation, and exercises the right within a reasonable time If, after default of the other party, he does an act recognizing the contract, he cannot afterwards rescind it. KARTICK NATH PANDEY *v.* GOVERNMENT [11 W. R., 58

99. ——— **Failure in performance of stipulation giving party right to rescind.**—*Impossibility of strict and literal performance.*—When an agreement provides that an act is to be done by one of the parties within a limited time, and the party fails to perform the act within such time, if the other party elects notwithstanding to take the benefit of the contract the latter must perform his part of it; and though exact and literal performance of the original stipulation has become impossible, the terms of the contract must be carried out as nearly as possible. BROJO SOONDUREE DEBIA *v.* COLLINS [13 W. R., 359

100. ——— **Revocation of contract by new agreement.**—*Breach of new contract.*—If a second contract be entered into between two parties in revocation of a previous one, the contractee cannot fall back upon the conditions of the first contract, on the ground of the breach by the contractor of the subsequent one, unless there be express conditions in the latter agreement to that effect. KALLIPERSAD SINGH *v.* GRANT . . . . . 2 Hay, 329

101. ——— **Prevention by one party of completion of contract.**—*Contract to cut trees.—Right of action.*—Plaintiff purchased, at advertised Government sale by auction, certain felled trees then lying in the forest of *K*. He also contracted for the delivery to Government of certain "sleepers" to be cut in the said forest. The Government refused to admit plaintiff's agent to the forest, and thereby prevented him from completing his contract. The remedy for such loss is by a common law action, and not by bill in equity, and a bill for the purpose ought consequently to be dismissed with costs. JOHNSON *v.* SECRETARY OF STATE [Cor., 71 : 2 Hyde, 153

102. ——— **Difference between articles contracted for and those tendered.**—*Action for non-acceptance.*—The plaintiffs contracted to supply the defendants with from 275,000 to 300,000 of gunny bags described as No. 6 quality,

CONTRACT—*continued.*

9. BREACH OF CONTRACT—*continued.*

Difference between articles contracted for and those tendered—*continued.*

size 40 by 28 inches, "the defendants to have the option of taking bags of a longer or shorter length at proportionate prices, duly giving a fortnight's notice to the plaintiffs, delivery to be taken in August 1870." The defendants, after taking delivery of 11,600 of the bags, found that the bags tendered were mixed in size, some being longer and some being shorter than the contract size, and refused to take delivery of the remainder. In an action for breach of contract in not accepting the bags, the Court below found on the evidence that out of 2,000 bags which were examined, 100 were short by from a quarter to half an inch, but that the bags which were really short were very few out of a large quantity which came up to contract size, and held, therefore, that there had been a substantial performance of the contract on the part of the plaintiffs. On appeal, the Court found that the parties did not contemplate any large margin of difference in the size of the bags, and that the proportion of those which differed was large enough to justify the defendants in refusing to take delivery, and held that the tender of such bags by the plaintiffs was not a substantial performance of the contract. MILLER *v.* THE GOURIPORE COMPANY **[8 B. L. R., 285**

103. ——— *Part acceptance of goods by defendant not according to contract.—Rate payable for such goods.*—The defendants contracted to purchase from the plaintiffs "2,000 maunds of fresh, clean, and good up-country indigo seed, guaranteed growth of season 1870-71, at R11 per maund, to be delivered to the defendants' agent at Hajipore in all February next. In part performance of this contract, the plaintiffs delivered, and the defendants' agent at Hajipore accepted 865 maunds of seed, no objection as to quality being then taken. But when the remainder of the seed was tendered in February the defendants refused to accept it on the ground that it was not according to contract. At the same time and upon the same grounds, they refused to pay the contract price for the seed already accepted, and tendered instead the market price at the time of delivery. In an action to recover the contract price of the 865 maunds delivered, and damages for loss on resale of the remainder of the seed, the Judge of the Court below found on the facts that the seed was not "seed of the growth of 1870-71" as far as it was reasonably possible to procure it; and that though there was evidence to show that seed of the previous season, if of good quality and in good preservation, was occasionally mixed with the new seed, and that seed so mixed had been accepted as a performance of contracts for 1870-71, yet there was no evidence that, under such contracts as the present, the seller was by custom at liberty to mix seeds of two crops so as to bring the sample up to an average quality; and, further, that a custom, so directly at variance with the express terms of the contract, could not, if proved, be allowed to prevail. *Held*, also, that the defendants had waived any objection to the 865 maunds which must therefore be taken as a good

CONTRACT—*continued.*

9. BREACH OF CONTRACT—*continued.*

Difference between articles contracted for and those tendered—*continued.*

delivery *pro tanto* under the contract, and must be paid for accordingly.—*Held* on appeal (affirming the decision of the Court below), that the plaintiffs had not delivered seed according to the contract; but reversing the decision of the Court below) that the contract was a contract for the delivery of the entire quantity of 2,000 maunds; and that the plaintiffs could only recover for the 865 maunds as on a new contract arising at the time when the seed was accepted; such contract being to pay for the seed according to its value, and not according to the rate stipulated for the 2,000 maunds. MACFARLANE *v.* CARR . . **8 B. L. R., 459: 17 W. R., 244**

104. ——— **Endorsement by parties on original contract.**—*Transfer of contract.—Action for non-acceptance.*—On the 16th April 1878 the plaintiffs contracted to purchase from *F. M. & Co.*, of Bombay, at R18 per ton, "*the entire cargo of coal per 'Culzean' amounting to 900 tons or thereabouts.*" On 18th April the plaintiffs transferred the contract to the defendants and one Nanabhai Bomansha, and the following endorsement was made:—"*The contract to be transferred to Messrs. Tullockchand and Shapurji and Nanabhai Bomansha at R20½. For C. H. B. Forbes and Selves, W. Tennent & Co.*" Underneath this endorsement the transferees wrote as follows:—"*Accepted 450 tons at R20½ per ton. Nanabhai Bomansha. Accepted 450 tons at R20½ per ton. Tullockchand and Shapurji.*" The *Culzean* arrived at Bombay with a cargo of 2,167 tons of coal, on board of which it appeared that 1,300 tons had been shipped to the Bombay Baroda and Central India Railway Company and 867 tons to the order of the shippers. *F. M. & Co.* were agents at Bombay for the shippers. The defendants refused to take delivery of the coal, on the ground that the contract transferred to them and Nanabhai Bomansha was a contract for an "entire cargo." The plaintiffs sued the defendants for non-acceptance, contending that there had been no transfer to defendants and Nanabhai Bomansha of the original contract, but a new several contract for separate portions of the cargo. *Held*, that the joint effect of the endorsement and the original contract was that the defendants agreed to purchase 450 tons, part of an entire cargo of 900 tons, or thereabouts; that, inasmuch as the cargo of the *Culzean* consisted of 2,167 tons, the defendants were not bound to accept any part of such cargo, and that the suit was not maintainable. *Borrowman* v. *Drayton, L. R. 2 Ex. D. 15* followed. FORBES *v.* TULLOCKCHAND MANOCKCHAND . . **I. L. R., 3 Bom., 386**

105. ——— **Dispute as to quality of goods tendered.**—*Right to examine goods.—Survey.—Reasonable time for examination of goods by purchaser.—Contract Act IX of 1872, s. 38.*—The defendant agreed to purchase from the plaintiffs one hundred full-pressed bales "fully good fair Kishli cotton" at R208-8 per candy, to be delivered from March 15th to April 1st. On March 21st the plain-

CONTRACT—*continued.*

9. BREACH OF CONTRACT—*continued.*

Dispute as to quality of goods tendered —*continued.*

tiffs sent the defendant a letter reminding him of the contract and requesting him to take delivery. On receipt of this letter the defendant put the matter into the hands of *V.* The plaintiff had then no cotton of the specific kind to deliver, nor did the letter refer to any particular bales. At 11-30 o'clock A.M., on March 30th, the plaintiffs sent the defendants a letter enclosing a sampling order directed to an employé of *Messrs. H. and S.*, on whose premises the bales referred to in the order were lying. *V.*, on behalf of the defendant, got samples taken of the cotton and examined them, but without reference on that day to any standard. He then, however, conceived doubts as to the quality of the cotton and expressed his doubts to the plaintiff in the evening of that day. On 31st March the plaintiffs sent the defendant a delivery order enclosed in a letter from their solicitors calling on the defendant to attend with his surveyor at 1 P.M. on that day to survey the cotton, as otherwise an *ex parte* survey would be held. This letter reached the defendant at 11-30 o'clock A.M., and was given by him to *V.* at noon of the same day. *V.* applied to *M.* to attend as surveyor, but *M.* was unable to do so. The plaintiffs had an *ex parte* survey held by *Messrs. C. and B.* at 1 P.M. and they pronounced the cotton, samples of which were submitted to them, to be "fully good fair Kishli cotton." While this survey was going on, the defendant was on the Cotton Green, but declined to attend, saying that *V.* and his surveyor were coming. Shortly afterwards *V.* did come, and subsequently wrote a letter to plaintiffs in the defendant's name, stating that the cotton was not of the description contracted to be sold by them, and asking for a survey. This letter reached the plaintiffs at 2-19 o'clock P.M. After this there was a discussion between plaintiffs and defendant and *V.* On that afternoon (the 31st March) the plaintiff's solicitors sent a letter to the defendant stating the result of the survey and requiring him to take delivery. This was answered by a letter of next day (April 1st) from the defendant's solicitors denying that the cotton was of proper quality or that proper notice of the survey had been given, alleging that the defendant had that morning attended with his surveyor and asked leave to survey the cotton which had been refused, and stating that the contract must be treated as cancelled. The cotton was sold by auction on April 5th. The plaintiffs brought this suit to recover R1,631-1-11 as damages for non-acceptance of the cotton. The defendants contended that there had been no reasonable time allowed by the plaintiffs for the examination of the cotton and that a joint survey should have been held. *Held*, that a joint survey was not necessary under the terms of section 38 of the Indian Contract Act (IX of 1872), and that the defendant having had a period of twenty-four hours for inspection, had had a reasonable opportunity of seeing whether the cotton offered by the plaintiffs was such cotton as the plaintiffs were bound by their contract to deliver. A purchaser of goods is not entitled to continue inspecting and examining the goods offered by the vendor until the expiration of the period for delivery. A reasonable opportunity for such inspection and examination is all that he is entitled to. RUTTONSEY MORARJI *v.* JAMNADAS PITAMBERDAS

[I. L. R., 6 Bom., 692

106. ——— Breach of warranty.—*Goods not agreeing with sample.—Conduct of parties.—Estoppel.*—In a suit for damages for breach of warranty where the dispute was whether the goods tendered (shellac) were according to the contract, it appeared that a sample had been taken by the plaintiff's sircar, and referred to the selling broker to decide whether the goods from which it had been taken ought to be accepted, and he decided that they should be taken at one rupee per maund less than the contract rate, which award the parties agreed to abide by. The sircar then went to the godown of the defendants, thoroughly examined the undelivered shellac, and removed it to the godown of the plaintiffs. *Held*, that after this the parties could not be allowed to raise the question whether there had been a breach of that contract and to ask for damages by reason of the goods not being of the quality contracted for. FORNARO *v.* RAMNARAIN SOOKDEB

[14 B. L. R., 180: 23 W. R., 136

107. ——— *Alleged breach of warranty by vendor on a sale and delivery of goods.—Burden of proof after acceptance, following upon an examination by purchaser.*—Under five contracts for the sale of good Burma cutch, to be delivered to a Calcutta firm, in Calcutta, by the vendors, who knew that it was bought for the export market, delivery and acceptance followed upon a searching examination of the cutch by the purchasers. The latter having sent advices of this purchase to a New York firm, with which they were in partnership, parcels of cutch were sold to different buyers in America, to whom, under such "forward" contracts, the cutch was shipped in separate shipments by the Calcutta firm. On the arrival of the cutch, objection was taken to its quality by the American buyers, who refused to take delivery. The Calcutta firm, thereupon, sued the vendors under the five contracts abovementioned. The burden of proof being upon the plaintiffs, who had accepted the cutch after full examination in Calcutta, to prove the breach of contract by the vendors by cogent evidence sufficient to rebut the presumption of due performance that arose from such acceptance,—*Held*, that this presumption was not rebutted in the absence of evidence as to the treatment of the cutch on its re-shipment by the plaintiffs, on the voyage from India to America, and at the port of arrival. GAN KIM SWEE *v.* RALLI BROTHERS

[I. L. R., 13 Calc., 237
L. R., 13 I. A., 60

108. ——— Executory sale.—*Delivery order.—Appropriation of goods to contract.—Substitution of liability.—Condition precedent.—Delivery in certain months.—Payment in advance.—Refusal to deliver.—Damages.*—In January 1883 *W.*

CONTRACT—*continued.*

9. BREACH OF CONTRACT—*continued.*

Executory sale—*continued.*

& Co., of Madras, contracted to deliver to *P. & Co.*, of Madras, certain goods of a certain quality, subject to survey before shipment, at a certain price "f. o. b. Cocanada, delivery in April and May; terms, full advance and local exchange ¾ per cent. payable at Madras." This contract was contained in bought and sold notes. It was further agreed that the goods were to be delivered on board any ship *P. & Co.* might direct at the port of Cocanada. *P. & Co.* paid the full amount of the purchase money in January. On the 31st March *P. & Co.* wrote to *W. & Co.* requesting that the goods might be marked in a certain way. On the 18th May *W. & Co.* wrote to *P. & Co.*, enclosing a letter from *W. & Co.*, to *S. N. & Co.* of Cocanada, requesting *S. N. & Co.* to hold the goods (which were said to have been purchased by *W. & Co.* from *S. N. & Co.* and to be in godown) at the disposal of *P. & Co.* In the letter to *P. & Co.* from *W. & Co.* the goods were also said to be in godown at that date. On the same day *P. & Co.* wrote to *S. N. & Co.* enclosing a delivery order for the goods (which *P. & Co.* stated they believed to be in godown), requesting that they might be marked in a particular way. On the 25th May *S. N. & Co.* wrote to *P. & Co.* informing them that they held the goods at *P. & Co.*'s disposal. On the 28th May *P. & Co.* received this letter. On the 31st May *P. & Co.* chartered a ship to take on board the said goods and other goods bought by *P. & Co.*, from *S. N. & Co.* and others, and wrote to *S. N. & Co.*, informing them that the ship would arrive about the 12th June. On the 5th June *P. & Co.* wrote to *S. N. & Co.* acknowledging receipt of a letter which stated that only a portion of the goods to be shipped was ready. On the 9th June *P. & Co.* received a letter from *S. N. & Co.* stating that all the goods were ready. On the 17th June the ship arrived at Cocanada. On the 21st June *S. N. & Co.* stopped payment and ceased to carry on business. No goods were delivered according to the contract. *S. N. & Co.* never had the goods to deliver between 18th May and 17th June. In a suit by *P. & Co.* to recover from *W. & Co.* the price paid and damages for breach of contract to deliver the goods, it was contended for *W. & Co.*: I.—That the transfer of the delivery order of the 18th May amounted to a delivery of the goods. *Held* that, as *S. N. & Co.* had neither had possession of the goods to be delivered nor had appropriated any goods to the contract, the delivery order was inoperative. II.—That the acceptance of the delivery order by *P. & Co.* amounted to an agreement that *S. N. & Co.* should deliver to *P. & Co.* the goods when ready, and that the liability of *S. N. & Co.* was substituted for that of *W. & Co.* *Held*, that such an agreement could not be inferred. III.—That as *S. N. & Co.* by accepting the delivery order were estopped from denying that they had possession of the goods as against *P. & Co.*, *S. N. & Co.* were discharged as against *W. & Co.*, and therefore *P. & Co.* had no remedy against *W. & Co.* *Held*, (1) that *S. N. & Co.* were not discharged as against *W. & Co.*, as *S. N. & Co.*'s representations were false; (2) that even if *S. N. & Co.* were discharged, this could not affect *P. & Co.*

CONTRACT—*continued.*

9. BREACH OF CONTRACT—*continued.*

Executory sale—*continued.*

IV.—That as *P. & Co.* had not supplied a ship in May, they had failed to perform their part of the contract and could not recover. *Held*, distinguishing *Bowes* v. *Shand* (*L. R., 2 App. Ca., 455*) and *Reuter* v. *Sala* (*L. R., 4 C. P. D., 239*), that the presence of the ship in May was not a condition precedent to *P. & Co.* recovering. V.—That *W. & Co.* had rescinded the contract on the 29th June by refusing t deliver, and therefore *P. & Co.* were only entitled to recover the price paid. *Held*, that *W. & Co.* were not entitled to rescind the contract. *Held*, also, that *P. & Co.* having paid in advance, were entitled to a reasonable time after the 29th June to prepare to purchase other goods, and were entitled to the difference between the contract price and the market price on the 1st of July as damages for the breach to deliver. SHAW *v.* BILL

[I. L. R., 8 Mad., 38

109. ——— **Carriers.**—*Railway receipt.—Jus tertii.—Title.*—In March 1871, *T. & Co.*, brokers in Calcutta, sold to *S. & Co.*, on account of *C.*, an up-country seed merchant, 200 tons of poppy-seed, and allowed *C.* to draw upon them to the extent of the value of fifty tons before despatch, on the terms of a previous contract, by which they had allowed *C.* to draw against cotton to arrive in Calcutta before the drafts matured, *C.* authorising them to receive payment on his account on goods sold and delivered through them. Towards the end of March, *C.* entered into an agreement with *E.*, a merchant in Calcutta, under which *E.* accepted bills to a large amount for *C.*, upon *C.'s* promise to cover the bills before maturity. In June *C.* ordered the defendant Railway Company to consign all goods despatched from Fyzabad to *E.'s* address, and empowered *E.* to take delivery of, and give receipts for, all such goods. In the same month, *C.* despatched from Patna, in bags supplied by *S. & Co.*, fifty-five tons of poppy-seed to Calcutta, and sent the railway receipt to *E.*, who was therein named as the consignee. One of the terms printed on the receipt stated that goods would only be delivered to the consignee named in the receipt, or to his order. In advising *E.* of the despatch of poppy-seed, *C.* informed him that it had been sold to *S. & Co.*, and that delivery was to be made through *T. & Co.*; and *E.* had also seen letters which passed between *C.* and his agents, in which the following passages occurred: "Our Calcutta firm will deliver the poppy to *T. & Co.*," and "Do your best, and hurry off despatches of fifty tons of poppy; the rest of the poppy and linseed can go to *E.*" *E.* endorsed the railway's receipt to *S. & Co.*, who paid the freight, and sircars of *E.* and *S. & Co.* together went to the railway station and demanded delivery, which the Railway Company at first promised to give, but afterwards, under an order from *C.* to "deliver fifty tons to *T. & Co.*, and to no other party, the rest of the seed to be delivered according to documents," they, at *T. & Co.'s* request, delivered the whole fifty-five tons to them. In an action by *E.* against the Railway Company for non-delivery of the seed to him,—*Held* (*per* MARKBY, *J.*), *E.* was mere agent of

CONTRACT—*continued.*

9. BREACH OF CONTRACT—*continued.*

Carriers—*continued.*

the vendor for the delivery of the goods; *T. & Co.* had superior title to the goods, of which *E.* had notice. *Held* (*per* COUCH, *C. J.*, and MACPHERSON, *J.*, on appeal) the Railway Company was bound to deliver to *E.* The property in the goods and the right of possession was in him; he had an authority coupled with an interest which *C.* could not revoke; he had no notice of the title of *T. & Co.*, which was an equitable right only. EAGLETON *v.* THE EAST INDIAN RAILWAY COMPANY
[8 B. L. R., 581: 17 W. R., 532

10. LAW GOVERNING CONTRACT.

110. ——— **Contract made out of British India.**—*Principal and Surety.—Lex loci contractus.*—Under a contract, made and to be performed in the territory of an Independent State, between the State and contractors, the latter received an advance of money, for the repayment whereof, in case the contract should fail, a third party became surety to the State. The contract failed and was terminated by the State, to which the surety repaid, on its demand, the money advanced, with some deduction on account of a part performance. For this amount the surety sued the principals, who were subject to the jurisdiction of the Courts in British India. In deciding whether the contract had or had not failed within the meaning of the suretyship undertaken by the plaintiffs,—*Held* that not the law of British India, but what was in the contemplation of the parties as to the result of the contract when they entered into it, must be regarded. SUJAN SINGH *v.* GUNGA RAM . I. L. R., 8 Calc., 337
[L. R., 9 I. A., 58

CONTRACT ACT—

1. ——— *Operation of.—Semble,*—The Contract Act is not retrospective. OMDA KHANUM *v.* BROJENDRO COOMAR ROY CHOWDHRY
[12 B. L. R., 451: 20 W. R., 317: and 21 W. R., 352

2. ——— **Illustrations appended to sections, How far binding.**—*Per* STUART, *C. J.*—Remarks on the legal character of the "Illustrations" attached to Acts of the Indian Legislature, and opinion expressed that they form no part of these Acts. NANAK RAM *v.* MEHIN LAL
[I. L. R., 1 All., 487

3. ——— **Illustrations appended to sections.**—The practice of looking more at the Illustrations in the Contract Act than at the words of the sections of the Act pointed out as a mistake. OMED ALI *v.* NIDHEE RAM . 22 W. R., 367

——— s. 2, cl. (d).

See CONSIDERATION.
[I. L. R., 4 Mad., 137
I. L. R., 6 Mad., 351

CONTRACT ACT, s. 10.

See MINOR—LIABILITY ON CONTRACTS.
[I. L. R., 11 Calc., 552

——— s. 11.

See MAJORITY, AGE OF—
[I. L. R., 7 All., 490, 763

——— s. 13.

See LACHES . I. L. R., 4 All., 334

——— s. 15.

See CONTRACT ACT, s. 25.
[I. L. R., 4 All., 352

——— s. 18, cl. 2.

See CONTRACT—ALTERATION OF CONTRACT—ALTERATION BY COURT.
[I. L. R., 3 Bom., 242

——— s. 19.

See CONTRACT—ALTERATION OF CONTRACT—ALTERATION BY COURT.
[I. L. R., 3 Bom., 242

See CONTRACT ACT, s. 25.
[I. L. R., 4 All., 352
6 N. W., 350

——— s. 20.

See CONTRACT ACT, s. 23—ILLEGAL CONTRACTS—GENERALLY.
[I. L. R., 3 Calc., 602

See COMPROMISE—CONSTRUCTION, ENFORCING, EFFECT OF, AND SETTING ASIDE DEEDS OF COMPROMISE.
[I. L. R., 6 Calc., 687

See LACHES. . I. L. R., 4 All., 334

1. ——— ss. 20, 21.—*Mistake of facts.—Erroneous expectation.*—The defendant executed to the plaintiff in 1847 a mulgeni kabuliat (corresponding to a lease at a fixed rental) agreeing to pay to the plaintiff R150 annually. At the date of the execution of the mulgeni the Government assessment was R56-8-0, but in 1872 it was enhanced to R129-8-0, and a local fund cess of R4-9-0 imposed in addition. The plaintiff sued the defendant to recover from him the enhanced assessment and the cess. *Held,* that the plaintiff was not entitled to recover, inasmuch as the defendant's liability was fixed by the terms of the mulgeni, which was binding, although it had been executed by both parties in the belief that the Government assessment would not be increased. A mistake as to existing facts may invalidate a contract; but an erroneous expectation, which events entirely falsify, has no effect. BABSHETTI *v.* VENKATARA MANA
[I. L. R., 3 Bom., 154

2. ——— *Mula-vargdars, Power of, to raise rent of mul-gaimdar.—Enhancement of assessment.—Power of the State.*—A mula-vargdar, or superior holder, cannot raise the rent of his mulgainidar, or permanent tenant holding at a fixed

CONTRACT ACT, ss. 20, 21—*continued.*

rent, on the ground that the assessment on the land has been enhanced at the Government survey. *Babshetti* v. *Venkataramana, I. L. R., 3 Bom., 154;* and *Ramkrishna Kine* v. *Narshiva Shanbog, S. A. No. 46 of 1879,* followed. *Vyakunta Bapuji* v. *The Government of Bombay, 12 Bom. Ap., 1,* referred to. RANGA v. SUBBA HEGDE . I. L. R., 4 Bom., 473

——— s. 22.

See PLAINT—AMENDMENT OF PLAINT [I. L. R., 9 Bom., 358

——— s. 23.

1. ILLEGAL CONTRACTS . . . 1093
(a) GENERALLY 1093
(b) AGAINST PUBLIC POLICY . . 1097
(c) COMPOUNDING CRIMINAL OFFENCES 1101
(d) ILLEGAL CESSES . . . 1104

See ACT XL OF 1858, s. 18. [I. L. R., 2 All., 902

See CONTRACT—WAGERING CONTRACTS. [I. L. R., 5 All., 443

See RIGHT OF OCCUPANCY—TRANSFER OF RIGHT . I. L. R., 7 All., 511, 878

1. ILLEGAL CONTRACTS.

(a) GENERALLY.

1. ——— s. 23.—*Contract void as contrary to law.—Agreement partly void and partly valid.*—When the void part of an agreement can be properly separated from the rest, the latter does not become invalid; but where the parties themselves treat debts —void as well as valid—as a lump sum, the Court will regard the contract as an integral one, and wholly void, upon which neither the principal nor the sureties can be sued. DAVLATSING v. PANDU [I. L. R., 9 Bom., 17

2. ——— *Contract between brokers to divide profits.*—A contract between two brokers to divide the profits of a transaction is not an illegal contract, and an action to enforce it is therefore maintainable. SUHAI v. BISHUN DYAL [1 Agra, 269

3. ——— *Contract in consideration that person will give evidence in civil suit.—Void contract.—Consideration.*—A contract to pay money upon the consideration that the plaintiff would give evidence in a civil suit on behalf of the defendant cannot be enforced. Such a contract is either for true evidence, and then there is no consideration, or for favourable evidence either true or false, and then the consideration is vicious. *Semble,*—If the consideration had been the plaintiff's promise not to evade process, that would still be no consideration for the defendant's undertaking. SASHANNAH CHETTI v. RAMASAMY CHETTI . . . 4 Mad., 7

4. ——— *Contract illegal and fraudulent as against third parties but enforceable between the parties to it.*—A contract between several

CONTRACT ACT, s. 23—*continued.*

1. ILLEGAL CONTRACTS—*continued.*

(a) GENERALLY—*continued.*

persons to make separate tenders to Government, and that whoever should obtain a contract from Government should share the profits with the others, although fraudulent towards the Government, will be enforced against any of such persons at the suit of any one of them who may have made the tender in pursuance of the contract. ISSER CHUNDRA GHOSE v. BHOOBUN MOHUN BANERJEE [Bourke, O. C., 313

5. ——— *Agreement to join Somaj.*—A suit, brought to enforce a penalty for breach of an agreement by which the defendant contracted to join a certain Somaj, of which the plaintiffs were members, and agreed that he would not, without the plaintiffs' permission, leave the community or join any other, it was held must be dismissed, the contract not being one capable of being enforced in a Court of law. NITAI SHAHA v. SHUBAL SHAHA [2 B. L. R., S. N., 4: 10 W. R., 349

6. ——— *Contract made by company before Registration Act XIX of 1857, s. 2.*—In a suit filed on the 28th of April 1866 and brought by a joint-stock company, after registration, to recover damages for breach of a contract made with the defendants before registration,—*Held* (by COUCH, *C. J.*, and ARNOULD, *J.*, affirming on appeal the decree of SARGENT, *J.*) that the contract was illegal under section 2 of Act XIX of 1857, and that the plaintiffs could not sue upon it. GUJERAT TRADING COMPANY v. TRIKAMJI VELJI [3 Bom., O. C., 45

7. ——— *Contract made by company before Registration Act XIX of 1857, s. 2.*—In a suit brought by a transferee of shares, in a joint-stock banking company formed after the passing of Act VII of 1860, and neither incorporated nor registered when the plaint was filed, to compel the directors, trustees, and public officers of the company to give up the share certificates which had come into the possession of the bank, or to pay damages to the plaintiff,—*Held* (by COUCH, *C. J.*, and SARGENT, *J.*, affirming on appeal the decree of ARNOULD, *J.*) that the company being illegal under section 2, Act XIX of 1857, the suit was not maintainable. MANIKJI SORABJI v. CAMA . . 3 Bom., O. C., 159

8. ——— *Payment in consideration of releasing person from prison.*—The plaintiff's husband being in jail, the plaintiff agreed with the defendants to pay them R50 in consideration of their obtaining her husband's release, which they stated they could do. She accordingly paid the money. In an action for breach of contract,—*Held,* the action would not lie, as the contract was an illegal one. PROTIMA AURAT v. DUKHIA SIRKAR [9 B. L. R., Ap., 38: 18 W. R., 450

9. ——— *Contract to obtain more favourable assessment by means not stated.*—In a written agreement the defendant, in consideration of a sum of money received by him, promised to obtain

CONTRACT ACT, s. 23—*continued.*

1. ILLEGAL CONTRACTS—*continued.*

(*a*) GENERALLY—*continued.*

a more favourable assessment upon certain villages in respect of waste and cultivated lands, and in case of failure to repay the amount received. In a suit to recover the amount paid to the defendant,—*Held*, that the contract was not vitiated by reason of illegality. *Aliter* if it appeared upon the face of the plaint, or if it were established by evidence independently of written agreement, that the arrangement was that the defendant should use corrupt or illegal means, or improperly exercise any personal influence which he possessed or professed to possess over a public servant. PICHARKUTTY MUDALI *v.* NARAYANAPPA AIYAN [2 Mad., 243

10. ——————— *Suit to recover bribe to Ameen.*—A civil suit does not lie to recover money paid to a Civil Court Ameen to induce him to make a favourable report. GOGUN CHUNDER DUTT *v.* JANOKEE . . . . 20 W. R., 235

11. ——————— *Contract not to alienate.—Agreement.—Consideration.*—By a written instrument, duly registered, *T.* agreed, in consideration of the recognition by his two brothers of his rights in the joint and undivided property of the three brothers, not to sell, transfer, or mortgage his share except to them, and, should he desire to dispose of it, to dispose of it to them for a certain sum. In breach of this agreement he gave a usufructuary mortgage of his share to *L.* *Held*, in a suit by *L.* to enforce the mortgage, that the agreement was valid, and that the mortgage was bad against *T.'s* brothers. LAKHMI CHAND *v.* TORI LAL [I. L. R., 1 All., 618

12. ——————— *Agreement for release of attached property.—Contract Act, s. 20.—Mistake of fact.*—Where the property of a judgment-debtor had been attached in execution for a sum claimed to be due under a decree, but which sum in fact included interest not awarded by the decree,—*Held* that an agreement, whereby the debtor obtained the release of his property on condition of paying by instalments the entire amount claimed inclusive of the interest, was not unlawful and void under clause 2, section 23 of the Indian Contract Act; and that the mistaken belief of the parties to the agreement that interest could be recovered by proceedings in execution was not a mistake of fact rendering the agreement voidable under section 20 of that Act. SETH GOKUL DAS GOPAL DAS *v.* MURLI [I. L. R., 3 Calc., 602: 2 C. L. R., 156 L. R., 5 I. A., 78

13. ——————— *Agreement to become surety for good behaviour on amount of security being deposited with surety.—Illegal consideration.—Void assessment.—Suit to recover deposit.*—*F.* was required by the Magistrate, under the Code of Criminal Procedure, to furnish two sureties who should be responsible for his good behaviour, each in a certain sum. *S.* agreed to become a surety on condition that *F.* would deposit with him the amount of the security. *F.* made the deposit, and *S.* became a surety. The period for which *S.* was responsible for *F.'s* good conduct having expired without *F.* committing any act to forfeit the security and *S.* refusing to return the deposit, *F.* sued *S.* to recover the deposit. *Held* that, as the consideration for the agreement defeated the object of the law, the consideration was unlawful, and *F.* was not entitled to relief. FATEH SINGH *v.* SANWAL SINGH . . I. L. R., 1 All., 751

14. ——————— *Champerty and maintenance.—Assignment of chose in action.—Illegal consideration.*—A *bonâ fide* purchase of a share in a claim about to be enforced by a suit is not void under section 23 of the Indian Contract Act, and a suit may, after such purchase, be properly brought by the vendee and vendors as co-plaintiffs. *A.* and *B.* having a claim against *C.* for R13,099-3, but not being in circumstances themselves to institute a suit for its enforcement, sold fourteen annas or fourteen sixteenths of their claim to *D.* for R4,000; and a suit was then instituted by *A.*, *B.*, and *D.* against *C.* *C.* pleaded that the sale to *D.* was void under section 23 of the Indian Contract Act, and that *A.* and *B.* could not sue for two annas only of their entire claim. *Held*, that the sale to *D.* was not void; that the suit was properly framed; and that even if the sale had been void, the suit by *A.* and *B.* was not liable to dismissal. ABDOOL HAKIM *v.* DOORGA PROSHAD BANERJEE . . . . I. L. R., 5 Calc., 4

15. ——————— *Sale made to defeat execution of decree.*—There is nothing in sections 23 and 24 of the Indian Contract Act (IX of 1872) to support the opinion that a sale made with the view of defeating a probable execution, is a sale with fraudulent and unlawful object, and therefore void within the meaning of those sections. RAJAN HARJI *v.* ARDESHIR HORMUJI WADIA [I. L. R., 4 Bom., 70

16. ——————— *Government ferry.—Lease.—Ben. Reg. VI of 1819.—Illegality of contract.*—*M.* took a lease for three years of a Government ferry, and covenanted with the Magistrate, who granted the lease, not to underlet or assign the lease without leave or license of the Magistrate. *M.* subsequently admitted *B* as his partner to share with him equally in the profits to be derived from the lease. *Held*, that such partnership was not void by reason of the covenant not to underlet or assign the lease. *S. A. No. 119 of 1872*, decided on the 1st August 1872, overruled. GAURI SHANKAR *v.* MUMTAZ ALI KHAN . . I. L. R., 2 All., 411

17. ——————— *Illegal or immoral consideration.—Gift.—Fraud, Want of proof of*—In the year 1870 *H.* made a gift of certain immoveable property to *W.*, who was his mistress but lived with him as his wife, "on condition of her continuing to be his wife and remaining obedient to him, her husband." *W.* acquired possession of the property in virtue of the gift, and had held it for eight years, when a creditor of *H.*, under a decree enforcing a debt created by *H.* subsequently to the gift, sued, amongst

CONTRACT ACT, s. 23—*continued.*

1. ILLEGAL CONTRACTS—*continued.*

(*a*) GENERALLY—*continued.*

other things, for a declaration that the gift was invalid, as it had been made for an illegal consideration, *viz.*, the future immoral cohabitation of *W.* with *H.* *Held* that, assuming that the consideration for the gift was illegal, in the absence of fraud, the gift could not be set aside so many years after *W.* had acquired possession thereunder. *Ayerst* v. *Jenkins*, *L. R.*, *16 Eq.*, *275*, followed. LACHMI NARAIN *v.* WILAYTI BEGAM . . **I. L. R., 2 All., 433**

Affirmed on appeal to the Privy Council in RAM SARUP *v.* BELA . . . **I. L. R., 6 All., 313 [S. C. L. R., 11 I. A., 44**

18. ——————— *Contract in consideration of past cohabitation.—Immoral or void consideration.*—*M.* had for many years lived with *G.* as his concubine. In consideration of such past cohabitation, *G.*, by an agreement in writing, dated the 28th March 1869, and duly registered, settled an annuity on *M.*, charging a portion of his real estate with the payment of such annuity. *Held*, in a suit by *M.* against *G.'s* heir, his married wife, to enforce the agreement, that the consideration for the agreement was not under the law then in force immoral, nor was the agreement, under the same law, void for want of consideration. *Held* also that, before *M.* could recover from the defendant on the agreement, it was necessary to show that the defendant had received funds available to meet the claim from the profits of the estate charged with the payment of the annuity, or other property of *G.* MAN KUAR *v.* JASODHA KUAR . . **I. L. R., 1 All., 478**

19. ——————— *Gambling.—Mofussil of Madras.—Money lent for, recoverable.*—Gambling not being prohibited by law in the mofussil of the Madras Presidency, money lent for such gambling is recoverable by suit. SUBBARAYA *v.* DEVANDRA **[I. L. R., 7 Mad., 301**

(*b*) AGAINST PUBLIC POLICY.

20. ——————— *Contract against policy of the Insolvent Act.*—In a suit for money due on three promissory notes,—two of them executed by defendant and one *T.* in favour of plaintiff, the third by defendant alone,—the defence was that the plaintiff agreed to give up the three notes sued upon, and to take in lieu thereof a single note signed by *T.*, while a petitioner in insolvency, in favour of defendant, and by defendant endorsed to plaintiff. *Held*, as the consideration for the making of that note by *T.* was the defendant's withdrawing his opposition in the Insolvent Court, that that arrangement was brought about by plaintiff to secure to himself and defendant an undue share of the insolvent's property, and was an arrangement contrary to the policy of the Insolvent Act, and therefore void. AGAR CHAND *v.* VIRARAGHAVALU CHETTI . . . **3 Mad., 172**

21. ——————— *Prohibiting discharge of obligation attaching under decree of Court.*—*A.* became surety for certain judgment-debtors, whose

CONTRACT ACT, s. 23—*continued.*

1. ILLEGAL CONTRACTS—*continued.*

(*b*) AGAINST PUBLIC POLICY—*continued.*

property had been attached in execution of a decree, but who had agreed with the decree-holder to liquidate the amount of the decree by yearly instalments. An agreement between *A.* and the judgment-debtors contained the following conditions: "If any of the instalments be paid by the said *A.*, the obligors shall not be at liberty to liquidate the remaining instalments either from their own funds or by borrowing money; but that *A.* shall continue to pay the instalments as they fall due, and shall hold possession of the estate." The judgment-debtors afterwards satisfied the decree in full. *Held*, in a suit against them by *A.*, that the above condition was void as contrary to public policy, as it prohibited the discharge of an obligation which, by decree of Court, the judgment-debtors were ordered to pay. LALL MUNEE *v.* PYAGDUT DOOBEY . **1 N. W., 137: Ed. 1873, 220**

22. ——————— *Agreement to officiate as patil.—Illegal contract as opposed to public policy.—Act XI of 1843.*—An agreement between two members of a patil family that they are to officiate in turns is not illegal as being opposed to public policy. The Court will not, however, compel the actual patil to vacate office under such an agreement as long as his appointment under Act XI of 1843 is unrevoked. VAKU VALAD RAM PATIL *v.* PAND VALAD MALJI PATIL . . . . **6 Bom., A. C., 243**

23. ——————— *Agreement to remunerate vakeel proportionately to the amount recovered.—Public policy.—Quære,*—Whether a special agreement entered into by the agent of a Hindu widow acting on behalf of a minor, under which the vakeel in an appeal he was conducting for her was to receive for his services a stated fee, and in case of success a further reward proportional to the amount recovered, was one which the Court would enforce. RAO SAHEB V. N. MANDLIK *v.* KAMALJABAI SAHEB NIMBALKAR **[10 Bom., 26**

See per WESTROPP, *C. J.*, IN VINAYAK RAGHUNATH *v.* GREAT INDIAN PENINSULA RAILWAY COMPANY **7 Bom., O. C., 118**

24. ——————— *Unlawful consideration.—Illegal contract.*—The defendant, with the expressed intention of benefiting the judgment-debtor, and of thwarting the judgment-creditor against whom he had a grudge and for whom he entertained ill-feeling, entered into a contract with a pleader of the Court in which the decree had been obtained, to pay him R50 if he could get the case, which was decreed, dismissed, struck off, or anyhow rejected from the file of the Court. *Held*, that the contract was one against public policy, and could not be enforced. RAMANDAS BANERJEE *v.* HAROLAL SHAHA **[1 B. L. R., S. N., 10: 10 W. R., 140**

25. ——————— *Contract of partnership with overseer in Public Works Department.—Fraud.*—Where an overseer in the Public Works Department, who is prohibited by the rules of his

CONTRACT ACT, s. 23—*continued.*

1. ILLEGAL CONTRACTS—*continued.*

(*b*) AGAINST PUBLIC POLICY—*continued.*

office from entering into any trade or contracts with that Department, enters into an agreement of partnership for carrying on business under contract with the Department, such agreement is a fraud upon the public, and is therefore one which a Court of Justice ought to treat as an absolute nullity. SHARODA PERSHAD ROY *v.* BHOLA NATH BANERJEE [11 W. R., 441

26. ——————— *Marriage, Contract to invalidate.—Public policy.—Hindu law.*—A contract entered into by Hindus living in Assam, by which it is agreed that, upon the happening of a certain event, a marriage is to become null and void, is contrary to the policy of the law, and a suit cannot be maintained upon it. SITARAM *v.* AHEERER HEERAHNER [11 B. L. R., 129: 20 W. R., 49

27. ——————— *Contract by person with license letting house or shop licensed.—Beng. Act II of 1866.—Contract against public policy.*—The intention of Bengal Act II of 1866 is that the person who has the license shall "keep," *i. e.*, dwell in, and have the management and control of, the shop or place of entertainment. A contract by which he lets the shop and the use of the license for a fixed term receiving rent, is contrary to the policy of the law and comes within the rule that a contract which is illegal or is contrary to public policy cannot be enforced. JUDOONATH SHAHA *v.* NOBIN CHUNDER SHAHA . . . . . 21 W. R., 289

28. ——————— *Husband and wife.—Divorce.—Promise of marriage.*—In consideration of advances of money made by *N.* to *V.*, a married woman (both being of the Kunbi caste), in order to enable her to obtain a divorce from her husband, *V.* promised to marry *N.* as soon as she should obtain a divorce. *N.* subsequently sued *V.* to recover the advances. *Held* that the agreement, having for its object the divorce of the defendant from her husband and her marriage with the plaintiff, was *contra bonos mores*, and, therefore, void. BAI VIJLI *v.* NANA NAGAR . . I. L. R., 10 Bom., 152

29. ——————— *Agreement executed in consideration of staying criminal proceedings.*—Plaintiff sued to recover from defendants, his brothers, R25,000, with interest, on a deed of assignment "B" granted to him by one *R. G.*, dated 30th October 1870, transferring to plaintiff a promissory note "A" for R25,000, executed by first and second defendants to the aforesaid *R. G.*, as one of the mediators, in conjunction with one *S. G.*, in a division of family property between plaintiff and defendants and others, agreeing to pay over on demand by the 30th September 1870 to plaintiff, through the mediators aforesaid, R25,000 in lieu and on account of family property in possession of defendants. The defendants admitted the execution by them of the document for R25,000, to be paid by them to plaintiff (A), and pleaded that it was given on consideration of the withdrawal of a criminal prosecution, or if not, that there was no consideration at all, and that, at the time of its execution by them, there was no dispute or question between them and plaintiff as to a partition of family property, which had been definitely settled by the Civil Court at Salem in Original Suit No. 2 of 1868, under the decree in which the defendants had recovered R13,000 and odd from the plaintiff. They denied any division of family property by mediation, as also that they agreed to pay R25,000 on account of family property in their possession, also the validity of A, and that it was legally binding upon them. The Court of first instance found (1) that a partition of family property was effected by mediation and the document A was executed to the mediators by defendants on account of family property in defendant's possession; (2) that A was valid in law and binding on defendants; and gave judgment for plaintiff for the amount sued for. Upon appeal by the first defendant,—*Held*, by the High Court, that as the decree in Original Suit No. 2 of 1868 (finally disposed of in appeal by the High Court) settled all the rights of the parties, and, among other matters, the question of this alleged concealment, or theft, which the Court found the present plaintiff to have falsely asserted, there was here, therefore, no *res dubia* or *lis incerta*, nor could either party believe that there was such. The final judgment of a competent Court in a suit to which the plaintiff was a party, had determined the matter. That, on the facts of the case, it seemed impossible to doubt that the note was executed as a consideration for getting rid of the criminal proceedings, and that, as such a consideration is not only null but vicious, the decree of the Civil Judge should be reversed. NAMASIVAYA GAUNDAN *v.* KYLASA GAUNDAN . . . . . 7 Mad., 200

See PUDISHARY KRISHNEN *v.* KARAMPALLY KUNHUNNI KURUP . . . . . 7 Mad., 378

30. ——————— *Contract not enforceable relating to social and religious customs.—Public policy.*—A Court cannot take notice of an agreement (*e.g.*, in the way of awarding damages for breach thereof) which has reference to social and religious customs, and which cannot be enforced by a Civil Court. An agreement between members of different Somajes to have social intercourse with each other, and to intermarry, is not opposed to public policy, but rather in accordance therewith. HURONATH PATTUR *v.* NITTO PARAMANICK . 22 W. R., 517

31. ——————— *Transaction defeating Government right of escheat.—Contract Act, s. 65.—Specific Relief Act, s. 35.*—Where the plaintiff and her mother executed in favour of the defendant a document which purported to divest the plaintiff and her mother of the entire property of the illom of which they were the sole proprietors; and to vest it in the defendant in consideration of his promising to marry and raise up heirs to the illom, and to maintain the plaintiff and her mother till death,—*Held* by INNES, *J.*, that the document aimed at defeating the right of escheat of the Government, and the transaction was against public policy with

CONTRACT ACT, s. 23—*continued.*

1. ILLEGAL CONTRACTS—*continued.*

(*b*) AGAINST PUBLIC POLICY—*continued.*

reference to the decision in *Cavali Vencata Narainappa's case, 8 Moore's I. A., 500,* but that the plaintiff being *in pari delicto* with the defendant could not recover the property. *Held* by KINDERSLEY, *J.*, that, as no claim was made by the Crown, it was not necessary to decide as to rights which may or may not be claimed by the Crown, and that if plaintiff and her mother were not, as apparently they were not, in the position of ordinary Hindu widows, there was nothing opposed to public policy in their disposing of the property, as being the last owners and competent to dispose of it absolutely. TAMARA SHERRI SIVITHRI ANDARJANOM *v.* MARANAT VASUDEVAN NAMBUDRIPAD . **I. L. R., 3 Mad., 215**

32. ——————— *Agreement to divide property.—Hindu law.—Public policy.*—There is nothing in Hindu law which makes illegal an agreement, entered into by expectants, to divide a particular property in a certain way, on the happening of a particular contingency. Nor is such an agreement contrary to public policy. *Wethered* v. *Wethered, 2 Sim., 183; Harwood* v. *Tooke, 2 Sim., 192; Hyde* v. *White, 5 Sim., 524,* followed. RAM NIRUNJUN SINGH *v.* PRAYAG SINGH

[I. L. R., 8 Calc., 138: 10 C. L. R., 66

33. ——————— *Contract in consideration of marriage.—Public policy.*—Where a Hindu, contracting a second marriage, agreed to confer, on the party whose sister was to be his second wife, a talook which was to be carved out of his estate, and until it was carved out, to make a yearly payment of a fixed sum,—*Held,* that the undertaking was for ample consideration and was not opposed to public policy. LALLUN MONEE DOSSEE *v.* NOBIN MOHUN SINGH

[25 W. R., 32

34. ——————— *Contract to give in marriage.—Consideration money, Suit for return of.—Public policy.*—The defendant, in consideration of R100, promised to give his minor daughter in marriage to the plaintiff; the defendant failed to fulfil his part of the promise, and the plaintiff brought a suit to recover the money paid as consideration for the promise. *Held* that such a suit would lie. *Jogeswar Chuckerbutty* v. *Panch Cowri Chuckerbutty, 5 B. L. R., 395, 14 W. R., 154,* approved. *Quære,*—Whether the Court could have enforced the payment of the R100 to the father of the minor as against the person engaging to marry the minor. RAM CHAND SEN *v.* AUDAITO SEN . **I. L. R., 10 Calc., 1054**

(*c*) COMPOUNDING CRIMINAL OFFENCES.

35. ——————— *Contract compounding an assault.*—A contract compounding an assault is not illegal, and may be sued upon. The fact of two of the defendants being Mahomedans does not affect the principle of this decision. MOTHOORANATH DEY *v.* GOPAL ROY . . **5 W. R., S. C. C. Ref., 16**

36. ——————— *Contract to pay money in consideration of foregoing a criminal prosecution.*—

CONTRACT ACT, s. 23—*continued.*

1. ILLEGAL CONTRACTS—*continued.*

(*c*) COMPOUNDING CRIMINAL OFFENCES—*continued.*

A contract to pay money in consideration of foregoing a criminal prosecution is opposed to public policy, and will not be enforced. The consideration to support the promise in such a contract is a vicious consideration. *Keir* v. *Leenan, 6 Q. B., 308; S. C. on appeal, 9 Q. B., 371,* observed upon. KANDAN CHETTI *v.* COORGEE SEIT . . . **2 Mad., 187**

37. ——————— *Agreement to abstain from prosecuting for giving false evidence.*—A Court cannot take cognizance of a bargain to abstain from the prosecution of a person who has committed such an offence as that of wilfully giving false evidence. QUEEN *v.* BALKISHEN

[3 N. W., 166: Agra, F. B., Ed. 1874, 252

38. ——————— *Compounding charge of fraudulent abstraction of documents.—English Common Law rule.*—The plaintiff, a resident of Pondicherry, held a bond from one of the defendants (the second) for a certain sum of money. This bond the plaintiff charged the said defendant before the French legal authorities with having fraudulently abstracted from his house in Pondicherry, and he obtained the arrest and extradition from the British territory of the second defendant, as also of his brother, the first defendant. The latter on his way to Pondicherry met the plaintiff, and a settlement of accounts took place. The fifth, sixth, seventh, and eighth defendants made themselves liable by executing the bond sued on for the sum found due to the plaintiff, and took indemnity bonds to themselves from the first defendant, the consideration being the agreement of the plaintiff to discontinue further proceedings in the criminal charge. The Court at Pondicherry sanctioned the agreement as a compromise by civil redress, and suspended further proceedings in accordance with the law in force in the settlement. *Held* that the contract was enforceable, the facts of the case not showing the compromise to be in its nature prejudicial as being in contravention of public policy under the Government of British India, or injurious to the good order and interests of society in regard to the administration of public justice. The English Common Law rule, that contracts for the compounding or suppression of criminal charges for offences of a public nature are illegal and void, has no application to a contract for compounding the prosecution of criminal proceedings for an offence against the municipal law of a foreign country. The rule of international law, that the law of the place of a contract governs its validity, is subject to the qualification that every State may refuse to enforce a contract when it is for the fraudulent evasion of its law, or is injurious to its public institutions or interests. SUBRAYA PILLAI *v.* SUBRAYA MUDALI

[4 Mad., 14

39. ——————— *Compounding charge of wrongful restraint.—Offence legally compoundable.—Suit to recover consideration.*—Where *A.* was criminally prosecuted by *B.* for wrongful restraint,

CONTRACT ACT, s. 23—*continued.*

1. ILLEGAL CONTRACTS—*continued.*

(c) COMPOUNDING CRIMINAL OFFENCES—*continued.*

and he came to terms with *B.* to pay him for the withdrawal of the complaint, or to deposit money or property with *C.* to be paid over to *B.* on the disposal of the case according to *B.'s* petition of withdrawal, and the Magistrate, instead of allowing the withdrawal of the charge, punished *A.* criminally,—*Held,* that *A.* could sue for the recovery of the money or property, as the charge was not one out of which it would have been illegal for *A.* to withdraw with the consent of the Magistrate, the offence charged consisting of an act for which *B.* might have sued for damages in the Civil Court. MATHOORA NATH BHOOMIK *v.* KENARAM KURMOKAR . 7 W. R., 33

40. ——————— *Transfer of property as compensation for criminal charge.—Illegal pressure.*—Certain parties convicted of a criminal offence, in order to avoid apprehension, entered into a compromise with complainant, who agreed to accept a sum of money as costs and as compensation for the disgrace he had suffered. They accordingly transferred to him some property in lieu of cash. *Held,* that the transfer was not made under illegal pressure, and they could not sue to set it aside. Though the offence was one in which a compromise could not legally be admitted, the error of the Magistrate in admitting it, the parties acting in good faith, ought not to affect the position of the parties. NUBBEE BUKSH *v.* HINGON . . . . . 8 W. R., 412

41. ——————— *Contract based on condonation of criminal offence.—Onus of proof.*—In a suit to enforce a contract, should the defendant plead that the contract was based upon the condonation of a criminal complaint against the plaintiff, which might have been of a nature not condonable by law, and that the contract was therefore void, it would be for him to show what was the nature of the offence complained of. KUMALA NATH SEIN *v.* BEHAREE KANT ROY . . . . . 11 W. R., 314

42. ——————— *Money paid to condone offence.—Causing death accidentally.*—Where, to suppress a criminal prosecution for having accidentally caused the death of his wife, plaintiff voluntarily paid money to defendant, knowing the defendant to be the nearest relative of the deceased who could take a part in the prosecution, the contract was held to be void, as against morality and public policy, and plaintiff was not entitled to sue for the money so paid. JETOO MAHATO *v.* MONURAM MAHATO [17 W. R., 84

43. ——————— *Agreement to withdraw charge of breach of criminal trust.—Unlawful agreement.—Void consideration.—Public policy.*—The plaintiff sued the defendant for possession of a house and premises, which he had bought from the latter. The defence was, that the sale was made for the purpose of raising money to be given to certain third parties as a bribe to induce them to withdraw a charge of criminal breach of trust which they had preferred against the defendant. The lower Appellate Court held that the defence was bad, on the ground that there was no evidence to show that the plaintiff was a party to, or in any way concerned in, the unlawful agreement, and gave the plaintiff a decree. *Held* that the decree was correct, as there was no evidence to show either that the plaintiff knew of the agreement to suppress the criminal prosecution, or that any money had been paid in pursuance of such unlawful agreement. RAJKRISTO MOITRO *v.* KOYLASH CHUNDER BHUTTACHARJEE [I. L. R., 8 Calc., 24

(d) ILLEGAL CESSES.

44. ——————— *Cess not authorised.—Beng. Reg. VII of 1822, s. 9, cl. 1.*—A claim for a cess or collection not avowed and sanctioned at the time of settlement nor taken into account in fixing the Government jumma, is illegal under clause 1, section 9, Regulation VII of 1822, and consequently inadmissible. HUSHMUT ALI *v.* SEETA RAM [1 Agra, 336

45. ——————— *Cess not authorised.—Beng. Reg. VII of 1822, s. 9, cl. 1.—Held,* that a suit substantially brought to prove a right to collect cesses not authorised under the provisions of clause 1, section 9, Regulation VII of 1822, being for an illegal object, was not maintainable. KHYRAT ALI *v.* MAHOMED YASEEN KHAN . . . . 2 Agra, 207

46. ——————— *Contract relating to illegal cess.*—Every contract relating to the collection from ryots and payment to the zemindar of an illegal cess is *ab initio* void. KAMALA KANT GHOSE *v.* KALU MAHOMED MANDAL [3 B. L. R., A. C., 44 : 11 W. R., 395

47. ——————— *Stipulation to pay collection charges.—Lease, Condition in.*—A condition in a lease, that the tenant will pay to the landlord collection charges, can be enforced if the condition is definite and certain in its nature, and forms part of the consideration for the lease. MAHOMED FAYEZ CHOWDHRY *v.* JAMOO GAZEE [I. L. R., 8 Calc., 730

48. ——————— *Payment added to rent.—Customary payment.*—Where a ryot has for many years been paying a *tullub beshee* of 2 annas in each rupee in addition to the *asal* jumma of his holding, and the two payments have been incorporated in time and have actually formed the subject of a single receipt, which the zemindar challenged the ryot to produce, but which the ryot failed to produce,—*Held* that, if a ryot, for the purpose of preventing disputes with his landlord and for securing his own interests, agrees to make a definite payment to his landlord in addition to his rent, the additional payment cannot be treated as an illegal cess, for the law favours such arrangements and provides for their being enforced. SERAJGUNGE JUTE COMPANY *v.* SORABDEE AKOOND [25 W. R., 252

CONTRACT ACT, s. 23—*continued.*

1. ILLEGAL CONTRACTS—*continued.*

(*d*) ILLEGAL CESSES—*continued.*

But *see* ORJOON SAHOO *v.* ANUND SINGH [10 W. R., 257

49. ——— *Suit for recovery of illegal cess.*—In the absence of a special agreement a claim for an illegal cess cannot be recovered in a court of law. SONNUM SOOKUL *v.* ELAHEE BUKSH [7 W. R., 453

50. ——— *Collection by tehsildar of present for zemindar for birth ceremonies.*—A sum collected by a tehsildar as *purvi-bhika* or present for the zemindar on the *annaprashun* ceremony (first eating of rice after birth), considered as an illegal cess, and therefore irrecoverable in a suit under Act X of 1859, section 24. NOBIN CHUNDER ROY *v.* GOORA GOBIND SURMAH . . . 14 W. R., 447

51. ——— *Kuntagara, Levy of.—Public policy.*—There is nothing illegal or contrary to public policy in the levying by riparian owners of "kuntagara" or a charge imposed upon boatmen for driving stanchions or pegs into the river bank for the purpose of attaching their boats thereto. DHUNPUT SINGH *v.* DENO BHUNDU SAHA . 9 C. L. R., 279

52. ——— *Agreement to pay prohibited tax.*—An agreement to pay a tax prohibited by an Act of the Legislature would defeat the object of the Act, and was, consequently, void, and could not be enforced—Indian Contract Act IX of 1872, section 23. GOSVAMI SHRI PURUSH OTAMJI MAHARAJ *v.* ROBB . . . I. L. R., 8 Bom., 398

——— s. 25.

See CASES UNDER CONTRACT ACT, s. 23—ILLEGAL CONTRACTS—GENERALLY.

See LIMITATION ACT, 1877, s. 19 (1871, s. 20) . . I. L. R., 1 Bom., 490
[I. L. R., 2 Bom., 230
I. L. R., 6 Bom., 683
I. L. R., 8 Bom., 405

See POWER OF ATTORNEY. [11 C. L. R., 581

See STAMP ACT, 1879, SCH. I, CL. I. [I. L. R., 8 Bom., 194

1. ——— *Consideration.—Void agreement.*—While certain hundis were running, the acceptor gave the holder, the drawer having become bankrupt, a mortgage of certain immoveable property as security for the payment of the hundis in the event of their dishonour when they became due. *Held*, in a suit on th mortgage-deed, the hundis having been dishonoured, that there was no consideration, within the meaning of that term in Act IX of 1872, for the agreement of mortgage, and the same was void under section 25 of that Act. MANNA LAL *v.* BANK OF BENGAL . . . I. L. R., 1 All., 309

2. ——— *Consideration.—Vakeel and client.—Promise of additional sum in case of success in suit.*—An agreement executed by a client to his vakeel, after the latter had accepted a vakalatnama to act for the former in a certain suit, whereby the client bound himself to pay to the vakeel, in the event of his conducting the suit to a successful termination, a certain sum in addition to the vakeel's full fees, held *nudum pactum*, and a suit founded upon it dismissed as unsustainable. RAMCHANDRA CHINTAMAN *v.* KALU RAJUTA . I. L. R., 2 Bom., 362

NUTHOO LALL *v.* BUDREE PERSHAD [3 Agra, 286

FULLER *v.* BISHOON KOOER' . 3 N. W., 25

3. ——— *Consideration.—Inam chithi.—Vakalutnama.—Act I of 1846, s. 7.—Nudum pactum.*—Where the acceptance of a vakalatnama by a pleader and the execution of an inam chithi (agreement) by his client, intended as remuneration for the professional services of the pleader, were contemporaneous, and the vakalatnama was not filed by the pleader until after the execution of the inam chithi,—*Held*, that the acceptance of the vakalatnama and the execution of the inam chithi constituted one transaction, and that the agreement was not illegal under Act I of 1846, section 7. SHIVARAM HARI *v.* ARJUN . I. L. R., 5 Bom., 258

4. ——— *Consideration.—Void agreement.—Immoral consideration.—Past cohabitation.*—Past cohabitation would not be an immoral consideration, if consideration it can properly be called, for a promise to pay a woman an allowance. Such a promise, however, is to be regarded as an undertaking by the promisor to compensate the promisee for past services voluntarily rendered to him, for which no consideration, as defined in the Contract Act, would be necessary. DHIRAJ KUAR *v.* BIKRAMAJIT SINGH . . I. L. R., 3 All., 787

5. ——— *Consideration.—Post-nuptial contracts.—Contract partly legal and partly illegal.*—The defendant, a Mahomedan husband, executed a kabinnama in favour of his wife, by which he agreed, among other things, that he would maintain her and make over to her whatever money he should earn; that he would never exercise any violence upon her; that he would not take her away from home; that it should not be within his power to marry or make any nika without her permission; that he would do nothing without her permission, and, if he did, she should be at liberty to divorce him, and realise from him the amount of dinmohur forthwith, and the nika would then be null and void. The plaintiff sued her husband upon this document, which was registered, to recover from him all his earnings amounting to R565, after deducting R54, which she admitted having received from him. The lower Appellate Court held, reversing the decision of the Munsif, that the agreement had been made subsequently to the marriage, and was, though registered, void for want of consideration. *Held*, on appeal, that the agreement being registered, came within section 25 of the Contract Act, and was not void on the ground that there was no consideration. Although some parts of the agreement might be illegal as being contrary to public policy, and therefore void, yet those which were legal could be enforced. (*See*

CONTRACT ACT, s. 25—*continued.*

Davlat Singh v. *Pandu, I. L. R., 9 Bom., 17.*) The Court treated the suit as one to enforce that part only of the contract which was legal, and considered the plaintiff entitled to recover a fair sum for her maintenance. POONOO BIBEE v. FYEZ BUKSH [15 B. L. R., Ap., 5: 23 W. R., 66

6. ——————— *Consideration.—Agreement to postpone execution proceedings.—Suit on agreement when execution is barred.*—In execution of a decree, dated the 28th May 1843, under which certain persons were jointly liable, the 10th February 1881 was fixed for the sale of the debtors' property which was then under attachment, but on that day all the debtors except one, *K.*, arranged with the decree-holders that the money should be paid by them in Bysack following, *i.e.*, by the 12th May 1881; that in the meantime the execution proceedings should be struck off, the attachment still subsisting; and that if default should be made, execution should proceed and no objection, on the ground that the decree was more than twelve years old, should be made by the debtors. The terms of the arrangement were embodied in a petition and sanctioned by the Court, which thereupon struck off the case. The debtors having made default on the 13th September 1881, the decree-holders applied for execution, but *K.*, who had not agreed to the arrangement, objected that the application was barred under section 230 of the Civil Procedure Code, and the objection was held to be valid. The decree-holders then sued to recover the money for which execution had been taken out, basing their suit upon the arrangement made by the defendants on the 10th February 1881. *Held*, that the plaintiffs were entitled to succeed on proof that there was a contract between the parties on good consideration, and that the petition of 10th February 1881, though not a contract giving the plaintiffs a right of suit, might be regarded as evidence corroborating other evidence of such a contract. SYAM SINGH v. BAIDYANATH RAI [13 C. L. R., 176

7. ——————— *Consideration.—Voluntary alienation or conveyance. — Gift.* — A decree-holder instituted a suit against his judgment-debtor and the latter's son for a declaration that a gift by the judgment-debtor to his son of certain property was fraudulent, and that such property was liable to be taken in execution of the decree. *Held* that, such gift having been made by the donor out of natural love and affection for the donee and in order to secure a provision for him and his descendants, and therefore for good consideration, and having operated, and the donor having reserved to himself sufficient property to satisfy the decree, the mere fact that the donor reserved to himself no property within the jurisdiction of the Court which made the decree was not a ground for holding that such gift was fraudulent and not made in good faith, and for setting it aside and allowing the decree-holder to proceed against the property transferred by it. The law relating to voluntary alienations explained. NASIR HUSAIN v. MATA PRASAD . . . I. L. R., 2 All., 891

8. ——————— *Consideration.—Agreement without consideration.*—The plaintiff sued to establish an agreement in writing by which the defendants promised to pay him a commission on articles sold through their agency in a bazar in which they occupied shops, in consideration of the plaintiff having expended money in the construction of such bazar. Such money had not been expended by the plaintiff at the request of the defendants, nor had it been expended by him for them voluntarily; but it had been expended by him voluntarily for third parties. *Held*, that such expenditure was not any consideration for the agreement within the meaning of section 2 (*d*) of Act IX of 1872, and the agreement did not fall within clause (2), section 25 of that Act, and was void for want of consideration. DURGA PRASAD v. BALDEO . I. L. R., 3 All., 221

9. ——————— *Promise to pay.—Balancing accounts.—Account stated.*—The Gujerati words "baki deva," which are of common use in balancing accounts, import no more than the English words "balance due," from which an unwritten contract may be inferred, but which do not of themselves amount to a promise to pay within the sense of Act IX of 1872, section 25, clause 3. RANCHODDAS NATHUBHAI v. JEYCHAND KHUSALCHAND [I. L. R., 8 Bom., 405

10. ——————— *Promise to pay.—Acknowledgment.—Account stated.—Adjusted account.—Adjustment of accounts, Effect of.—"Ruzu"—Limitation Act (XV of 1877), s. 19.*—The "ruzu" or adjustment of an account can operate either as a revival of an original promise or as evidence of a new contract. If it is to be used as evidence of a new contract furnishing a basis for a new cause of action, it must contain a promise in writing duly signed as required by the Contract Act IX of 1872, section 25, clause 3, a bare statement of an account not being such a promise. RAMJI v. DHARMA [I. L. R., 6 Bom., 683

11. ——————— *Promise to pay a debt barred by limitation.—Judgment-debt.*—The holder of a decree for money, dated the 22nd June 1868, applied for execution on the 23rd February 1869. In September 1869, before the decree had been executed, the judgment-debtor, admitting that a certain amount was due under the decree, agreed to pay such amount by instalments; and that, if default were made, the decree should be executed for the whole amount thereof. Default having been made early in 1873, the decree-holder applied at once for execution of the decree. On the 5th May 1873, a petition, signed by the judgment-debtor, was preferred on his behalf to the Court executing the decree, such petition being in effect as follows: "Execution case for R6,839-15-3. In this case the decree-holder has filed an application for execution of his decree in consequence of a default in payment of instalments: the fact is that the petitioner has failed to pay the instalments simply owing to illness, otherwise he has no objection to the decree-holder's demand: in future he will not fail to pay instalments: he has written a letter to plaintiff asking him to pardon his breach of promise, and to agree to realise the decree-money by the instalments formerly fixed, and to stay execution

CONTRACT ACT, s. 25—*continued.*

of the decree for the present. The decree-holder has granted this request: the petitioner therefore presents this petition and prays that monthly instalments of R150 may be fixed, and execution of the decree be postponed for the present: in case of default being made in payment of two instalments in succession, the decree-holder will be at liberty to realise the balance of the decree-money with interest at twelve per cent. per annum." At the time such petition was preferred, execution of the decree was barred by limitation. *Held*, that a "debt" within the meaning of section 25 (3) of Act IX of 1872 includes a "judgment-debt," and such petition was a promise to pay a debt barred by limitation within the meaning of that law, and a suit founded on such petition to recover the balance of the money due under the decree was maintainable. BILLINGS *v.* UNCOVENANTED SERVICE BANK . **I. L. R., 3 All., 781**

12. ——————— *Acknowledgment of barred debt.—Kistbundi, Suit on.—Limitation Act, XIV of 1859, s. 4.*—*A.* obtained a decree in 1858 against *B.*, but did not apply for execution till 1864, when *B.*, although objecting that the decree was barred, presented to the Court, under arrangement with *A.*, a petition acknowledging a certain sum to be due, and executed a kistbundi agreeing to pay the debt by monthly instalments. *B.* paid several instalments, but did not do so on one occasion, until execution was taken out against her. On her death shortly afterwards, execution was taken out against her representatives. The representatives objected that the decree was barred, and that the kistbundi could not be substituted for the decree. The objection was, on appeal to the High Court, allowed. *A.* then brought a suit on the kistbundi. *Held*, that at the time the kistbundi was entered into, the decree was, under the limitation law then in force, capable of being executed, and that there was, therefore, valid consideration for the kistbundi. *Held*, also, that even had there been no valid consideration for the kistbundi, yet the principle laid down in section 25, clause 3 of Act IX of 1872, and which prevailed before the passing of that Act, would have saved the kistbundi from becoming void for want of consideration. HEERA LALL MOOKHOPADHYA *v.* DHUNPUT SINGH
[I. L. R., 4 Calc., 500
3 C. L. R., 554

13. ——————— *Renunciation by a co-parcener of his rights by registered document.—Suit for partition.*—The plaintiff, a member of an undivided Hindu family, having by a registered document renounced all right to the family property in favour of the remaining co-parceners, who were to manage the estate in future, pay all debts and maintain the plaintiff in the family, sued to recover his share of the family property. *Held*, that the plaintiff was still a co-parcener and was not estopped by the document from bringing the suit. APPA PILLAI *v.* RANGA PILLAI . . **I. L. R., 6 Mad., 71**

14. ——————— **and ss. 2(d), 15, and 19.**—*Bond.—Coercion.—Consideration.*—A person, while under arrest in execution of a decree which had been made against him by a Court having no jurisdiction to make it, gave the holder of such decree a bond for the amount of such decree *plus* a small sum paid for him for the stamping and preparation of such bond, in order that he might be released from such arrest. *Held* that such bond was given under duress, and that it was executed without consideration, the small sum paid by the holder of such decree for preparing and stamping the bond not being in any legitimate sense of the phrase "consideration" for such bond, and therefore such bond was void. BANDA ALI *v.* BANSPAT SINGH . **I. L. R., 4 All., 352**

CONTRACT ACT, s. 25 and ss. 2 (d), 15 and 19—*continued.*

15. ——————— **and s. 19.**—*Voidable contract.—Misrepresentation.—Suit to recover money advanced under contract.*—*J.* having represented to *C.* that there were good roads, metalled to within six or seven miles of the place where he wanted *C.* to forward a certain engine and boiler, and a fair kucha road the remainder, *C.*, relying on his statement, agreed to forward the same to the place of destination for a certain sum, part of which *C.* received on different occasions, and duly forwarded to the place the engine, but, on passage across an iron suspension bridge on the road being refused to the boiler by the officer in charge of the bridge on account of its weight, *C.* threw up the contract. *J.* having conveyed the boiler across the nala spanned by the bridge, and, finally, to the place of destination, sued to recover from *C.* the money expended by him in so doing, alleging breach of contract. It was held that the suit was rightly dismissed on the ground that the agreement was avoidable by *C.* under the provisions of section 19 of Act IX of 1872. It was also held that the plaintiff could not recover in the suit any portion of the moneys advanced to the defendant. JOHNSON *v.* CROWE . . . . . **6 N. W., 350**

1. ——————— **s. 27.**—*Contract in restraint of trade.—Consideration.—Exclusive right to convey passengers.*—In the case of covenants in restraint of trade, the deed of covenant must show a good consideration. The Courts will not enter into the question of the adequacy of the consideration. A covenant giving a person the exclusive right to convey passengers to and fro on the road from Ootacamund and Metapollium, is not a contract in general restraint of trade, and therefore is one which the law will enforce. AUCHTERLONY *v.* BILL . **4 Mad., 77**

2. ——————— *Contract in restraint of trade.*—In a suit for (so-called) damages, on the ground that defendants, after executing an agreement by which they stipulated to sell fish every day in plaintiff's bazar, and to pay a fee per diem, and bound themselves to pay "damages" to a specified extent, in the event of their leaving his bazar and resorting to any other bazar, had left his for another bazar, where they were vending fish,—*Held* that the suit could be maintained, being an action upon a contract, in which there was nothing illegal. MADHUB CHUNDER ROY *v.* LUKHEE JELLANEE
[9 W. R., 212

3. ——————— *Contract in restraint of trade.—Small Cause Court, Law of.—Agreement*

CONTRACT ACT, s. 27—*continued.*

between Hindus.—Acts IX of 1850 and XXVI of 1864.—21 Geo. III, c. 70, ss. 17 and 18.—Letters Patent, 1862, cl. 18.—Letters Patent, 1865, cl. 19.—The effect of Act XXVI of 1864 was, that suits in the Small Cause Court were to be decided according to the law or equity administered in the High Court; by the Charter of 1862 that law or equity was to be "the law or equity which would have been applied by the Supreme Court," and by the Charter of 1865 that "which would have been applied by the High Court" under the Charter of 1862. The Statute 21 George III, Cap. 70, which applied to the Supreme Court, and gave to Hindus the right to have matters of contract decided by their own laws, became, if its provisions apply to the High Court, part of the law of that Court not by virtue of the Statute itself, but by virtue of the Charter which was subject to alteration by the Governor General in Council; and having ceased to have any operation as an Act, it was unnecessary to repeal it expressly by the Contract Act (IX of 1872). That Act is applicable to Hindus residing in Calcutta; therefore, where the plaintiff, a Hindu, agreed with the defendants, also Hindus, that he would cease to carry on his business in a certain locality in Calcutta, in consideration of receiving from them a specified sum, it was held, in a suit to enforce the contract, that such an agreement was void under section 27 of the Contract Act. The words "not inconsistent with the provisions of this Act," in section 1 of the Contract Act, apply to "any usage or custom of trade" or "any incident of any contract." MADHUB CHUNDER PORAMANICK *v.* RAJCOOMAR DOSS

[14 B. L. R., 76 : 22 W. R., 370

4. ——————— *Contract in restraint of trade.—Damages.—Covenant.—Breach of covenant.*—*D.* and *E.*, being in England, entered into a written agreement with *A.*, *B.*, and *C.*, the partners of a firm carrying on trade in Madras, to go to Madras, and there enter into the service of the firm; the service to last for five years, or to be determined at any time by certain notice being given; and covenanted that on the expiry of the five years, or sooner determination of the service, they would not carry on within 800 miles from Madras any business carried on by the firm; and also covenanted that on such expiry, or sooner determination, they would, whenever requested by the firm so to do, return to England. In pursuance of the agreement *D.* and *E.* went to Madras, and entered into the service of the firm. After it had continued for about 2½ years the service was determined by notice from the firm. *D.* and *E.* then, in violation of their said covenants, refused to return to England, though requested to do so by the firm, and proceeded to set up and carry on, on their own account, business of the same kind as that carried on by the firm. *Held*, in a suit by the firm against *D.* and *E.* for damages for breaches of the said covenants, and for a perpetual injunction restraining *D.* and *E.* from carrying on in Madras, or within 800 miles from Madras, any business carried on by the firm, that, treating the covenant in restraint of trade as one entered into in England, it could not, even if valid by the law of England, be enforced in India, inasmuch as its object was to contravene the law of India (section 27 of Act IX of 1872). *Held*, further, that that covenant would have been void by the law of England because the limit of the restriction was unreasonable, and, as no narrower limit had been mentioned in the agreement, this was not a case where the covenant could have been enforced within a narrower and reasonable limit. *Held*, also, that the covenant to return to England, except so far as it operated improperly in restraint of trade, was a covenant the breach of which did not in any way cause damage to the firm, and therefore such breach did not entitle them to any damages. OAKES *v.* JACKSON

[I. L. R., 1 Mad., 134

5 ——————— *Contract in restraint of trade.—Public policy.*—In a suit upon an agreement binding defendants to remain subject to the orders of plaintiff, the head of their caste, not to carry on their trade with the assistance of any other persons than their own caste, and imposing penalties for non-performance,—*Held*, that it would be contrary to public policy to give effect to such an agreement. VAITHELINGA *v.* SAMINADA

[I. L. R., 2 Mad., 44

6. ——————— *Contract in restraint of trade.—Held* that a stipulation in a contract prohibiting any sales of goods to others during a particular period, of a similar description to those bought under the contract, is not a stipulation in restraint of trade under section 27 of Act IX of 1872. CARLISLE NEPHEWS AND COMPANY *v.* RICKNATH BUCKTEAR MULL

[I. L. R., 8 Calc., 809

7. ——————— *Contract in restraint of trade.*—A contract under which a person is partially restrained from competing, after the term of his engagement is over, with his former employer, is bad under section 27 of the Contract Act. *Quære*,—As to the effect of an agreement of service by which a person binds himself, *during the term of his agreement*, not, directly or indirectly, to compete with his employer. BRAHMAPUTRA TEA COMPANY *v.* SCARTH . . . I. L. R., 11 Calc., 545

8. ——————— *Contract in restraint of trade.—Contract void for uncertainty.*—Plaintiff, who was a broker, agreed to give up an admitted claim to brokerage on 2,000 corahs previously disposed of, in consideration of defendant, who was a commission agent for different kinds of goods, employing him to sell a like quantity of other corahs and all his other goods for the future, employing plaintiff alone as his broker for the sale of his goods. It was also agreed that if defendant did not sell the second batch of corahs through plaintiff, the brokerage on the whole would be payable by defendant. *Held*, that the agreement was not void either as being in restraint of trade or for uncertainty. BUSKIN *v.* RAMKISSEN SEAL . 23 W. R., 146

1. ——— s. 28, excep. 1.—*Agreement to refer to arbitration, Revocation of.—Common Law Procedure Act of 1854 (17 & 18 Vict., c. 125).—9 & 10 Will. III., c. 15.—3 & 4 Will. IV. c., 42.—Spe-*

CONTRACT ACT, s. 28, excep. 1—*continued.*

cific performance of agreement to refer.—Suit for damages for breach of agreement to refer.—A contract entered into by the plaintiffs with the defendants contained a clause providing, in case of any dispute, for a reference to two arbitrators in England, one to be appointed by each of the contracting parties, whose decision in the matter was to be final. The contract contained no provision for making the submission to arbitration a rule of Court, so that 9 and 10 William III, c. 15, and 3 and 4 William IV, c. 42, section 39, did not apply. Matter of dispute arising, the defendants refused to appoint an arbitrator, and an award was made by arbitrators appointed by the plaintiffs. Previous to the making of the award the plaintiffs, under the provisions of the Common Law Procedure Act, 1854, had the submission to arbitration made a rule of the Court of Common Pleas, In a suit in which the plaintiffs' claim was for damages awarded by the arbitrators and incurred by the plaintiffs in respect of the breach of the contract,—*Held*, the award was invalid. The making the submission a rule of Court has not the effect of depriving a party of his right to revoke, at any time before the award, the authority of arbitrators whom he has appointed: still less could it have any effect to prevent him from declining to appoint an arbitrator. *Held*, also, the contract was not within the scope of section 28, Act IX of 1872. To make an agreement conform to exception 1 of that section, the jurisdiction of the Courts must be excluded in all respects except the matter which is the result of the arbitrators' award. Agreements which exclude the jurisdiction of the Courts until an award is made, as in *Scott* v. *Avery*, *2 Jur., N. S., 815 : 5 H. L. C., 811*, are within that exception, and are not illegal. *Quære*,—Whether it was intended by that exception to authorise the Court to entertain a suit for specific performance of an agreement to refer to arbitration. Section 28, Act IX of 1872, does not forbid an action for damages for the breach of such an agreement. KOEGLER *v.* THE CORINGA OIL COMPANY . **I. L. R., 1 Calc., 42**

Held, on appeal, that the contract was not one of the nature referred to in section 28, Act IX of 1872. That section only refers to contracts which wholly or partially prohibit the parties absolutely from having recourse to a Court of Law. The first exception in that section applies only to a class of contracts where the parties have agreed that no action shall be brought, until some question of amount has first been decided by the arbitrators. *Semble*,—A suit will not lie to enforce an agreement to refer to arbitration, even in the case referred to in the first exception to section 28 of Act IX of 1872. THE CORINGA OIL COMPANY *v.* KOEGLER

[I. L. R., 1 Calc., 466

2. ——————— *Agreement not to appeal.—Void agreement.*—Where, in consideration of *A.* giving *B.* time to satisfy a decree against him held by *A.*, *B.* agreed not to appeal against the decree and did appeal,—*Held*, that the agreement was not prohibited by section 28 of Act IX of 1872, and that the Appellate Court was bound by the rules of justice, equity, and good conscience to give effect to it and to refuse to allow *B.* to proceed with the appeal which he had instituted in contravention of it. ANANT DAS *v.* ASHBURNER AND COMPANY

[I. L. R., 1 All., 267

See JATI RAM TALOOKDAR *v.* DASS RAM KOLITA

[3 C. L. R., 574

3. ——————— *Agreement not to appeal.—Release of judgment-debtor.*—Where a plaintiff had obtained a decree and under it in execution arrested his judgment-debtor, the latter filed a petition in Court agreeing not to prefer any appeal against the judgment obtained by the plaintiff in consideration of his release and being allowed to pay by instalments. *Held*, section 28 of the Contract Act had no relation to such an undertaking. PROTAP CHUNDER DASS *v.* ARATHOON

[I. L. R., 8 Calc., 455 : 10 C. L. R., 443

4. ——————— **excep. 1.**—*Agreement not to appeal.—Arbitration.—Misconduct of arbitrators.—Civil Procedure Code, ss. 521, 523, 524.*—In an agreement to submit to arbitration, which was filed in Court under the provisions of section 523 of the Code of Civil Procedure, it was stipulated that the decision of the arbitrator should be accepted as final, and that no appeal therefrom should be made by either party. *Held*, that this stipulation did not prevent the Court from setting aside the award on the ground of misconduct on the part of the arbitrator. RANGA *v.* SITHAYA . . . **I. L. R., 6 Mad., 368**

5. ——————— *Agreement to refer to manager questions arising under agreement.—Tramways Company.—Agreement with conductor.—Manager, Power of.—Jurisdiction of Courts of Justice.*—The plaintiff became conductor of the Calcutta Tramways Company in accordance with an agreement which, amongst other things, provided that "the Company will retain a sum of money deposited by the conductor together with all his wages for the current month as security for the discharge of his duties, and in case of any breach by him of the rules, the Manager of the Company shall be the sole judge as to the right of the Company to retain the whole or any part of the deposit and wages, and his certificate in writing in respect of the amount to be retained and the cause of such retention shall be binding and conclusive evidence between the parties in all Courts of Justice." On a reference from the Calcutta Court of Small Causes as to the effect of this agreement,—*Held*, that it was a contract to refer to arbitration rendered valid by section 28, example 1, of the Contract Act, and that the certificate of the Manager was conclusive. AGHORE NAUTH BANERJEE *v.* CALCUTTA TRAMWAYS COMPANY

[I. L. R., 11 Calc., 232

——————— **s. 29.**—*Agreement void for uncertainty.—General charge on property.*—A promise to pay out of the debtor's property indefinitely, and an indefinite order for the satisfaction of a decree out of the assets of a deceased person in whose hands soever they may be found, create no charge on specific property such as will bind it in the hands

CONTRACT ACT, s. 29—*continued.*

of a purchaser unless he purchases it in fraud. BHERI DORAYYA *v.* MADDIPATU RAMAYYA [I. L. R., 3 Mad., 35

See also DEOJIT *v.* PITAMBAR [I. L. R., 1 All., 275

——— s. 30.

See CONTRACT—WAGERING CONTRACT. [I. L. R., 9 Bom., 358 I. L. R., 5 All., 443

——— s. 38.

See CONTRACT—BREACH OF CONTRACT. [I. L. R., 6 Bom., 692

See TENDER . . 5 C. L. R., 105

1. ——— s. 39.—*Right to rescind.—Refusal to perform.—Time of essence of contract.—Suit for damages for non-delivery.*—Section 39 of the Contract Act only enacts what was the law in England and in India before the Act was passed,—*viz.*, that where a party to contract refuses altogether to perform, or is disabled from performing, his part of it, the other party has a right to rescind. In a suit for damages for the non-delivery of linseed upon a contract the terms of which as to payment were cash on delivery, part delivery had been made by the defendants, and a sum of R1,000 had been paid on account by the plaintiffs. The plaintiffs then made a claim against the defendants for excess refraction, and the defendants thereupon refused to deliver the remainder of the linseed unless the plaintiffs paid the full amount owing for the portion that had been delivered. The plaintiffs declined to accept these terms, and the defendants then cancelled the contract. *Held*, that there was not such a refusal on the part of the plaintiffs to perform their part of the contract as to entitle the defendants to rescind under section 39 of the Contract Act. SOOLTAN CHAND *v.* SCHILLER [I L. R., 4 Calc., 252 : 3 C. L. R., 287

2. ——— *Expression of.—Intention not to perform contract.—Right to sue for non-performance.—Rescinding contract.*—Where a vendor contracts to deliver goods within a reasonable time, payment to be made on delivery, if before the lapse of that time he merely expresses an intention not to perform the contract, the purchaser cannot at once bring his action unless he exercise his option to treat the contract as rescinded. MANSUK DAS *v.* RANGAYYA CHETTI . . . . 1 Mad., 162

——— s. 42.

See RIGHT OF SUIT—JOINT RIGHT. [I. L. R., 7 All., 313

——— s. 43.

See PARTIES—PARTIES TO SUITS—PARTNERSHIP, SUITS CONCERNING— [I. L. R., 6 Bom., 700

1. ——— *Suit against joint contractors.—Res judicata.*—A suit in which a decree has been obtained against one of several joint makers of a promissory note, is a bar to a subsequent

CONTRACT ACT, s. 43—*continued.*

suit against the others. The effect of section 43 of the Contract Act is not to create a joint and several liability in such a case. That section merely prohibits the defendant in such a suit pleading in abatement, and thus places the liability arising from the breach of a joint contract and the liability arising from a tort on the same footing. The rule laid down in the case of *King* v. *Hoare, 13 M. and W., 494*; and *Brinsmead* v. *Harrison, L. R., 7 C. P., 547*, is one of principle, not merely of procedure. HEMENDRO COOMAR MULLICK *v.* RAJENDROLALL MOONSHEE [I. L. R., 3 Calc., 353 : 1 C. L. R., 488

2. ——— *Decree against member of joint family for trading debt.—Suit to declare son's property liable for father's debt.*—*V.* and his three infant sons constituted an undivided trading Hindu family in 1875 when part of the family property was sold to pay a trading debt of *V.* In February 1877, *V.*, at the request of his wife, as compensation to his sons for the loss of their interests in the property sold, *bonâ fide* assigned to his sons, his share in a house, No. 9, *A.* Street. In October and November 1877, *M.* and *S.* each obtained decrees against *V.* for *bonâ fide* trading debts and issued execution against the house No. 9, *A.* Street. The mother of the infant sons intervened and the attachment was raised, and *M.* and *S.* were referred to a regular suit to establish their claims. In January 1878 *V.* was declared insolvent. *M.* and *S.* respectively sued to have it declared that the house No. 9, *A.* Street, was liable to be attached and sold in satisfaction of their decrees against *V. Held*, reversing the decree of KERNAN, *J.*, that the plaintiffs by obtaining decrees against *V.* had exhausted their remedy, and that a second suit against the sons of *V.* was not maintainable. *Hemendro Coomar Mullick* v. *Rajendro Lall Moonshee, I. L. R., 3 Calc., 353*, approved. GURUSAMI CHETTI *v.* SAMURTA CHUMIA MAMAR CHETTI. GURUSAMI CHETTI *v.* SADASIVA CHETTI [I. L. R., 5 Mad., 37

And *see* CHACKALINGA MUDALI *v.* SUBBARAYA MUDALI . . . I. L. R., 5 Mad., 133

3. ——— *Liabilities of joint contractors.*—Where five brothers had made themselves jointly liable for a sum of money under a bond, and mortgaged a certain mouzah as security for the debt; and the mortgagee, having subsequently taken a separate bond from each of two of the brothers for one fifth of the whole amount, now sought to recover the remaining three fifths of the said amount from the remaining three brothers; but the latter contended that the claim, being jointly held against all five, could not be broken up,—*Held*, that any one of the five might be sued for the whole amount, and that the plaintiff was entitled to recover the three fifths from the three brothers. MAHTAB SINGH *v.* SADHOORAM BHUGUT . . 25 W. R., 419

——— s. 44.

See EXECUTION OF DECREE—JOINT DECREE, EXECUTION OF, AND LIABILITY UNDER— . . . 6 C. L. R., 212

CONTRACT ACT, s. 44—*continued.*

——— *Release to one of several partners.—Compromise with one partner.*—In a suit for damages against a partnership firm, the plaintiffs compromised the suit with one of the partners upon the terms contained in the following receipt: "Received from *A.* the sum of R9,500 in full discharge of all claims upon him as an individual and as a partner in the late firm of *B. S. & Co.*, and we hereby undertake to immediately withdraw the suit against him and others." *Held* that although, according to English law, the receipt operated as a discharge to all the remaining defendants, yet that the 44th section of the Contract Act applies to liabilities arising out of the breach of a contract, as well as to the performance of contracts, and that *A.* alone was released. KIRTEE CHUNDER MITTER *v.* STRUTHERS

[I. L. R., 4 Calc., 336: 3 C. L. R., 546

——— s. 45.

See RIGHT OF SUIT—JOINT RIGHT.

[I. L. R., 7 All., 313

1. ——— s. 51.—*Suit for damages for non-delivery.—Time of essence of contract.—Contract Act, s. 55.—Readiness and willingness.*—In a suit for damages for non-delivery of linseed upon a contract the terms of which as to payment were cash on delivery, part delivery had been made by the defendants, and a sum of R1,000 had been paid on account by the plaintiffs. The plaintiffs then made a claim against the defendants for excess refraction, and the defendants thereupon refused to deliver the remainder of the linseed unless the plaintiffs paid the full amount owing for the portion which had been delivered. The plaintiffs declined to accept these terms and the defendants then cancelled the contract. *Held* by GARTH, *C. J.*, that section 51 of the Act was not applicable, inasmuch as it did not appear that the plaintiffs were unwilling to pay for the deliveries which the defendants refused to make, and that time was not of the essence of the contract so as to bring the case within the provision of section 55 of the Act. *Held* by MARKBY, J., that section 51 would have applied if the defendants, when they came to make delivery; had insisted upon the contract being strictly performed and upon payment being made on delivery; and that if the defendants had so insisted, time might have been of the essence of the contract within the meaning of section 55. SOOLTAN CHUND *v.* SCHILLER

[I. L. R., 4 Calc., 252: 3 C. L. R., 287

2. ——— *Sale of goods where no time is fixed.—Mutual obligations to pay for and deliver.*—In an action for damages for breach of contract,—*Held*, that no time being fixed for payment or delivery by a contract for the purchase and sale of certain goods, the construction of law is, that the seller will deliver on payment of the price, and that the buyer will pay the price on receiving the goods, and either party is competent to call upon the other within a reasonable time to fulfil his part of the agreement, if ready to fulfil his own. JUGGUNATH *v.* BECK . . . . . 2 N. W., 60

——— s. 53.—*Reciprocal promises.—Voidable contract.*—*B.* sued the obligees to enforce a bond hypothecating immoveable property, to the discharge of which he had agreed by means of a sale of the property. The contract of sale was never carried into effect, although the vendors were ready and willing to put him in possession of the property, as *B.* failed to pay the price which he covenanted to pay. It was held that *B.* was not at liberty to enforce the bond. NARAIN SINGH *v.* MADHO PARSHAD

[7 N. W., 153

——— s. 55.

See CONTRACT ACT, s. 51.

[I. L. R., 4 Calc., 252: 3 C. L. R., 287

——— *Sale of goods.—Delivery at certain date.—Rescission of contract—Vendor's remedies.—Time of essence of contract.*—In a contract for the sale of ascertained goods, terms cash on delivery, to be given and taken in ten or eleven days, the vendee obtained an extension of the time for the performance of the contract, agreeing to pay godown rent and interest. He took delivery of, and paid for, some of the goods, and subsequently obtained a further extension of time. A small balance remained in the vendor's hands, after giving the vendee credit for the goods taken delivery of, godown rent, and interest. After the expiration of the further time, the vendee tendered the price of the remaining goods and demanded delivery, when the vendors stated that they had rescinded the contract. In an action for damages for non-delivery,—*Held*, that time was of the essence of the contract, and that, under section 55 of the Contract Act, the vendors were entitled to rescind. BULDEO DOSS *v.* HOWE

[I. L. R., 6 Calc., 64: 6 C. L. R., 582

——— s. 56.—*Breach of contract.—Impossibility to perform a portion arising after execution.*—A contract was entered into between the plaintiff and the defendant, by which the plaintiff agreed to cultivate indigo for the defendant, for a specified number of years, in certain specified lands situated in different villages, with respect to portion of which lands the plaintiff was a sub-tenant only. Subsequently, during the continuance of the contract, the plaintiff lost possession of those lands, through his immediate landlord having failed to pay the rent, and having been in consequence ejected therefrom by the owner. In a suit by him, under the above circumstances, to have so much of the contract as related to those lands cancelled, on the ground that it had become impossible of performance through no neglect on his part,—*Held*, that such a case came within the provisions of clause 2, section 56 of Act IX of 1872 (Contract Act), and that the mere fact that the plaintiff could have paid up the debt due by his immediate landlord and so retained possession of the land, was not sufficient to constitute such an omission or neglect on his part as to take it out of the provisions of that section. INDER PERSHAD SINGH *v.* CAMPBELL

[I. L. R., 7 Calc., 474: 8 C. L. R., 501

CONTRACT ACT, s. 60.

See APPROPRIATION OF PAYMENTS.
[W. R., 1864, Act X, 15
[I. L. R., 13 Calc., 164

——— s. 62.—*Substitution of new contract for old one.*—The mere fact of one party alleging that a new contract has been substituted for an old one, does not of itself put an end to the old contract, even as against the party so alleging, unless the allegation is proved to be true. ROUSHAN BIBEE *v.* HURRAY KRISTO NATH . I. L. R., 8 Calc., 926

——— s. 65.

See CONTRACT ACT, s. 23—ILLEGAL CONTRACTS—AGAINST PUBLIC POLICY.
[I. L. R., 3 Mad., 215

See CONTRACT—CONSTRUCTION OF CONTRACTS . . I. L. R., 9 Mad., 441

See CONTRACT—WAGERING CONTRACTS.
[I. L. R., 9 Bom., 358

——— s. 68.

See MINOR—REPRESENTATION OF MINOR IN SUITS . I. L. R., 7 Calc., 140

——— s. 69.

See CHARTER-PARTY.
[I. L. R., 7 Bom., 51

1. ——— *Payment for which another person is liable.*—Section 69 of Act IX of 1872 was intended to include cases not only of personal liability but all liabilities to payment for which owners of land are indirectly liable, when such liabilities are imposed upon lands held by them. That section must be held to include such a case as a sub-lessee paying rent to a superior landlord, for which the intermediate lessee is liable under a covenant. MOTHOORANATH CHUTTOPADHYA *v.* KRISTOKUMAR GHOSE
[I. L. R., 4 Calc., 369

2. ——— *Money paid under compulsion of law.—Voluntary payment.*—A mortgagee of two separate properties became by purchase the owner of the equity of redemption of one of them, and of this property the value was so proportioned to his payments that the mortgage-debt was in effect satisfied. This mortgagee, however, obtained a decree and order in execution for the sale of the other property, on which his mortgage was the second. Of the latter property, the plaintiffs, who also represented the first mortgagee, had become purchasers, and they filed objections to the sale. These were disallowed, and they thereupon paid into Court money sufficient to satisfy the decree in order to prevent the sale. *Held*, that this was not a voluntary payment, nor a payment of money equitably due; but one made under compulsion of law,—*i.e.*, under pressure of the execution-proceedings. And *held*, that this might be recovered in a suit for a money-decree, the remedy not being confined to the execution-proceedings. DULICHAND *v.* RAMKISHEN SINGH
[I. L. R., 7 Calc., 648

CONTRACT ACT, s. 69—*continued.*

See MOHESH CHUNDER BANERJEE *v.* RAM PURSONO CHOWDHRY.
[I. L.R., 4 Calc., 539

3. ——— *Reimbursement of person paying money due by another in payment of which he is interested.—Purchase of mortgaged property.*—*M.* and *R.* conveyed certain property to *S.* by a deed of sale, in which the vendors asserted themselves to be in possession of the property, and no mention was made of the property being mortgaged. There was nothing to show that the purchaser purchased a mere equity of redemption, nor that he was aware of the mortgage. Before *S.* obtained possession of the property the mortgagee sued to enforce his lien and obtained a decree, and attached the property in execution, and it was advertised for sale. *S.* satisfied the decree, which was equal in amount to the purchase-money, and brought a suit to obtain possession of the property. The Court of first instance decreed the claim conditionally on the payment of the purchase-money to the defendants, but the lower Appellate Court reversed the decree, being of opinion that the plaintiff was entitled to an unconditional decree, and its decree was affirmed in special appeal. MAZHA ALI *v.* MAHOMED SAHIB KHAN . 7 N. W., 336

4. ——— *Revenue Sale Law (Act XI of 1859), s. 9.—Payment of revenue.*—Where two co-sharers in an undivided estate took from a third co-sharer a farming lease of her interest in a portion of the said estate, on the stipulation that they should meet the Government demand on the said co-sharer, and take credit for the amount in the rent reserved; and the two farmers leased out the same share in a dur-ijara lease to a fourth person, who, on the failure of the said farmers to meet the Government demand, paid it in himself to save the estate, and then brought a suit against the third co-sharer to recover the amount; and the Munsif decided that the suit could only lie against the two farmers, but the Judge ruled that the suit could only lie against the third co-sharer as proprietor;—it was found by the High Court, that as the third co-sharer's share was not separate, and the whole estate was liable to sale for default, the two farmers were generally liable as proprietors with the third co-sharer, and, having recovered the rent for the share, might have been made liable for the revenue, even if the suit had been brought, as supposed by the Judge, under section 9, Act XI of 1859, but—*Held*, that as the suit had not been brought under any particular section of the law, section 69 of the Contract Law applied to the suit as well as section 9, Act XI of 1859, and that the money paid by the dur-ijaradar was recoverable from the two farmers who had realised the rent and were responsible, both under their contract and as co-proprietors, for the revenue. TARINI *alias* SAWAH MONEE DEBIA *v.* SEEENATH MOOKERJI . . . . . 25 W. R., 385

——— ss. 69 & 70.

See CONTRIBUTION, SUIT FOR—PAYMENT OF JOINT DEBT BY ONE DEBTOR.
[I. L. R., 8 Calc., 113

CONTRACT ACT, ss. 69 & 70—*continued.*

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—CONTRACT.
[I. L. R., 4 All., 152

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—MONEY HAD AND RECEIVED.
[I. L. R., 4 All., 19

1. ——————— *Illegal collection of cess.—Bom. Act III of 1869, s. 8.—Suit to recover cess fraudulently levied.*—The plaintiffs sued to recover back from the defendant the amount levied by him as local cess on certain wanta lands belonging to the plaintiffs, the defendant claiming to be the superior holder of the village in which the lands were situated. The amount was levied by the defendant through the assistance of the mamlatdar under Bombay Act III of 1869, section 8. The defendant contended that, in consequence of a demand from Government, he had paid local cess on the whole of his talooka, including the village in which the plaintiffs' lands were situated and was therefore, entitled, under sections 69 and 70 of the Contract Act (IX of 1872), to recover from them the amount which he had paid to Government as a portion of the cess which rateably fell upon their lands. It was found that the defendant was not the proprietor of the lands held by the plaintiffs, and that the relation of landlord and tenant did not exist between them; also that defendant paid local cess for the plaintiffs' lands fraudulently and with the intention of thereby making evidence of title to their lands, knowing that he had no lawful or just claim to them. *Held*, that the defendant was not a person "interested in the payment" of the money made by him to Government, within the meaning of section 69 of the Contract Act, assuming that a portion of that sum was demanded by Government in respect of the plaintiffs' wanta lands, and that they were "bound by law to pay" it to Government. *Held*, further, that the defendant did not "lawfully" make the payment, within the meaning of section 70 of the Act, inasmuch as he did so fraudulently and dishonestly. DESAI HIMATSING *v.* BHAVABHAI
[I. L. R., 4 Bom., 643

2. ——————— *The Summary Settlement (Bom.) Act, VII of 1863, ss. 2, 6, 9.—Inamdar.—Suit for contribution.*—The plaintiff was the jaghirdar of a village in which the defendant held certain land as inamdar on the annual payment of a certain quit-rent. The plaintiff's jaghir was, in point of time, subsequent to the defendant's inam. Ever since the time of the jaghir, the ancestors of the defendant (and, after them, the defendant himself) paid the quit-rent to the ancestors of the plaintiff, and, after them, to the plaintiff himself. In 1869 the summary settlement was introduced into the village under Bombay Act VII of 1863. Under section 9 of that Act a notice was served upon the plaintiff by the Collector in respect of the village, and he accepted the settlement provided in sections 2 and 6 of the Act. Government, accordingly, granted the village to him at the summary settlement of two annas in the rupee of the full assessment. No notice was served upon the defendant under the Act, nor did the plaintiff inform the defendant of the notice which the plaintiff had received in respect of the village. The certificate issued by the Collector to the plaintiff, previously to the grant of the sanad regarding the settlement, contained the following passage: "Before the villages (Vesu and Sanya) were granted in jaghir, lands were held by peta-inamdars over which the jaghirdar has no right. They are entered in the sanad only for the purpose of receiving the settlement and paying it over to the Sarkar." In 1877 the plaintiff sued the defendant for the amount of three years' summary settlement which he (plaintiff) had paid to Government on account of the defendant's land. *Held*, that sections 69 and 70 of the Contract Act (IX of 1872) did not apply to the case. KAMALUDIN *v.* PARTAP MOTA . . I. L. R., 6 Bom., 244

3. ——————— *Suit for contribution.—Payment by one person where both are liable.—Quære,*—Whether a suit for contribution, where both plaintiff and defendants were liable for the money paid by the plaintiff, falls within the scope of either section 69 or section 70 of the Contract Act, which seems rather to contemplate persons who, not being themselves bound to pay the money or to do the act, do it under circumstances which give them a right to recover from the person who has allowed the payment to be made and has benefited by it. FUTTEH ALI *v.* GUNGANATH ROY
[I. L. R., 8 Calc., 113: 10 C. L. R., 20

4. ——————— *Contract, Relations resembling.—Money paid.—Voluntary payment.*—*B.* sold certain immoveable property to *A.*, one of the terms of the agreement of sale being that *A.* should retain a portion of the purchase-money, and therewith pay the amount of a simple decree for money against *B.* held by *C.* *A.* failed to pay the amount of *C.'s* decree, and *B.* therefore sued him for the balance of the purchase-money and obtained a decree. In the meantime *C.* had the property attached in execution of his decree against *B.* *A.* thereupon paid the amount of *C.'s* decree. *B.* subsequently took out execution of his decree against *A.* for the balance of the purchase-money, and *A.* paid the amount of the decree. *A.* then sued *B.* to recover the amount which he had paid in satisfaction of *C.'s* decree against *B.* *Held* that *A.* was entitled, under section 70 of the Contract Act, 1872, to recover such amount, *B.* having enjoyed the benefit of the payment, and the same not having been intended to be gratuitous. *Semble,*—That the case came within the provisions of section 69 of the Contract Act and of the principle laid down in *Dulchand v. Ramkishen Singh, I. L. R., 7 Calc., 648.* AJUDHIA PRASAD *v.* BAKAR SAJJAD
[I. L. R., 5 All., 400

5. ——————— *Vendor and purchaser.—Arrears of Government revenue.*—On the date of the purchase of a revenue-paying estate there were arrears of revenue due. The instrument of sale was silent as to the party liable to pay such arrears. The purchaser was compelled to pay such arrears. *Held*, that the purchaser could not recover the money so paid from the vendor. DOST MUHAMMED *v.* SAJJAD AHMAD . . . . I. L. R., 6 All., 67

CONTRACT ACT, ss. 69 & 70—*continued.*

6. ——————— *Payment of Government revenue by person wrongfully in possession of land.*—*B.*, who was in wrongful possession of land which by right belonged to *K.*, collected rents and paid the Government revenue. *K.* eventually established her title to the property, obtained possession and recovered the rents from the tenants, and *B.* was obliged to refund the same. Subsequently *B.* sued *K.* to recover the sum which he had paid on account of revenue. *Held*, that the claim did not fall within the provisions of sections 69 and 70 of the Contract Act, and the fact that the plaintiff had been a loser by his wrongful act, or that the defendant had been benefited by the payment he made, would give him no right of action against her. *Tiluk Chand* v. *Soudamini Dasi, I. L. R., 4 Calc., 566*, referred to. BINDA KUAR *v.* BHONDA DAS

[I. L. R., 7 All., 660

7. ——————— *Voluntary payment.*—*Landlord and tenant.*—*Government revenue, Payment of, by putnidar.*—*Defaulting proprietor, Liability of, to recoup putnidar who pays Government revenue for him, when a separate account has been opened.*—*Revenue Sale Law (Act XI of 1859), ss. 9, 10, 11, 13, 14 and 54.*—A putnidar who had made certain payments on account of Government revenue due by his superior landlords who had defaulted, although a separate account had been opened for the payment of such Government revenue, brought a suit to recover the amount so paid. In such suit it was contended that the payments were merely voluntary, and that the plaintiff could not recover them. *Held*, that the plaintiff was "interested" in making the payments, and was therefore entitled to recover under section 69 of the Contract Act. *Held*, further, that section 70 of the Contract Act applied to the case, inasmuch as the word "does" in that section includes payments of money, and also that the plaintiff was entitled to recover under section 9 of the revenue sale law, as he believed in good faith that his interest would be endangered by a sale taking place. The liability of a landlord under section 9 of the revenue sale law to recoup a person paying Government revenue for him does not depend upon the question of whether the money was originally deposited or not, but accrues upon its being credited in payment of the arrears. SMITH *v.* DINONATH MOOKERJEE . . . I. L. R., 12 Calc., 213

——————— s. 70.

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—CONTRACT.

[I. L. R., 3 All., 66
I. L. R., 4 All., 134, 152

——————— s. 72.

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—DAMAGES.

[I. L. R., 2 All., 671

1. ——————— *Liability of person to whom money is paid by mistake.*—*Principal and agent.*—A treasury officer, under the imposition of a gross fraud, paid money to the defendant, who was the innocent agent of the person who contrived the fraud. In paying the money the treasury officer neglected no reasonable precaution, nor was he in any way guilty of carelessness. *Held*, that the defendant was bound to repay the money received by him, and that he could not defend himself by the plea that he had paid it to his principal: nor could the Court allow that the circumstance that the principal was himself a servant of the plaintiff, and in the course of his employment obtained facilities for committing the fraud, relieved the defendant from his liability. SHUGAN CHAND *v.* GOVERNMENT, NORTH-WESTERN PROVINCES . I. L. R., 1 All., 79

CONTRACT ACT, s. 72—*continued.*

2. ——————— *Arrears of revenue.*—*Voluntary payment.*—*Mistake.*—*Payment under a mistake.*—The plaintiffs, believing that they held a four annas share, and the defendants the remaining twelve annas share, in a putni, the revenue of which was in arrears, paid to the zemindar, on the 8th of March 1876, a portion of the arrears corresponding to the share in the putni to which they considered themselves entitled. It was afterwards decided, in a suit between the parties, that the plaintiffs were not entitled to any share in the putni, and that the defendants were entitled to the whole sixteen annas thereof. Subsequently to this decision, the defendants, in paying up the arrears of revenue due on the putni, took the benefit of the payment made by the plaintiffs on the 8th of March 1876, and paid in only so much as, together with the previous payment, made up the whole arrear. The plaintiffs then brought the present suit to recover from the defendants the amount of the payment made to the zemindar on the 8th of March 1876. *Held*, that the payment was not a voluntary payment, and that the plaintiffs were entitled to recover. NOBIN KRISHNA BOSE *v.* MON MOHUN BOSE . I. L. R., 7 Calc., 573: 9 C. L. R., 182

But *see* TILUCK CHAND *v.* SOUDAMINI DASI

[I. L. R., 4 Calc., 566: 3 C. L. R., 456

3. ——————— *Payment of debt erroneously supposing person was liable to contribute.*—Where the plaintiff purchased property and discharged a debt for which the property was hypothecated, believing that certain persons were liable to contribute, of whom one was subsequently declared not liable to contribute,—*Held*, not to be such a payment by mistake as to give him a right of suit. NILKUNTH SAHEE *v.* HUNOOMAN PERSHAD

[3 N. W., 136

4. ——————— *Money paid under mistake.*—*Fraud inducing a mistake.*—*A.*, a gomastah of *B.'s* deceased husband, represented to *B.* that he had her husband's will in his possession, containing a legacy in *A.'s* favour, and obtained from *B.* an agreement for R2,000, expressed to be in consideration of the alleged will being given up to *B.*, of *A.* foregoing his legacy, and of services to be rendered by *A.* in winding up the affairs of the shop. In pursuance of this agreement *B.* paid a sum of money to *A.*, but upon discovering that the alleged will was not a will at all, sued to recover back the money so paid by her. *Held* that, under the circumstances, the taking of the

CONTRACT ACT, s. 72—*continued.*

agreement was a fraud upon *B.*; that the payment of the sum of money by *B.* was not a voluntary payment, and could be recovered back; and that the Court could not apportion the amount (if any) that might be claimable by *B.* for work done under the agreement. RUPABAI *v.* PARBHURAM KIRPASHANKAR . . . . . 8 Bom., A. C., 102

——— s. 73.

See LIMITATION ACT, 1877, ART., 116.
[I. L. R., 3 Mad., 76
I. L. R., 12 Calc., 357

——— s. 73, & ss. 77, 83, 84, & 107.—*Resale, Notice of.—Right of unpaid vendors.—Nominal damages.*—The defendant purchased from the plaintiffs a cargo of Watson's Hartley steam coal at R21 per ton, to arrive by ship *Grecian*, but on its arrival the defendant, on being called upon to do so, refused to take delivery, on the ground that the usual certificate that the coal was what it was stated to be did not accompany the cargo. The plaintiffs thereupon gave notice to the defendant that, unless delivery were taken, the coal would be sold on his account and at his risk; and on the defendant repeating his refusal to take delivery, the plaintiffs caused the coal to be sold, and it was purchased in the name of *M. & Co.* for R13 per ton. In a suit, which was stated in the plaint to be for the loss sustained by the plaintiffs on the re-sale, the Court found that the plaintiffs themselves were the real purchasers, and that the sale had taken place without proper notice, and under the circumstances was invalid. *Held*, both in the lower Court and on appeal, that the plaintiffs had, by the way in which they had dealt with the coal, rendered themselves accountable to the defendant in respect thereof, and that notwithstanding the defendant had committed a breach of the contract in refusing to take delivery of the coal, the plaintiffs were bound to give an account of the coal and prove that they had sustained a loss on the resale, and on their omission to do so they were not entitled to recover any damages. *Held* on appeal, *per* MARKBY, *J.*, that the plaintiffs were not entitled to put aside the sale as invalid, and treat the case as one for damages for breach of contract. Under the circumstances they were not entitled to even nominal damages. The mere shipment on board the *Grecian* did not pass the property in the coal to the defendant under section 77 of Act IX of 1872. *Per* PONTIFEX, *J.*—Whether, by virtue of the contract and the subsequent appropriation and shipment, the property in the coal passed or did not pass to the defendant within the meaning of section 84 or section 83 of Act IX of 1872, even if the sale were invalid, the plaintiffs were not entitled, considering their conduct in dealing with the coal, and the concealment of their interest in the purchase, and in the absence of satisfactory evidence of what ultimately became of the coal, to recover any damages. BUCHANAN *v.* AVDALL
[15 B. L. R., 276

——— s. 74.

See CONTRACT—ALTERATION OF CONTRACT—ALTERATION BY COURT.
[I. L. R., 1 Mad., 349

CONTRACT ACT, s. 74—*continued.*

See CASES UNDER INTEREST—STIPULATIONS AMOUNTING TO PENALTIES OR OTHERWISE.

See DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES—BREACH OF CONTRACT.
[I. L. R., 5 All., 238
W. R., 1864, 354
20 W. R., 481

1. ——— s. 76.—*Government currency note, Theft of.*—A Government currency note was stolen from *A.* and cashed by *B.* in good faith for *C.* On the conviction of *C.* for theft, the Magistrate ordered the note to be given to *B.* *A.* appealed to the Sessions Judge, who was of opinion that he was not competent to interfere as a Court of Appeal under section 419 of the Criminal Procedure Code; but submitted the case for the orders of the High Court. *Held*, that the provisions of section 76 of the Contract Act did not apply, as the change of a currency note for money is not a contract of sale, and that as the note came honestly into the hands of *B.*, the order of the Magistrate was right. EMPRESS *v.* JOGESSUR MOCHI . . . . I. L. R., 3 Calc., 379

2. ——— *Government currency note.—Goods.*—A Government currency note is not "goods" within the meaning of the Contract Act IN THE MATTER of MICHELL . 1 C. L. R., 339

——— s. 77.

See CONTRACT ACT, s. 73 . 15 B. L. R., 276

——— s. 78 and s. 86.—*Sale of goods.—Ascertained goods.—Transfer of ownership.—Breach of warranty.—Ordinary diligence.*—*A.* contracted with *B.* to sell him 975 maunds of rice, the whole contents of a certain golah at Kallygunge (near which place *B.* resided), at a certain rate. *B.* paid to *A.* certain earnest-money, and agreed to remove the whole of the rice, after weighing, on or before a certain date. *B.* transferred his contract to *C.*, who, through his servant, took delivery from *A.* of 130 maunds, paying to *A.* R1,000; but subsequently refused to take delivery of the residue, as he alleged it to be of inferior quality to that contracted for. The golah was accidentally burnt, and the residue of the rice destroyed. In a suit by *A.* to recover from *B.* the balance of the purchase-money (after deducting the payments made) under the contract,—*Held*, that the sale was complete, and the ownership, with the risk of loss in the rice sold, passed to *B.* under sections 78 and 86 of the Contract Act, because the contract was for "ascertained goods" for which *B.* had paid earnest-money and taken part delivery; and that it was not open to *B.* to rescind the sale on alleging and proving a breach of warranty on the part of *A.* unless he could bring the case within the provisions of section 19; but that he was precluded from so doing, because he might have discovered the inferiority of the quality of the rice by using "ordinary diligence." SHOSHI MOHUN PAL CHOWDHRY *v.* NOBO KRISHTO PODDAR
[I. L. R., 4 Calc., 801

——— s. 83.

See CONTRACT ACT, s. 73.
[15 B. L. R., 276

CONTRACT ACT, s. 84.

See CONTRACT ACT, s. 73.
[15 B. L. R., 276

——— **s. 86.**

See CONTRACT ACT, s. 78.
[I. L. R., 4 Calc., 801

——— **s. 90.**

See ATTACHMENT—SUBJECTS OF ATTACHMENT—ANNUITY OR PENSION.
[I. L. R., 6 All., 634

——— **s. 93.**—*Suit for damages for non-delivery.—Obligation to deliver.*—In a suit for damages on account of failure to deliver goods (*kulaye*) sold, where the contract was to deliver by weight, the weighment taking place in the seller's own premises, —*Held*, that as plaintiffs did not apply for delivery, the sellers, defendants, were not, under the Contract Act, section 93, bound to deliver the goods. KANOORAM SEIMAN *v.* GOLAP CHAND NOWLUCKHA
[24 W. R., 178

——— **s. 108.**

See DELIVERY ORDER.
[I. L. R., 8 Bom., 501

——— **s. 108, excep. 1.**—*Possession of goods by person other than owner.—Title conveyed by vendor to vendee.*—The plaintiff let to *D.* a piano on hire on the following terms:—"At R30 per month; if duly paid for and kept three years, shall then become the property of hirer." These terms were embodied in a voucher which was signed by *D.* The monthly hire was not regularly paid, and the plaintiff sued for and obtained a decree for a portion of the hire up to May 1873. Subsequently, in that month, *D.* sold the piano to the defendant, who obtained delivery of it in June. In a suit by the plaintiff in trover for conversion of the piano, the Judge found that the defendant acted in good faith. *Held*, that the possession acquired by *D.* was not possession by consent of the owner within the meaning of section 108 of Act IX of 1872, exception 1, and that he did not, by sale to the defendant, transfer the ownership in the piano to him. Exception 1 of section 108 does not apply where there is only a qualified possession, such as a hirer of goods has, or where the possession is for a specific purpose. GREENWOOD *v.* HOLQUETTE . 12 B. L. R., 42: 20 W. R., 467

——— **ss. 126-147.**

See DEKKAN AGRICULTURISTS' RELIEF ACT, s. 72 . . I. L. R., 5 Bom., 647

——— **s. 127.**

See PRINCIPAL AND SURETY—LIABILITY OF SURETY . . I. L. R., 1 All., 487

——— **s. 128.**

See PRINCIPAL AND SURETY—LIABILITY OF SURETY . . 4 C. L. R., 145

CONTRACT ACT, ss. 132, 139.

See BILL OF EXCHANGE.
[I. L. R., 3 Calc., 174

——— **s. 133.**

See PRINCIPAL AND SURETY—LIABILITY OF SURETY . I. L. R., 12 Calc., 330

See PRINCIPAL AND SURETY — DISCHARGE OF SURETY . . I. L. R., 3 All., 9

——— **ss. 133-139.**

See PRINCIPAL AND SURETY—LIABILITY OF SURETY . I. L. R., 12 Calc., 330

——— **ss. 134, 137.**

See PRINCIPAL AND SURETY—LIABILITY OF SURETY . . I. L. R., 7 Bom., 146

See PRINCIPAL AND SURETY — DISCHARGE OF SURETY . I. L. R., 8 All., 259

——— **s. 135.**

See PRINCIPAL AND SURETY—DISCHARGE OF SURETY . I. L. R., 6 Calc., 241

——— **ss. 139, 141.**

See PRINCIPAL AND SURETY—DISCHARGE OF SURETY . I. L. R., 8 All., 259

——— **s. 142.**

See GUARANTEE . I. L. R., 6 Mad., 406

——— **s. 151.**

See CARRIERS . I. L. R., 6 Calc., 227
[I. L. R., 10 Calc., 166, 210

See RAILWAY COMPANY.
[I. L. R., 3 Bom., 109

See BILL OF LADING.
[I. L. R., 10 Calc., 489

——— **s. 152.**

See RAILWAY COMPANY.
[I. L. R., 3 Bom., 109

See CARRIERS.
[I. L. R., 10 Calc., 166, 210

——— **s. 161.**

See CARRIERS.
[I. L. R., 10 Calc., 166, 210

——— **s. 170.**

See LIEN . I. L. R., 8 Calc., 312

See BAILMENT . I. L. R., 6 All., 139

——— **s. 171.**

See ATTORNEY AND CLIENT.
[I. L. R., 6 Calc., 1

See LIEN I. L. R., 8 Calc., 312

CONTRACT ACT—*continued.*

1. ——— s. 178.—*Custody of servant.—Possession.—Pledge of goods.*—A servant, entrusted by his mistress with the custody of goods, pawned them during her absence. The mistress sued in *trover* for the goods. *Held*, that the custody of the servant was not "possession" within the meaning of section 178 of the Contract Act, and that if he was to be regarded as having taken the goods into his possession for the purpose of pawning them, the case came within the second proviso to that section, and that accordingly the action would lie. BIDDOMOYE DABEE DABEE *v.* SITTARAM. BIDDOMOYE DABEE DABEE *v.* SOOBUL DAS MULLICK . I. L. R., 4 Calc., 497 [3 C. L. R., 398

See GREENWOOD *v.* HOLQUETTE [12 B. L. R., 42

2. ——— *Goods obtained by offence or fraud.—Bailment.—Pawner.—Pawnee.*—*G.* went to the plaintiff's place of business in Calcutta, and representing to him that he wanted some jewellery on inspection, and would purchase it if he did not return it within ten days, obtained from the plaintiff a quantity of jewellery, depositing as security R2,000 with the plaintiff. *G.*, having thus obtained the jewellery, took it to *K.*, at his residence, which was out of the local limits of the jurisdiction of the Court, and pledged the jewellery to *K.* for R6,000. In a suit brought against *G.* and *K.* to recover the jewellery or its value, *G.* did not appear, and *K.* alone defended the suit. *Held* that the plaintiff was entitled to recover the jewellery from *K.*, under section 178 of the Contract Act, *G.* having obtained it from the plaintiff by an offence or fraud within the meaning of that section. KARTICK CHURN SETTY *v.* GOPALKISTO PAULIT . . . I. L. R., 3 Calc., 264

——— s. 192.

See PRINCIPAL AND AGENT—LIABILITY OF AGENTS . . . 11 C. L. R., 547

——— ss. 202, 203.

See PRINCIPAL AND AGENT—REVOCATION OF AGENCY . I. L. R., 5 Bom., 253

——— s. 230.

See CHARTER-PARTY. [I. L. R., 7 Bom., 51

See PRINCIPAL AND AGENT—LIABILITY OF AGENTS . . I. L. R., 5 Calc., 71 [I. L. R., 5 Bom., 584

——— ss. 231, 232, 234.

See PRINCIPAL AND AGENT—LIABILITY OF PRINCIPAL . I. L. R., 4 Bom., 447

——— s. 235.

See CHARTER-PARTY. [I. L. R., 7 Bom., 51

——— s. 237.

See PRINCIPAL AND AGENT—AUTHORITY OF AGENTS . . 22 W. R., 156

CONTRACT ACT, ss. 239, 240.

See PARTNERSHIP—WHAT CONSTITUTES PARTNERSHIP . I. L. R., 4 All., 74

——— s. 247.

See HINDU LAW—JOINT FAMILY—DEBTS AND JOINT-FAMILY BUSINESS. [I. L. R., 3 Calc., 738

——— s. 249.

See PARTNERSHIP—RIGHTS AND LIABILITIES OF PARTNERS . 9 C. L. R., 21

——— s. 253, cl. 6.

See PARTNERSHIP—DISSOLUTION OF PARTNERSHIP . I. L. R., 10 Calc., 669

——— s. 253, cl. 10.

See PARTNERSHIP—DISSOLUTION OF PARTNERSHIP . . . 25 W. R., 49

——— s. 264.

See PARTNERSHIP—DISSOLUTION OF PARTNERSHIP . I. L. R., 8 Calc., 678

——— s. 265.

See COURT FEES ACT, s. 7, CL. 4. [I. L. R., 7 Bom., 125 13 C. L. R., 160

See COURT FEES ACT, SCH. I, CL. 1. [I. L. R., 7 Bom., 535

See JURISDICTION OF CIVIL COURT—PARTNERSHIP . . I. L. R., 7 All., 227

See PARTNERSHIP—DISSOLUTION OF PARTNERSHIP . I. L. R., 10 Calc., 669

1. ——— *Jurisdiction of District Court.—Suit for dissolution of partnership and for account.*—The suit was brought for a dissolution of partnership between plaintiff and first defendant, and for an account as between them. It was alleged in the plaint that plaintiff and first defendant entered into partnership in 1864 to work a jungle in the North Arcot District which had been leased to plaintiff for three years; that fourth defendant was subsequently admitted a partner, and that the contract was carried on under the style of *R. T. & Co.*; that in March 1867, fourth defendant took up a contract in Madras and another general partnership was established, of which plaintiff and first defendant were members; that the funds of the first firm, became incorporated in the second firm, which was styled *K. T. & K.*, and that this firm undertook several contracts in Madras and Chingleput; and finally, that the cause of action was the refusal of first defendant to account, and accrued in North Arcot District, where all the defendants resided permanently. The District Judge dismissed the suit on the ground that, under section 265 of the Contract Act, he had no jurisdiction. *Held*, on appeal, that the District Court of North Arcot had jurisdiction, as the defendants were resident within the district; that the provision in the Contract Act is permissive and does not

CONTRACT ACT, s. 265—*continued.*

prohibit a suit elsewhere than at the place where the partnership was carried on if a sufficient ground of jurisdiction exists. JAVALI RAMASAMI *v.* SATHAMBAKAM THERUVENGADASAMI

[I. L. R., 1 Mad., 340

2. ——————— *Jurisdiction of District Court.—Suit for adjustment of accounts of a partnership.*—Section 265 of the Contract Act, while it enables a partner, after the termination of a partnership, to apply to the District Court to wind up the business, does not take away the ordinary right of suit in any Civil Court having jurisdiction to have the accounts of the partnership taken. LUCHMAN LALL *v.* RAM LALL

[I. L. R., 6 Calc., 251: 8 C. L. R., 115

3. ——————— *Jurisdiction of District Court.—Partnership, winding up.—The Bombay Civil Courts Act, No. XIV of 1869.—Power of District Judge to refer to Assistant Judge a case falling under s. 265 of Contract Act.*—A previous dissolution of partnership is necessary in order to give jurisdiction to the District Court under section 265 of the Contract Act. Accordingly, where a suit was instituted in the District Court of Ahmedabad by some members of a partnership (which, however, was not dissolved at the date of the suit) for the winding up of the business of a ginning factory and for distributing among the shareholders any surplus that might remain, after providing for the payment of its debts, under section 265 of Act IX of 1872, and the Assistant Judge, to whom it was referred for trial by the District Judge, directed the dissolution of the partnership and the winding up of its business, the High Court on appeal reversed the decree of the Assistant Judge, and returned the plaint to the plaintiffs for its presentation to the proper Court. *Quære,*—Whether the District Judge had power, under the Bombay Civil Courts Act, XIV of 1869, to refer to the Assistant Judge a case falling under section 265 of Act IX of 1872. SORABJI FARDUNJI *v.* DULABHBHAI HARGOVANDAS

[I. L. R., 5 Bom., 65

4. ——————— *Jurisdiction of District Court.— Winding up partnership.— Subordinate Court.—Bengal Civil Courts Act (VI of 1871), s. 11.*—The Court of a Subordinate Judge is inferior to the Court of a District Judge within the meaning of section 11 of the Civil Courts Act. The word "may" in section 265 of the Contract Act has a somewhat similar force to the words "it shall be lawful" in a statute, which merely make that legal and possible which there would otherwise be no right or authority to do. And the words "may apply" in the section create a new jurisdiction, which must be exercised strictly in accordance with the statute which creates it,—that is to say, the jurisdiction created by the section must be exercised exclusively by a Court not inferior to the Court of a District Judge, within the local limits of whose jurisdiction the place or principal place of business of the firm, which it is sought to wind up, is situated. It was the intention of the Legislature, in enacting section 265 of the Contract Act, to create a new jurisdiction to be exercised exclusively by the Court of the District Judge; and in the absence of a contract to the contrary, the members of a partnership, or their representatives, cannot obtain the relief mentioned in the section except by resorting to that Court. The presumption that the existing jurisdiction of a Court is not intended to be taken away unless express words have been used for that purpose usually applies only to the jurisdiction of the superior Courts. Unless the jurisdiction of a superior Court is expressly and clearly taken away, such jurisdiction will be presumed to continue. PROSAD DOSS MULLICK *v.* RUSSICK LALL MULLICK. PROSAD DOSS MULLICK *v.* KEDAR NATH MULLICK

[I. L. R., 7 Calc., 157: 8 C. L. R., 329

5. ——————— *Jurisdiction of District Court.—Suit to wind up partnership firm.*—A suit to wind up the business of a partnership firm, to provide for payment of the debts, and to distribute the surplus according to the shares of the partners respectively, should be brought in the Court of the District Judge. RAM CHUNDER SHAHA *v.* MANICK CHUNDER MANICKYU

[I. L. R., 7 Calc., 428: 9 C. L. R., 157

6. ——————— *Jurisdiction of District Court.—Suit with respect to partnership.—Jurisdiction of Subordinate Judge.—Transfer of case by High Court.*—A suit claiming a declaration that certain other defendants were partners with the first defendant, that if the partnership should be held to be subsisting, it might be dissolved, or that if it had ceased to exist the date of its termination might be fixed, and that in either event a liquidator might be appointed to take an account, and, after realising assets and discharging liabilities, might be ordered to pay a share to each party out of the balance remaining, was instituted in the Court of the District Judge, who transferred it to the Court of a Subordinate Judge. The High Court subsequently transferred it to its own file. *Held,* that the suit was not one falling within the purview of section 265 of the Contract Act; but, assuming that it was such a suit, and the Subordinate Judge had no jurisdiction, the High Court was nevertheless competent to transfer it. HARRISON *v.* DELHI AND LONDON BANK . **I. L. R., 4 All., 437**

7. ——————— *Jurisdiction of District Court.—Suit for profits of a ship.—Co-owners in a ship.—Partnership.—Contract Act (IX of 1871), s. 239, illus. (e).—Jurisdiction of District Judge.*—The fact that several persons are co-owners of a ship does not make them partners, and it is not necessary that a suit by one co-owner against the managing owner or ship's husband, for his share of the profits made by the ship before she has been sold, should be brought in the Court of the District Judge under section 265 of the Contract Act, but such suit may be brought in the Court of the lowest grade competent to try it. HYDER ALI *v.* ELAHEE BUX MALOOM

[I. L. R., 8 Calc., 1011: 10 C. L. R., 606

8. ——————— *Jurisdiction of District Court.—Suit to wind up partnership and distribute profits.*—A suit to wind up a partnership and to distribute the profits is not cognizable by a Court subor-

CONTRACT ACT, s. 265—*continued.*

dinate to a District Court by virtue of section 265 of the Contract Act. RAMAYYA *v.* CHANDRA SEKARA [I. L. R., 5 Mad., 256

9. ——— *Jurisdiction of District Court.—Suit for dissolution of partnership.—Finality of decree in accordance with award.—Civil Procedure Code, s. 215, Chap. XXXVII.—Arbitration.*—A suit for dissolution of a partnership, taking the accounts of the firm, and a declaration of the plaintiff's right to a certain share in the debts due to the firm, was, with reference to the value of the subject-matter of the suit, instituted in the Court of a Munsif. The matters in difference in the suit were eventually referred to arbitration under Chapter XXXVII of the Code of Civil Procedure, and an award was given declaring the plaintiff entitled to recover a certain sum from the defendant. Judgment and a decree were given in accordance with the award. *Held*, that the suit was not an application of the nature mentioned in section 265 of the Contract Act, 1872, but a suit of the nature mentioned in section 215 of the Civil Procedure Code, and was therefore not cognizable in the District Court, but in the Court of the Munsif. *Prosad Doss Mullick* v. *Russick Lall Mullick, I. L. R., 7 Calc., 157*; and *Ram Chunder Shaha* v. *Manick Chunder Banikya, I. L. R., 7 Calc., 428*, dissented from. KALIAN DAS *v.* GANGA SAHAI . . . . I. L. R., 5 All., 500

10. ——— *Jurisdiction of District Court.—Partnership suit.—Subordinate Court.—Dissolution.—Wrong.—Damages.—Code of Civil Procedure, Act XIV of 1882, s. 213.*—A suit for winding up an expired partnership can be brought in the District Court under section 265 of the Contract Act (IX of 1872) and section 213 of the Civil Procedure Code Act (XIV of 1882). But the jurisdiction of the ordinary Courts is not annulled by the special jurisdiction assigned to the District Court by section 265 of the Contract Act. Any one having a cause of action arising out of partnership transactions may sue the person liable in the ordinary Court. The jurisdiction of such Court, however, does not extend to the case of a winding up of an *expired* partnership. This jurisdiction is given to the District Court by section 265 of the Contract Act, and when, along with a new mode of relief, particular jurisdiction is constituted to administer it, the Court specified, and no other, is to be understood as vested with authority. Hence, though administration for the purpose may apparently be sought in the subordinate Courts, it can be obtained, in the case of an expired partnership, only in the District Court or the High Court. But the jurisdiction of the subordinate Courts in other respects is not extinguished. An apparent cause of action gives a right to sue in them for such relief as they can afford, though not for the particular kind of relief contemplated in section 265 of the Contract Act. Where in a suit a cause of action appears which in itself is cognizable by an inferior Court, such a Court is not justified in rejecting the suit, merely because it is one in which the District Court might have jurisdiction under section 265 of the Contract Act. Where an application under section 265 of the Contract Act is presented to the District Court, that Court should determine

CONTRACT ACT, s. 265—*continued.*

whether it is (1) a mere case of administration, or (2) of administration sought as a cloak for strictly litigious claims, or (3) of administration *plus* claims involving litigation of the ordinary means. In the second case it may properly decline a function that properly belongs to an ordinary Court. In the last case it may either assume the administration of the estate of the firm, or decline to do so, according to circumstances, subject to appeal, and in the former case it may either itself deal with all questions arising between the ex partners, or if these be of such a kind as to form separable subjects of adjudication, it can direct the party in each case interested to proceed on the particular alleged cause of action in the Court having ordinary jurisdiction, and itself use the result as an element of its administration. ADARJI DORABJI *v.* ERAKSHAH DHANJI . I. L. R., 8 Bom., 272

11. ——— *Jurisdiction of District Court.—Jurisdiction of Subordinate Court.—Practice.*—Section 265 of the Contract Act (IX of 1872) assumes that there has been a partnership, and enables the District Court to wind it up, but does not deprive the ordinary Courts of their jurisdiction in cases seriously contested as to the existence of partnership. Such contests ought to be decided as in ordinary cases. KISANDAS HAJARIMAL *v.* GULABCHAND . . . . I. L. R., 8 Bom., 494

12. ——— *Partnership.—Suit to recover share of profits realised.*—A suit to compel the defendant to account for and pay over a share of a sum realised on a joint speculation, or to provide for the plaintiff's share out of another fund realised under the joint orders of the parties, is not affected by the provisions of section 265 of the Contract Act, 1872. PITCHAYYA *v.* NARASAYYA [I. L. R., 7 Mad., 246

CONTRACTORS, DAMAGE DONE BY—

See CALCUTTA MUNICIPAL ACT, 1863. [8 B. L. R., 265

CONTRADICTORY STATEMENTS.

See CASES UNDER FALSE EVIDENCE—CONTRADICTORY STATEMENTS.

CONTRIBUTION, SUITS FOR—

Col.
1. CO-SHARERS, LIABILITY OF— . . . 1135
2. VOLUNTARY PAYMENTS 1136
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See CASES UNDER CONTRACT ACT, ss. 69, 70.

See CASES UNDER DECREE—FORM OF DECREE—CONTRIBUTION.

See HINDU LAW—JOINT FAMILY—DEBTS AND JOINT FAMILY BUSINESS. [6 B. L. R., Ap., 101

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, N.-W. P. [I. L. R., 1 All., 26

CONTRIBUTION, SUITS FOR—*continued.*

See CASES UNDER LIMITATION ACT, 1877, ART. 99 (1871 ART. 100).

See MULTIFARIOUSNESS.

[I. L. R., 1 All., 455
5 N. W., 215
7 N. W., 82
25 W. R., 41

See CASES UNDER SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—CONTRIBUTION.

1. CO-SHARERS, LIABILITY OF—

1. ——— Liability under decree for costs.—*Division of liability.*—A suit having been brought before a Subordinate Judge against co-sharers in a joint property for contribution on account of costs levied from plaintiffs in a suit which had been preferred by all the co-sharers (plaintiffs and defendants) together, a decree was given ordering the defendants to contribute *per capita* in equal shares. On application made to the Subordinate Judge's successor a review was granted, and additional evidence called for as to the respective shares of the parties in the property. *Held*, that the parties were liable for contribution according to their respective interests in the property, and not simply *per capita*. MURDAN ALI *v.* TUFUZZUL HOSSEIN . 16 W. R., 78

2. ——— Allegation and proof of specific liability.—In a suit for contribution, where a joint decree cannot be passed, the specific liability of each co-sharer must be not only alleged but clearly established. PITAMBUR CHUCKERBUTTY *v.* BHYRUB NATH PALEET . . . . 15 W. R., 52

3. ——— Unequal distribution in execution of decree.—*Proportionate liability.*—In execution of a decree for an enhanced rent against the holders of a jote jumma, the landlord put up for sale, and caused to be sold, a talook which was also the joint property of the same parties. One of these parties accordingly sued others of them, on the allegation that his share of the property sold exceeded the lands occupied by him in the jote jumma, and asked the Court to give him a joint and several decree against all the defendants for the entire amount of the difference. *Held*, that plaintiff could not be entitled to such a decree, but should have asked that the defendants might be directed to contribute to him in proportion to their respective shares, if his complaint was well founded. But as defendants alleged that, although plaintiff held that small quantity, it was compensated for in other ways, it was for plaintiff to show that he did not derive from, or by virtue of his share in, the jote jumma a profit or interest equivalent to the interest he held in it. UNNODA PERSHAD ACHARJEE *v.* SHUREBOONDEREE DEBIA [11 W. R., 453

4. ——— Suit for revenue paid by lumberdar for co-sharers.—Until the shareholders formally take steps to set aside as lumberdar a co-sharer whose rights and interests in the mouzah have been sold, their relative positions continuing unaltered, the lumberdar can sue in the Revenue Court

CONTRIBUTION, SUITS FOR—*continued.*

1. CO-SHARERS, LIABILITY OF—*continued.*

Suit for revenue paid by lumberdar for co-sharers—*continued.*

to recover from them their quotas of revenue which he has been obliged to pay as lumberdar. GONESH PERSHAD *v.* SALIG RAM . . 6 N. W., 278

5. ——— Costs of suit for possession of accreted lands against zemindars.—*Proportionate liability.*—*B.* having obtained a decree against *T.* and other zemindars of pergunnah Mymensingh for possession of certain accreted lands as pertaining to pergunnah Jaffershye, took out execution and recovered costs, &c., from *T.* alone, who sued his co-debtors for contribution, no question being raised as to separate liabilities. *T.* obtained a joint decree, took out execution, and recovered from *R.* alone, who then brought a suit for contribution against the other co-debtors, obtaining a decree in both Courts. In special appeal it was contended, *inter alia*, that the principle of the decree was wrong, and that the defendants were liable only for that portion of the land of which they were in wrongful possession. *Held* that, as in the original suit there was no plea that the lands were in the occupation of the answering defendants, in any other way than under their zemindari title, the only way in which the liabilities could be awarded was by making each party pay according to the shares they held in the parent zemindari. OBHOY KANT LAHOREE *v.* RAM SOONDUREE DABEE CHOWDHRANI [20 W. R., 209

6. ——— Sums expended in maintaining common property.—*Consent of co-sharers.*—A co-owner is liable to contribute to the payment of all sums necessarily expended by another co-owner in maintaining the common property. But he cannot be called upon to contribute in respect of money expended on improvements to which he has not assented. MAHOMED KHAN *v.* SHAISTA KHAN [2 N. W., 248

7. ——— Repair of common water-course by one co-owner.—Where a water-course was for the common benefit of joint owners and one party repaired it at his own cost, he was held entitled to call upon the other owner for contribution. BUZLOOL HOSSEIN *v.* GUNPUT CHOWDHRY [25 W. R., 170

2. VOLUNTARY PAYMENTS.

8. ——— Payment for support of family idols.—*Moral obligation.*—When a Hindu ancestor makes no endowment or trust for the support of the family idols, no legal obligation rests on his descendants to support the idols, nor can any suit for contribution lie against any of them for payments made for the expenses of the idols. SHAM LALL SET *v.* HURO SOONDUREE GOOPTA [5 W. R., 29 : 1 Ind. Jur., N. S., 36

9. ——— Payment of debt by one of several co-guarantors.—*Principal and Surety. Co-sureties.*—If one of several co-guarantors, on the

CONTRIBUTION, SUITS FOR—*continued.*

2. VOLUNTARY PAYMENTS—*continued.*

Payment of debt by one of several co-guarantors—*continued.*

default of the principal, pays the whole debt, or more than his proportion of it, he may recover for such excess above his proper share by contribution from the others. An action by one guarantor against his co-guarantors will lie where a single guarantor has paid the debt, and it is not necessary, in order to maintain such an action, to show that the liquidating guarantor had previously applied to, or proceeded against, the principal, with a view to recover the debt from him. NURO NARAIN DOSS *v.* BROJO MOHUN DOSS . . **W. R., 1864, 70**

10. ——— Payment for arrears of rent by one of several co-tenants.—*Sureties.*—In a suit to recover contribution on the allegation that plaintiff and defendant were joint tenants, and that there was an arrear of rent due from them, for which the zemindar was about to sue when the plaintiff paid it, together with several other cesses and expenses, it was *held* that as there had been no demand upon the defendant, nor any suit nor other effectual proceeding for the recovery of the rent, the payment by the plaintiff was voluntary and officious, and that as the demand with which plaintiff complied was an excessive demand, his compliance with it would not bind the defendant to pay the amount of contribution sued for. *Held*, further, that the rules which govern Courts in England in matters of suretyship could not be applied to a case like this, where joint and several liability was not found as a fact, and where the sum alleged to be due was not certain but contested. LUCKHEE KANT DOSS *v.* SHIBCHUNDER CHUCKERBUTTY . . **12 W. R., 462**

PITAMBAR CHUCKERBUTTY *v.* BHYRUBNATH PALEET . . . . . **15 W. R., 52**

11. ——— Payment of arrears of rent by purchaser.—The plaintiff brought a suit against the defendants to recover as contribution their share of a sum paid by him for arrears of rent due on a farming lease in a zemindari which had been purchased by the plaintiff *Held*, the payment was a voluntary one, and the suit therefore would not lie. KRISHNA KISHOR PODDAR *v.* KAILAS CHANDRA MOOKERJEE . . **6 B. L. R., 641, note**

S. C. KISTO KISHORE PODDAR *v.* KOYLASH CHUNDER MOOKERJEE . . **12 W. R., 128**

12. ——— Payment by judgment-creditor on cross-decree by one only of his judgment-debtors.—*Payment for arrears of rent.*—A decree-holder for arrears of rent against three persons jointly placed certain sums of money in Court to the credit of one of them,—*viz.*, the plaintiff, who, in her capacity of guardian of her son, had a cross-decree against him, and afterwards he withdrew those sums in execution of the joint decree. Thereupon the plaintiff sued the other two joint debtors for contribution, as she had repaid to her minor son the sum of money so taken away. *Held*, that the payment by the plaintiff to her minor son was a voluntary payment, and was not therefore such a

CONTRIBUTION, SUITS FOR—*continued.*

2. VOLUNTARY PAYMENTS—*continued.*

Payment by judgment-creditor on cross-decree by one only of his judgment-debtors—*continued.*

payment as entitled her to sue her joint debtors for contribution. RAJLAKHI DEBI *v.* TARAMONEE CHOWDHRAIN

[2 B. L. R., A. C., 281: 11 W. R., 218

13. ——— Suit for fees of Ameen deputed to make partition.—*Payment by one proprietor.*—A suit for contribution for the fees of an Ameen who was deputed to make a batwara will lie against another proprietor of the estate who joined with the plaintiff in applying for the batwara, and is not affected by the fact that the betwara was, for certain reasons, not carried out. The Collector having called upon the proprietors to pay the fees of the Ameen, the plaintiff's payment of the whole amount was not a voluntary payment, as the Collector could have sold the whole estate to realise the fees. Such suit is governed by Act XI of 1838. GREESH CHUNDER LAHOORY *v.* ASUDOONISSA BEBEE

[8 W. R., 333

14. ——— Payment of costs by one of representatives of judgment-debtor.—*Joint liability for costs.*—Notwithstanding an order of the Privy Council that a certain sum should be paid to a judgment-debtor out of money deposited by the judgment-debtor in their treasury, the former took out execution against the property of the latter, who, having died in the meantime, was represented by plaintiffs and defendants. Certain property belonging to the deceased having been attached and advertised for sale, plaintiffs paid the costs due under the Privy Council decree, and then sued for contribution. *Held* that defendants were liable for the sum paid in excess of plaintiff's share. AHMUDOOLLAH *v.* MEAH KHAN . . . . **14 W. R., 105**

15. ——— Payment to stay sale.—*Suit for refund on ground of previous satisfaction of decree.*—*A.* was in possession of certain lands in lieu of dower. *B.* put up to sale, in execution of a decree against *C.* (*A.'s* husband), *C.'s* rights and interest in those lands. *A.* under protest deposited in Court the amount claimed in order to stop the sale, and consented that it should be paid over to *B.* until the rights of the parties could be settled in a regular suit. *A.* then sued *B.* for a refund of the money on the ground that at the time of *B.'s* attaching the property his decree against *C.* had been already satisfied. The Zilla Court gave a decree for *A.* upon the merits. The High Court, on appeal, held that the payment into Court was a voluntary payment, and therefore *A.* had no right of action against *B.* *Held* (reversing the decision of the High Court) that the payment was not a voluntary payment. FATIMA KHATUN *v.* MAHOMMED JAN CHOWDHRY

[1 B. L. R., P. C., 21: 10 W. R., P. C., 29
12 Moore's I. A., 65

16. ——— Payment by lessee of Government revenue on default of malik.—When a sub-lessee (kutkinadar holding from a zur-i-peshgee-

CONTRIBUTION, SUITS FOR—*continued.*

2. VOLUNTARY PAYMENTS—*continued.*

Payment by lessee of Government revenue on default of malik—*continued.*

dar) pays the Government revenue on the default of the malik, who sells the estate to escape liability, the obligation to repay the sufne is a personal liability on the part of the malik which could be enforced in a suit for contribution, and cannot be enforced against the estate. JHOO BHUGGUTH *v.* TARA HOOM HOSSEIN . . . . . **W. R., 1864, 132**

17. ——— Payment by dur-putnidar to stay sale.—*Liability of co-sharers in zemindari.*—*Held* that plaintiff, who held partly as zemindar and partly as dur-putnidar, was entitled to look to his co-sharers in the zemindari for contribution of Government revenue paid by him to save the entire estate from sale, and that the fact of his being a sharer in the dur-putni could not bind him to recover his over-payments from the putnidars. RADHA MADHUB DUTT *v.* RAM RUNJUN CHUCKERBUTTY **[17 W. R., 461**

18. ——— Payment of revenue to save estate from sale.—*Suit against co-sharers.*—Where a village was in arrear through the deficiency of a former lumberdar, and the plaintiff, having purchased at auction the share of the lumberdar, and not his right and liabilities, had to pay the revenue to save the estate,—*Held* that the plaintiff had a right to call upon his co-sharers to contribute their quota of Government revenue, the co-sharers' remedy being against the defaulting lumberdar. FUZUL ALI *v.* JUMNA DOSS . . . . **1 Agra, 229**

19. ——— Payment to prevent foreclosure.—**Evidence of defendants' shares.**—In a suit by one of several shareholders in certain mortgaged property to recover contribution on account of payment made by plaintiff to save the property from being foreclosed; not the sudder jummas assessed on the villages to which the claim related, but the zemindar's collections, would be the better evidence of the relative values of the villages and the proportion payable by the defendants. KHATOON KOONWAR *v.* HURDOOT NARAIN SINGH **[20 W. R., 163**

20. ——— Payment of revenue to stay sale.—*Liability of mortgagees of co-sharer in possession.*—The interests of a Hindu widow (*R. D.*) in certain estates having been mortgaged, the mortgagees in due course foreclosed the mortgage, and obtained a decree for possession. Intermediately, *R. D.* committed default in the payment of the Government revenue, and her share was paid in by her co-sharers, who brought a suit against *R. D.* to recover the amount, and obtained a decree. This decree proving infructuous, they brought the present suit against the mortgagees. *Held*, that the plaintiffs were entitled to recover against the defendants who had completed their legal title to *R. D.'s* share, and were entitled, had they chosen, to make the payment which she omitted to make. *Held*, that a suit for contribution is not founded upon implied promise or request; but that the obligation to pay rests on a different ground,—*viz.*, that in *æquali jure* the law requires equality. GUNGA GOBIND MUNDUL *v.* ASHOOTOSH DHUR . . . **21 W. R., 256**

CONTRIBUTION, SUITS FOR—*continued.*

2. VOLUNTARY PAYMENTS—*continued.*

Payment of revenue to stay sale—*continued.*

21. ——— Payment to save from sale property attached under mortgage decree.—*D.* having obtained a decree against his debtors, *J.*, *P.*, and others, took out execution and attached certain property which had been pledged by them as security. He then brought part of it to sale, exempting the share of *P.* (which he purchased without notice to the other tenants) and realised his dues, *J.* paying the amount in order to save the property from sale. *J.* then sued *P.* for contribution and obtained a decree making her (*P.'s*) share liable, which he attached and put up for sale. *D.* objected under Act VIII of 1859, section 246, but his objection was disallowed and he paid up *P.'s* contribution. He now sued to recover the amount so paid. *Held*, that *D.'s* claim was unjust, for when he was paid up by *J.*, he was bound to give up his lien on *P.'s* share which became vested in *J.* Accordingly, in buying that share he took it burdened with his own lien, and when *J.* paid off the entire liability, he succeeded to the right of contribution from *P.* by buying it from her share. If, therefore, *D.* wished to retain that share, he was bound to make good *P.'s* defalcation. JEETRAM DUTT *v.* DOORGA DASS CHATTERJEE **[22 W. R., 430**

22. ——— Payment of Government revenue.—*Principle of distribution of liability.*—In a suit for contribution of Government revenue the previously paid and recognised quotas must be taken as the proper data for distribution until a regular batwara is made and sanctioned under Regulation XIX of 1814. POORNOCHUNDER GANGOOLY *v.* KISHEN CHUNDER GHOSE . . . . **5 W. R., 112**

23. ——— Payment by landlord.—**Landlord and tenant.**—*Expenses of perfecting title.*—The plaintiffs were the registered holders of the village of Mankoli in the Ahmedabad Collectorate, for which they obtained a sanad in 1864 under Bombay Act VII of 1863. The defendants were the descendants of the original owners of the village, who, about 1768, finding themselves unable to meet the expenses attaching to the village, gave up their title to it to the ancestors of the plaintiffs on condition of retaining a third of the lands rent-free as their wanta, or share, subject to no other condition but a house-tax. *Held*, that a settlement made by the plaintiffs without the defendants' consent was not binding on the latter, and any payment made by them to Government was a purely voluntary one, to which they could not ask the defendants to contribute. Also, assuming that the relationship of landlord and tenant did exist between the parties, a suit by the plaintiffs against the defendants would not lie for contribution to any expenses to which the plaintiffs as landlords might have been put in defending or perfecting their title. JESINGBHAI *v.* HATAJI **[I. L. R., 4 Bom., 79**

CONTRIBUTION, SUITS FOR—*continued.*

2. VOLUNTARY PAYMENTS—*continued.*

Payment by landlord—Landlord and tenant—*continued.*

KAMALUDIN HUSEN KHAN *v.* PARTAP MOTA [I. L. R., 6 Bom., 244

24. ——— Payment by jaghirdar.—*Summary Settlement Act, Bombay, VII of 1863.—Liability of inamdar.*—The plaintiff was the jaghirdar of a village in which the defendant held certain land as inamdar on the annual payment of a certain quit-rent. The plaintiff's jaghir was, in point of time, subsequent to the defendant's inam. Ever since the time of the jaghir, the ancestors of the defendant (and, after them, the defendant himself) paid the quit-rent to the ancestors of the plaintiff, and, after them, to the plaintiff himself. In 1869 the summary settlement was introduced into the village under Bombay Act VII of 1863. Under section 9 of that Act, a notice was served upon the plaintiff by the Collector in respect of the village, and he accepted the settlement provided in sections 2 and 6 of the Act. Government, accordingly, granted the village to him at the summary settlement of two annas in the rupee of the full assessment. No notice was served upon the defendant under the Act, nor did the plaintiff inform the defendant of the notice which the plaintiff had received in respect of the village. The certificate issued by the Collector to the plaintiff, previously to the grant of the sanad regarding the settlement, contained the following passage: "Before the villages (Vesu and Sanya) were granted in jaghir, lands were held by peta-inamdars over which the jaghirdar has no right. They are entered in the sanad only for the purpose of receiving the settlement and paying it over to the Sarkar." In 1877 the plaintiff sued the defendant for the amount of three years' summary settlement which he (plaintiff) had paid to Government on account of the defendant's land. *Held*, that the defendant was not liable to pay, whether regarded as an independent inamdar holding directly under Government or as a tenant of the plaintiff. KAMALUDIN HUSEN KHAN *v.* PARTAP MOTA . . . . I. L. R., 6 Bom., 244

3. PAYMENT OF JOINT DEBT BY ONE DEBTOR.

25. ——— Mortgaged property purchased by various persons.—*Payment to save portion from sale.*—In March 1864, the owner of an estate mortgaged it as security for the payment of certain moneys. Subsequently portions of such estate were purchased by the plaintiff and the defendants at an execution-sale. Subsequently again, the mortgagee sued the mortgagor and the plaintiff for the mortgage-money, claiming to recover it by the sale of the portion of such estate purchased by the plaintiff. Having obtained a decree, the mortgagee caused a portion of such portion to be sold in the execution of the decree. In order to save the remainder of such portion from sale in the execution of the decree, the plaintiff satisfied the judgment-debt. The plaintiff then sued the defendants for contribution. *Held* that, assuming that the mortgagee, by not including the defendants in his suit upon the mortgage-

CONTRIBUTION, SUITS FOR—*continued.*

3. PAYMENT OF JOINT DEBT BY ONE DEBTOR—*continued.*

Mortgaged property purchased by various persons—*continued.*

bond, had put it out of his power to proceed at law by another suit on the basis of the same bond against the properties in the possession of the defendants as purchasers, it did not follow that the plaintiff's equitable right to recover a fair contribution from the defendants, on the ground of his having paid the whole debt due to the mortgagee, was thereby invalidated. JAGAT NARAIN *v.* QUTUB HUSAIN [I. L. R., 2 All., 807

26. ——— Joint mortgage.—*Purchase of share in mortgage at sale in execution.*—*T.* and *D.* in May 1867 jointly mortgaged their respective two biswas shares of a certain village. In August 1877, the mortgagee sued to recover the mortgage-money, by the sale of the mortgaged property, and obtained a decree. Before this decree was executed *L.* obtained a decree against *D.*, in execution of which his two biswas share was put up for sale on the 20th June 1878, and was purchased by *A.* Subsequently the mortgagee applied for execution of his decree, and *D.'s* two biswas share was attached and advertised for sale in execution thereof. In order to save such share from sale, *A.*, on the 29th June 1878, satisfied the mortgagee's decree. He then sued *P.*, *D.'s* co-mortgagor, to recover half the amount he had so paid, by the sale of *P.'s* two biswas. *Held* that, inasmuch as, when *A.* discharged the whole amount of the mortgage-debt, he not only became entitled to a contribution of half such amount from *P.*, but having acquired the rights of the mortgagee was competent to assert a lien on *P.'s* two biswas share; *A.* was entitled to a decree as claimed. PANCHAM SINGH *v.* ALI AHMAD [I. L. R., 4 All., 58

27. ——— Mortgage-debt.—*Apportionment of decree according to share of purchased property.—Payment of money for which other person is liable.*—In execution of a decree, the right, title, and interest in two parcels of property of a judgment-debtor, who had, previous to the attachment, executed a simple mortgage thereof to *A.*, were sold; and *B.* and *C.* respectively purchased them at different prices. *A.* sued the mortgagor and the purchasers *B.* and *C.* for enforcing his lien on the two parcels of property. The suit was dismissed by the first Court, but on appeal the order was "Appeal decreed." *A.* entered into a compromise with *B.*, and entered satisfaction of a moiety of the decree. He afterwards issued execution of the other moiety against *C.*, and compelled him to pay. *C.* now sued *B.* for recovery of the proportion of the amount paid by him to *A.*, but which, according to the valuation of the respective properties, should have fallen into the share of *B.* *Held*, that the debt due upon the mortgage-bond was a general burden upon the two properties, for which no portion of those two properties was more liable than the other. *Held* also that, as between the plaintiff and defendant, the liability was not joint, but several, in proportion to the respective values of the properties, and that the plaintiff, having been com-

CONTRIBUTION, SUITS FOR—*continued.*

3. PAYMENT OF JOINT DEBT BY ONE DEBTOR—*continued.*

Mortgage debt—*continued.*

pelled to pay money for which the property of the defendant was legally liable, was entitled to recover the amount from the defendant. BHAIRAB CHANDRA MADAK *v.* NADYAR CHAND PAL [3 B. L. R., A. C., 357

S. C. BHYRUB CHUNDER MUDDUCK *v.* NUDDIAR CHAND PAL . . . 12 W. R., 291

28. ——— **Sale of mortgaged property to different persons.**—*Undertaking by one to discharge liabilities.*—*A.* and *B.*, respectively, at different dates, purchased portions of a property on which there was a mortgage. On the mortgagee obtaining a decree against the property, *B.* paid off the entire debt, and brought a suit against *A.* for contribution. *Held* that he was entitled to recover, notwithstanding in the deed of sale to *B.* there was an undertaking by *B.* that he would discharge all the liabilities of the mortgagor, including the mortgage on the property. MOTHOORANATH CHUTTOPADHYA *v.* KRISTOKUMAR GHOSE . . . I. L. R., 4 Calc., 369

29. ——— **Release granted to one debtor.**—*Payment of more than proper share of debt.*—Any debtor paying more than his share is entitled to sue his co-debtors for contribution, whether a release has been granted or not. SHEO CHURN LALL *v.* RAM SURUN SAHOO . . 16 W. R., 49

30. ——— **Joint bond.**—*Payment by one debtor on bond.*—*A.* and *B.* jointly executed a bond in favour of *C.* When the bond fell due *A.* alone executed a second bond for a larger amount in favour of *C.*, covering the amount of the debt under the former bond, together with a further advance to him (*A.*). At the same time *C.* cancelled the former bond. *Held*, that thereupon *A.* could maintain his suit against *B.* for contribution. TRAILAKHANATH ROY *v.* KASHINATH ROY . . . 6 B. L. R., 633 [14 W. R., 458

31. ——— **Decree against one of several joint debtors.**—*Cause of action.*—The mere existence of a decree against one of several joint debtors does not afford ground for a suit for contribution against the other debtors. RAM PERSHAD SINGH *v.* NEERBHOY SINGH [11 B. L. R., 76 S. C. 19 W. R., 24

SERAJOOL HUQ *v.* ROY LUCHMEEPUT SINGH [20 W. R., 242

32. ——— **Payment of joint decree by one of Hindu co-parceners.**—A decree having been passed against the plaintiff and defendant, undivided Hindu brothers, jointly for a family debt, and the decree-holder having levied the sum decreed from the plaintiff, a suit was brought by him in a Small Cause Court for contribution against the defendant. *Held*, that the suit would not lie under the circumstances of the case. CHELLAPILLA RAU PANTULU *v.* BALARAMA KRISHNAMA PANTULU [I. L. R., 6 Mad., 424

CONTRIBUTION, SUITS FOR—*continued.*

3. PAYMENT OF JOINT DEBT BY ONE DEBTOR—*continued.*

33. ——— **Purchase of decree by one of several judgment-debtors.**—*Execution of decree.*—One of several joint judgment-debtors who has taken an assignment of the decree cannot execute it against his co-debtors. His only remedy is to sue them for contribution towards the amount he paid for the decree in the proportion in which they were bound, *inter se*, to satisfy the decree. IN THE MATTER OF THE PETITION OF DIGUMBUREE DABEE. IN THE MATTER OF THE PETITION OF SOROOP CHUNDER HAZRA . . . B. L. R., Sup. Vol., 938

S. C. DEGUMBUREE DABEE *v.* ESHAN CHUNDER SEIN. SUROOP CHUNDER HAZRA *v.* TROYLUCKONATH ROY . . 9 W. R., 230

DIGAMBUREE DEBIA *v.* ESHAN CHUNDER SEIN [15 W. R., 372

OBHOY CHURN ROY CHOWDHRY *v.* NOBIN CHUNDER ROY CHOWDHRY . 23 W. R., 95

DIGAMBUREE DEBIA *v.* SHARODA PERSHAD ROY . . . . 5 W. R., Mis., 46

KHOSHALEE *v.* NUND LALL . 6 N. W., 1

34. ——— *Execution of decree against another.*—One of nine judgment-debtors paid the whole of the debt, and then applied to execute the decree against one of the others. *Held*, that he was entitled to receive only one ninth of the debt from him. KISHEN KAMINEE CHOWDRAIN *v.* MOHIMA CHUNDER ROY [Marsh., 339: 2 Hay, 459

35. ——— **Execution against one of several joint debtors.**—*Barred decree.*—A decree having been executed for the full amount due against a joint debtor, the latter sued his co-debtors for contribution, who pleaded that at the time of payment the decree had been barred in consequence of a certain proceeding in the execution case not having been *bonâ fide*. *Held*, that the question raised by the defendants was necessarily considered in the execution case, that the Court must be assumed to have acted rightly in granting execution, and that the plaintiff, having been compelled to pay the joint debt, was entitled to reimbursement. SHIB CHUNDER BIDYARUTTUN *v.* HUREE DASS BHUTTACHARJEE [13 W. R., 298

36. ——— **Payment of debt by one of several joint debtors.**—*Form of decree.*—When parties are bound by a joint liability, and one of them discharges the whole debt due to the creditor, he may bring an action against his co-debtors for a contribution by each of them for his share of the sum due to the original creditor. The plaintiff in such a case can only sue each of the co-debtors for his share of the amount paid, and a decree should not be given jointly and severally, but severally against each of the defendants for the contribution due by each. EGLINTON *v.* KOYLASHNATH MOZOOMDAR . . . . . W. R., 1864, 303

ROGHOONATH DOSS *v.* ALLADEEN PATTUCK [8 W. R., 201

CONTRIBUTION, SUITS FOR—*continued.*

3. PAYMENT OF JOINT DEBT BY ONE DEBTOR—*continued.*

Payment of debt by one of several joint debtors—*continued.*

37. ——— Where a judgment was passed against several defendants, jointly and severally, and some of them paid the whole of the judgment-debt,—*Held*, that they might sue the others for contribution. SUPPANACHARI *v.* CHAKKARA PATTAN . . . . . 1 Mad., 411

38. ——— **Judgment-debtors under summary order of inferior Court for execution of decree.**—*Effect of payment under order.*—A summary order of an inferior Court for the execution of a decree may be conclusive as between the decree-holder who obtained it and those against whom it was made, but is not necessarily so against the latter as between themselves only. Such an order has not necessarily the same effect, so far as contribution is concerned, as if it were the original decree in the suit. NUND COOMAR SINGH *v.* GANGA PERSHAD [3 W. R., 207

39. ——— **Payment of debt by one debtor.**—*Partition of property among debtors.*—Where there had been disputes respecting family property and an agreement was entered into by which the parties made a division of the property and agreed to pay a debt in equal shares, and one of the parties had been made under a decree to pay the whole debt,—*Held*, that he had a clear right to recover from the others their proportion of the debt unless they could show some answer to his claim. DOMAN SINGH *v.* KASEERAM . 5 W. R., P. C., 39 [1 Moore's I. A., 366

40. ——— **Joint liability for a debt paid by one debtor in suit for debt.**—*Costs.*—If one of several persons jointly liable for a debt is sued, and is compelled to satisfy the debt and the costs of the suit, he can only call on the others to contribute in respect of the debt, and not in respect of the costs. PUNJAB *v.* PETUM SINGH [6 N. W., 192

41. ——— **Payment to stay sale for arrears of rent.**—*Liability of person in use and occupation.*—The land of a jote jumma belonging to plaintiff and one *P.* having been attached in satisfaction of a joint decree for arrears of rent, plaintiff deposited the entire amount of the decree. He then sued *M.*, who had obtained *D.'s* share of the jote, for contribution, on the ground that *M.* was in use and occupation. *Held*, that the case against *M.* was not met by the plea that he was not a party to the suit in which the decree was obtained. GUDADHUR CHOWDRY *v.* SHAMA CHURN MITTER . 16 W. R., 8

42. ——— **Costs payable jointly and severally.**—*Intervenor.*—In a suit for possession an intervenor claimed the lands in dispute upon a title distinct from that of plaintiff; whereupon the intervenor was made a defendant, and a decree was ultimately passed in plaintiff's favour, with costs payable jointly and severally by all the defendants.

CONTRIBUTION, SUITS FOR—*continued.*

3. PAYMENT OF JOINT DEBT BY ONE DEBTOR—*continued.*

Costs payable jointly and severally—*continued.*

The original defendants having been obliged to pay the whole amount of these costs in execution, they brought a suit for contribution against the legal representatives of the intervenor. *Held* that, in the absence of any contract or agreement, there was no equity between the parties to justify a suit for contribution. KRISTO CHUNDER CHATTERJEE *v.* WISE [14 W R., 70

43. ——— **Separate suits where joint debtors are sued for debt paid by one.**—*Ascertainment of shares.*—Ordinarily claims for contribution should be brought in separate suits against the individual contributors, but there may be cases where, by reason of special difficulty in the ascertainment of the shares, convenience may suggest a departure from the ordinary rule of separate suits. In those cases the ascertainment of the shares should form a portion of the relief sought for. RUJAPUT RAI *v.* MAHOMED ALI KHAN . 5 N. W., 215

4. JOINT WRONG-DOERS.

44. ——— **Liability of wrong-doers as amongst themselves.**—One tort feasor cannot recover contribution against another. SUPPANA CHARI *v.* CHAKKARA PATTAN . 1 Mad., 411

45. ——— **Costs of suit rendered necessary by wrong-doers.**—The plaintiff and defendants jointly opposed and prevented the ameen of a zemindar from measuring certain lands. The zemindar thereupon brought a suit against them to have his right to measure declared, and obtained a joint decree with costs. In execution of the decree for costs, the property of the plaintiff was attached, and he solely paid the whole amount due for costs. The plaintiff now sued the defendants for contribution. *Held* that such a suit would lie. RUTTEE SIRDAR *v.* SAJOO PORAMANICK [11 B. L. R., 345: 20 W. R., 235

46. ——— **Wrong-doers with intention.**—*Bonâ fide exercise of right.*—The question as to whether as between persons against whom a joint decree has been passed there is any right of contribution at all, depends upon the question whether the defendants in the former suit were wrong-doers in the sense that they knew, or ought to have known, that they were doing an illegal or wrongful act. In that case no suit for contribution will lie. If the defendants in the former suit were not guilty of wrong in that sense, but acted under a *bonâ fide* claim of right, and had reason to suppose that they had a right to do what they did, then they may have a right of contribution *inter se;* and in such case the Court should enquire what share they each took in the transaction; because, according to circumstances, one or more of them might be excused altogether, or in part, from contributing,—as, for instance, one of them might have acted as a servant, and by the command of the others; or the others might have been

CONTRIBUTION, SUITS FOR—*continued.*

4. JOINT WRONG-DOERS—*continued.*

Wrong-doers with intention—*continued.*

the only persons benefited by the wrongful act; in which case those who were benefited, or who ordered the servant to do the act, would not be entitled to contribution. Section 22 of Act XV of 1877 does not apply to a case in which the persons to whom a right of suit is assigned after the institution of the suit, obtains leave to carry on the suit. SUPUT SINGH *v.* IMRIT TEWARI

[I. L. R., 5 Calc., 720 : 6 C. L. R., 62

47. ——— **Costs of suit in which false defence is set up.**—Where a decree for costs against two defendants jointly was executed against one of them, who had set up a false defence in the suit in collusion with the other, and the former brought a suit to recover one moiety of the amount paid by him from the latter,—*Held* that the suit would not lie. VAYANGARA VADAKA VITTIL MANJA *v.* PARIYANGOT PADINGARA KURUPPATH KADUGOCHEN NAYAR . . I. L. R., 7 Mad., 89

48. ——— **Payment of damages under decree, by one of several joint wrong-doers.**—Where one of several joint wrong-doers liquidates the whole amount of the damages obtained in satisfaction of the wrong committed by them all, he is not entitled to contribution from the rest. HARNATH *v.* HAREE SINGH . . . 4 N. W., 116

49. ——— **Payment of decree by one of several joint wrong-doers.**—*Cause of action.—Breach of covenant.—Damages for breach of contract.—Breach of contract.*—In a suit for damages against *A.* and others for breach of a covenant not to open a ferry at a particular place, a decree was obtained against all the defendants. The amount of this decree was levied by execution from *A.* alone, who thereupon brought a suit for contribution against his co-defendants in the former suit. Both the lower Courts dismissed the suit on the ground that the plaintiff and the defendants had been joint wrong-doers, and that no suit for contribution would lie as between them, On second appeal to the High Court,—*Held*, that the rule of law relied on by the Courts below had no application to the circumstances of the present case, and that the plaintiff was entitled to maintain his action. BROJENDRO KUMAR ROY CHOWDHRY *v.* RASH BEHARY ROY CHOWDHRY

[I. L. R., 13 Calc., 300

50. ——— **Payment to secure property.**—*Mesne profits.*—In a claim for contribution arising out of a former suit in which a District Judge had given a decree against the present plaintiff and defendant, and in the execution of which the Munsif had allowed mesne profits to the plaintiff, although the Judge's decision, which entered fully into other details, had omitted to award mesne profits,—*Held* that, as the Judge's decision had made no mention of mesne profits, the present plaintiff was not entitled to recover as contribution the sum which, in order to secure his property against the joint decree, he had paid on behalf of the defendant. BUNWAREE LALL SAHOO *v.* SUDHIST LALL

[25 W. R., 269

CONTRIBUTION, SUITS FOR—*continued.*

5. INTEREST.

51. ——— **Discretion of Court.**—*Act XXXII of 1839.*—In suits for contribution it is in the discretion of the Court to allow or refuse interest on the amount claimed, whether there has been a written demand for it or not, inasmuch as Act XXXII of 1839 does not apply to such suits. BISTOO CHUNDER BANERJEE *v.* NITHORE MONEE DABEE . 10 B. L. R., 352 : 19 W. R., 98

LULLEET BISWAS *v.* PROSONNOMOYEE DOSSEE

[10 B. L. R., 353, note

CONVERTS.

See FALSE EVIDENCE—FALSE EVIDENCE GENERALLY . . 4 Mad., 185

See HINDU LAW—INHERITANCE—DIVESTING OF EXCLUSION FROM AND FORFEITURE OF INHERITANCE—OUTCASTS—

[2 Agra, 311
I. L. R., 8 Mad., 169

See HINDU LAW—MARRIAGE—DISSOLUTION OF MARRIAGE.

[I. L. R., 8 Mad., 169

See MARRIAGE . . 16 W. R., 249

1. ——— **Hindu convert to Christianity.**—*Law governing converts.—Hindu law.*—Upon the conversion of a Hindu to Christianity, the Hindu law ceases to have any continuing obligatory force upon the convert. He may renounce the old law by which he was bound, as he has renounced the old religion, or, if he thinks fit, he may abide by the old law, notwithstanding he has renounced the old religion. The profession of Christianity releases the convert from the trammels of Hindu law, but it does not of necessity involve any change of the rights or relations of the convert in matters with which Christianity has no concern, such as his rights and interests in, and his powers over, property. The convert, though not bound as to such matters, either by the Hindu law or by any positive law, may, by his course of conduct after his conversion, have shown by what law he intended to be governed as to these matters. ABRAHAM *v.* ABRAHAM

[1 W. R., P. C., 1 : 9 Moore's I. A., 195

2. ——— *Law governing converts.—Succession Act, s. 331.*—Native Christians are governed by the Succession Act, but if a family of native Christians continued to observe the Hindu law of succession until the Succession Act altered their rule of succession, the members of the family born before the Succession Act came into operation could not be deprived of the rights acquired by them under Hindu law. PONNUSAMI NADAN *v.* DORASAMI AYYAN

[I. L. R., 2 Mad., 209

3. ——— *Marriage, Validity of.—Succession to estate of Hindu who has become a Christian.—Succession Act, s. 35.*—If a Hindu becomes a convert to Christianity, and dies intestate, succession to his estate is governed

CONVERTS.—Hindu convert to Christianity—*continued.*

by the Indian Succession Act, 1865. *A. K.*, a Brahman, went through a Hindu marriage ceremony with *S.*, a Brahman girl of eight years of age, in 1850. The marriage was never consummated, nor was the consummation ceremony performed. In 1851, *A. K.* was converted to Christianity. *S.* refused to live with him because he was an outcast, and in 1857 *S.* renounced all claims on him or his estate. In 1858, *A. K.* went through a Christian form of marriage with *M.* In 1881, *A. K.* died intestate, and possession was taken of his estate by the Administrator General. *S.* claimed the estate from the Administrator General. Her suit was dismissed on the ground that *A. K.* having died an outcast and degraded, and his degradation not atoned for under Hindu law, no right of inheritance remained to her. Before judgment was delivered *S.* died and the suit abated. In a suit filed by the Administrator General to have the estate administered by the Court, the claimants were (1) the father of *A. K.*, (2) the brother of *A. K.*, undivided from his father, and (3) the executor of *M.* *Held*, that *S.* was the wife of *A. K.* when he went through the form of marriage with *M.*, and that, but for the fact that *S.* had relinquished her rights, *S.* would have been entitled on the death of *A. K.* to such portion of his estate as the law assigned to her as his widow. *Held*, also, that under section 35 of the Indian Succession Act, 1865, the father of *A. K.* was entitled to the whole of the estate. ADMINISTRATOR GENERAL OF MADRAS *v.* ANANDACHARI . **I. L. R. 9 Mad., 466**

4. ——— **Hindus becoming Mahomedans,**—*Succession of property.—Hedl*, that the question as to succession of property between parties who, though originally Hindus, subsequently embraced the Mahomedan religion, and professed that religion for successive generations, must be disposed of under the Mahomedan law; and the plea of usage opposed to Mahomedan law must not be recognised. SURMUST KHAN *v.* KADIR DAD KHAN **[1 Agra, F. B., 39: Ed. 1874, 29**

5. ——— A Hindu embracing the Mahomedan religion is bound by the Mahomedan law of inheritance. SOJAN *v.* ROOP RAM **[2 Agra, 61**

LALLA OUDH BEHAREE LALLA *v.* MEWA KOONWAR **[3 Agra, 82**

6. ——— **Converts from Hindu to Mahomedan religion.**—*Custom as to inheritance.*—The general presumption arising from the intimate connection between law and religion in the Mahomedan faith, is that the Mahomedan law governs converts from the Hindu religion to Mahomedanism. But a well-established custom in the case of such converts to follow their old Hindu law of inheritance would override that general presumption, and a usage establishing a special rule of inheritance as regards a special kind of property would be given the force of law, even though it be at variance with both Hindu and Mahomedan laws. MAHOMED SIDICK *v.* HAJI AHMED. ABDULLAH HAJI ABDSATAR *v.* HAJI AHMED . **I. L. R., 10 Bom., 1**

CONVERTS—*continued.*

7. ——— **Forfeiture of property.**—*Omission to take property forfeited, Effect of.—Quære,*—Whether, when a person becomes a convert and his property is under Hindu law forfeited to his son, the mere omission by the son to enter upon the property vested in him by the forfeiture, or otherwise assert his right to it, would re-vest it in the convert and make it descendible to his heirs. LALLA OUDH BEHAREE LALL *v.* MEWA KOONWAR . **3 Agra, 82**

CONVERSION.

See DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES—TORTS.
[I. L. R., 4 Calc., 116

1. ——— **Stolen notes.**—Two notes are stolen from *A.*, which *B.* (not a *bonâ fide* holder for valuable consideration) tenders to *C.* in payment for certain articles. *C.*, not knowing *B.*, refuses to deal with him, whereupon *B.* brings *D.*, who is known to *C.*, and the purchase is made by him. *Held*, that the part which *D.* performed in the transaction amounted to a "conversion of the notes to his own use," and that he is liable to *A.* KISSORYMOHUN ROY *v.* RAJNARAIN SEN . . . . . **1 Hyde, 263**

2. ——— **Appropriation of goods as to which there is dispute.**—*Delivery to party without title.*—*K.* received into his godown certain goods belonging to the plaintiff and in charge of his servant, concerning which there was a dispute between the plaintiff's agent and *B.*, of which circumstances *K.* was aware; and he advanced money to *B.* on the security of such goods, which were subsequently delivered to *B.*, and sold by him with the acknowledgment of *K.*, and, notwithstanding the plaintiff's servant objected to it, delivered them to the purchaser. *Held*, that *K.* was liable for damages at the instance of the plaintiff in an action for conversion of the goods. ANUNT DASS *v.* KELLY
[1 N. W., Part 7, p. 107: Ed. 1873, 194

CONVEYANCE.

See STAMP ACT, 1869.
[I. L. R., 1 Mad., 133

See STAMP ACT, 1869, s. 3, CL. 11.
[10 Bom., 354
8 Mad., 112

See STAMP ACT, 1879, s. 3.
[I. L. R., 7 Mad., 350
I. L. R., 7 Calc., 21

CONVEYANCE, RETURN OF, BY PURCHASER.

See VENDOR AND PURCHASER—COMPLETION OF TRANSFER.
[I. L. R., 2 Bom., 547

CONVICTION.

See CRIMINAL PROCEDURE CODE, 1882, s. 347 (1872, s. 221).
[I. L. R., 3 Calc., 495

CONVICTION—*continued.*

——— Illegal.

See APPROVERS . I. L. R., 1 Bom., 475

See CONFESSION—CONFESSIONS OF PRISONERS TRIED JOINTLY.
[I. L. R., 1 Mad., 163
I. L. R., 1 Bom., 475
I. L. R., 1 All., 664, 675

See OFFENCE COMMITTED BEFORE PENAL CODE CAME INTO OPERATION.
[I. L. R., 2 Calc., 225

See WITNESS—CRIMINAL CASES—PERSONS COMPETENT TO BE WITNESSES.
[I. L. R., 2 Calc., 405

——— Setting aside, for error in law.

See CASES UNDER ACCOMPLICE.

——— Simultaneous, for several offences.

See CASES UNDER SENTENCE—CUMULATIVE SENTENCES.

——— Validity of—

See EXCISE ACT, 1871.
[I. L. R., 1 All., 630, 635, 638

1. ——— Conviction without evidence.—*Illegal conviction.*—A conviction on no evidence is wrong in point of law. QUEEN *v.* CHAND BAGDEE . . . . . 7 W. R., Cr., 6

QUEEN *v.* POORNO CHUNDER DOSS
[8 W. R., Cr., 59

2. ——— Want of complaint and of evidence.—*Illegal conviction.*—Where a Magistrate, acting merely on certain information contained in a letter addressed to him, convicted a person for obstruction and nuisance, the High Court set aside the conviction on the ground that there was no complaint and no evidence. IN THE MATTER OF RAM KOOMAR
[10 C. L. R., 521

3. ——— Conviction on evidence taken in absence of accused.—*Illegal conviction.*—A conviction based upon evidence taken in the absence of the accused is illegal. ANONYMOUS
[3 Mad., Ap., 34

QUEEN *v.* RAJCOOMAR SINGH . 8 W. R., Cr., 17

QUEEN *v.* LALLA CHOWBEY . . 2 N. W., 49

QUEEN *v.* RAMNATH . . 7 W. R., Cr., 45

QUEEN *v.* HOSSEIN ALI CHOWDHRY
[8 W. R., Cr., 74

4. ——— Conviction on statement of complainant.—A conviction on the statement of a complainant is lawful. KULUM MUNDUL *v.* BHOWANI PROSAD . . . 22 W. R., Cr., 32

5. ——— Conviction on plea of guilty without assessors.—*Criminal Procedure Code (Act XXV of 1861), s. 362.*—A conviction of a prisoner on a plea of guilty before a Court of Session is valid although there were no assessors. QUEEN *v.* SRIKANT CHARAL . 2 B. L. R., F. B., 23
[S. C. 10 W. R., Cr., 43

CONVICTION—*continued.*

6. ——— Conviction of deaf and dumb person without attempt to make him understand the charge.—*Illegal conviction.*—A deaf and dumb prisoner was convicted of an offence. Upon the trial, no attempt was made to communicate with the prisoner respecting the charge against him. The High Court quashed the conviction. ANONYMOUS
[6 Mad., Ap., 7

7. ——— Conviction for one offence under Penal Code and Act I of 1871.—*Illegal conviction.*—A conviction under the Penal Code and also under a special law as the Cattle Trespass Act (I of 1871), in respect of one and the same offence, is illegal. QUEEN *v.* HOSSEIN ALI . 5 N. W., 49

8. ——— Conviction under both ss. 471 & 474 of Penal Code.—*Illegal conviction.*—Convictions of using forged documents (section 471), and of having them in possession with intent to use them (section 474 of the Penal Code), cannot stand together. QUEEN *v.* NUZUR ALI
[6 N. W., 39

9. ——— Conviction without jurisdiction.—*Trial under Act I of 1849.—Omission to record order giving jurisdiction.*—Where a tindal of a small vessel had been convicted of criminal breach of trust which appeared to have been committed in the Portuguese possession of Goa, but no order giving himself jurisdiction was recorded by the Sessions Judge of Mangalore who tried the case under section 9 of Act I of 1849,—*Held,* that the conviction was illegal and that there ought to be a new trial. ANONYMOUS . . . . 5 Mad., Ap., 13

10. ——— Order for imprisonment for future default.—*Punishment for contingent failure to work.—Act XIII of 1859, s. 2.*—An order of a Magistrate passed under section 2 of Act XIII of 1859, that the prisoner should work for a certain period, and, in case he failed to do so, should suffer rigorous imprisonment for one month, annulled as to the latter part, the Magistrate having no power to make that order until the failure had occurred and been proved before him. REG. *v.* JOMA BIN BALU
[4 Bom., Cr., 37

11. ——— Fine for continuing offence.—*Beng. Act VI of 1866.*—Sagur Dutt was convicted before a Justice of the Peace for using a warehouse, &c., in the town of Calcutta for the keeping and storing of jute other than jute screwed for shipment, without a license, and for his said offence was fined R300, and adjudged to pay a further fine of R25 for every day after the conviction on which the offence was continued. *Held* that the conviction was bad. IN THE MATTER OF SAGUR DUTT. QUEEN *v.* THE JUSTICES OF THE PEACE FOR CALCUTTA
[1 B. L. R., O. Cr., 41: 18 W. R., Cr., 44, note

IN RE LOVE . . . 9 B. L. R., Ap., 35
[18 W. R., Cr., 44

IN THE MATTER OF THE PETITION OF THE CHAIRMAN OF THE MUNICIPAL COMMISSIONERS FOR THE SUBURBS OF CALCUTTA *v.* ANEESOODDEEN MEAH . . 12 B. L. R., Ap., 2
[S. C. 20 W. R., Cr., 64

CONVICTION.—Fine for continuing offence—*continued.*

QUEEN *v.* TARINEE CHURN BOSE [21 W. R., Cr., 31

KRISTODHONE DUTT *v.* CHAIRMAN OF COMMISSIONERS FOR SUBURBS OF CALCUTTA [25 W. R., Cr., 6

12. ———— *Offence under Act XXVI of 1850.*—Where accused was convicted under Act XXVI of 1850 of disobedience of an order made by the Municipal Commissioners of Puna, and was sentenced to pay a fine of twenty rupees, and (eight days' time being allowed him within which to comply with the order) a further fine of two rupees each day during which he should continue wilfully to disobey such order, the latter part of the sentence was reversed by the High Court as being illegal. REG. *v.* JAGUNNATH BHAT BIN APPA BHAT [5 Bom., Cr., 103

13. ———— Fine for future default.— *Order for payment of monthly maintenance.*—Where the Magistrate's order directed the defendant to pay a monthly sum for the maintenance of his wife, and directed that the defendant be rigorously imprisoned for the term of fifteen days for every breach of the order, under section 316 of the Code of Criminal Procedure, the High Court quashed the latter part of the order as being irregular and bad in substance. ANONYMOUS . . . . 5 Mad., Ap., 34

14. ———— Conviction of offence without specific charge.— *Criminal Procedure Code, 1872, s. 457.—Conviction of minor charge on charge for graver offence.*—When a person is charged with an offence consisting of parts, a combination of some only of which constitutes a complete minor offence, he may, under section 457 of the Code of Criminal Procedure, be convicted of the latter without being specifically charged, but only when the graver charge gives notice of all the circumstances going to constitute the minor offence. Hence, where a man charged with murder was convicted of abetment of it, the High Court annulled the conviction and sentence and ordered him to be re-tried on the latter charge. REG. *v.* CHAND NUR . . . . 11 Bom., 240

See REG. *v.* RAMAJIRAV JIVBAJIRAV [12 Bom., 1

15. ———— Double conviction for same offence.— *Illegal conviction.—F.* brought a charge of assault against *M.* before a Bench of Magistrates, who, finding no evidence to show by whom complainant's arm had been broken, treated the case as one of simple hurt, and sentenced the accused accordingly. Complainant then applied for compensation to the District Magistrate, who instituted fresh proceedings, and convicted the accused of grievous hurt. *Held* that, as the whole matter was one transaction and went as a whole before the Bench of Magistrates, and as the facts were deposed to by the same witnesses before the Magistrate, the two convictions could not stand side by side. The proceedings before the Bench of Magistrates were accordingly quashed. IN THE MATTER OF THE PETITION OF FAKEER MAHOMED . . . . . 24 W R., Cr., 46

CONVICTION—*continued.*

15. ———— Alternative conviction.— *Doubt as to which of several offences accused is guilty of.*—Judgment in the alternative cannot be passed in cases in which it is doubtful whether the accused person is guilty of any one of the several offences charged, but where it is doubtful of which of those offences he is guilty. Such an alternative conviction is illegal. QUEEN *v.* JAMURHA [7. N. W., 137

17. ———— Conviction of one offence and acquittal on others where several are proved.— *Cognate offences.—Illegal conviction.*—When more than one offence is proved, it is not proper to convict only of one and to acquit of the others, although the offences may be cognate. REG. *v.* MURAR TRIKAM . . . 5 Bom., Cr., 3

18. ———— Conviction on evidence taken before another Magistrate.— *Illegal conviction.*—Where a prisoner is convicted by one Magistrate upon evidence previously recorded before another, the defect cannot be cured by the evidence being again recorded, and the conviction confirmed. QUEEN *v.* POORNO CHUNDER DOSS [8 W. R., Cr., 59

And *see* QUEEN *v.* GOPI NOSHYO [21 W. R., Cr., 47

19. ———— Power to quash conviction.—A lower Court has no power to quash its own conviction, though illegal. IN RE GUNOWREE BHOOEA . . . . 6 W. R., Cr., 70

20. ———— *Valid conviction in case improperly originated.—Per* MACLEAN, *J.*— The High Court may without reference to the local Government set aside a conviction on a trial improperly originated. IN THE MATTER OF THE PETITION OF NOBIN CHUNDRA BANIKYIA. EMPRESS *v.* NOBIN CHUNDRA BANIKYIA [I. L. R., 8 Calc., 560: 10 C. L. R., 369

21. ———— Ground for setting aside conviction.— *Police Act V of 1861, s. 29.—Offence under Penal Code.*—That the facts proved would also constitute an offence under a section of the Penal Code, seems to be no reason for quashing a conviction under the special law, Act V of 1861. QUEEN *v.* KASSIMUDDIN . 8 W. R., Cr., 55

22. ———— *Subsequent evidence.*—A valid conviction arrived at by a Magistrate who had jurisdiction in the matter cannot be set aside simply because, subsequent to the trial and conviction, fresh evidence has been discovered which may tend to convict the accused of an offence other than that for which he was convicted. QUEEN *v.* RAMDOYAL MAHARA . . . 21 W. R., Cr., 47

23. ———— *Conviction under sanction obtained after trial.—Want of jurisdiction.*—A conviction having been set aside as arrived at without jurisdiction, no sanction to the prosecution having been obtained from the Court against which the offence was committed, formal sanction was obtained, the accused re-arrested, and, without being

CONVICTION.—Ground for setting aside conviction—*continued.*

called upon to plead, ordered to undergo the sentence previously passed,—*Held*, that the whole of these proceedings were illegal. IN THE MATTER OF THE PETITION OF EDOO KHANSAMAH [24 W. R., Cr., 64

24. ——————— *Irregular proceedings of Magistrate.—Illegal conviction under Stamp Act.*—Conviction and sentence for an offence under the Stamp Act (XXXVI of 1860, section 26) reversed on reference by the Sessions Judge, as the proceedings of the Magistrate who tried the case were highly irregular. REG. *v.* DEVSANVAT BIN SHIVRAM SANVAT . . . 3 Bom., Cr., 34

25. ——————— *Irregular proceedings by Magistrate.*—A conviction and sentence for criminal breach of trust as a public servant reversed, owing to irregularities in the preliminary enquiries and irregular procedure as to the examination of the prisoner in the Court of Session. REG. *v.* DIAZ . . . . . 3 Bom., Cr., 51

26. ——————— *Dispute between civil suitors.—Improper prosecution.—Illegal conviction.*—As a general rule, one of two parties to an impending suit ought not to put the Criminal Law in motion as against the other in matters connected with the suit; or if he does so, the hearing of the criminal case ought to be postponed until the suit is concluded. But although that is a good ground for questioning the propriety of a prosecution, it is not a ground for questioning the legality of a conviction. QUEEN *v.* ACHEET LALL . 17 W. R., Cr., 46

27. ——————— *Irregularity in Criminal proceedings.—Prejudging defence.*—Upon the single charge of wrongful confinement preferred under section 342 of the Penal Code, before a Joint Magistrate, the prisoners raised a defence justifying the confinement on the ground that the persons confined had been caught by them under circumstances which led to the belief that they had committed house-breaking by night with intent to commit theft. Enquiry having been made, the Magistrate committed the prisoner not only for wrongful confinement, but, disbelieving the defence, for fabricating false evidence and for bringing a false charge. The prisoners were tried by the Sessions Judge and found guilty on all three charges at one and the same time. *Held*, that the conviction on the last two charges was illegal, as by adding the additional charges the Magistrate had really prejudged the defence to the first charge. Where the Court, without having first heard the evidence for the prosecution, examines the witnesses for the defence, he commits an irregularity, but if the prisoners are not materially prejudiced thereby, the conviction will not be set aside. IN THE MATTER OF TURIBULLAH . . . 4 C. L. R., 338

COOCH BEHAR, COURT OF THE DEWAN AHILKAR OF—

See CIVIL PROCEDURE CODE, 1882, s. 229 [4 B. L. R., A. C., 134
13 W. R., 154

COPARCENERS.

See HINDU LAW—INHERITANCE—JOINT PROPERTY AND SURVIVORSHIP. [I. L. R., 3 Bom., 151
I. L. R., 3 Mad., 145
1 Mad., 412
I. L. R., 4 Bom., 37
I. L. R., 7 Mad., 458

See CASES UNDER HINDU LAW—JOINT FAMILY.

See HINDU LAW—WILL—POWER OF DISPOSITION—GENERALLY. [I. L. R., 5 Bom., 48
8 Mad., 6, 13, note

See CASES UNDER MAHOMEDAN LAW—PRE-EMPTION—RIGHT OF PRE-EMPTION—CO-SHARERS.

COPARCENERS, CONSENT OF—

See PARTITION—MODE OF EFFECTING PARTITION . I. L. R., 3 Calc., 514
[5 W. R., 208

CO-PRISONER, EVIDENCE OF—

See CASES UNDER CONFESSION—CONFESSIONS OF PRISONERS TRIED JOINTLY.

COPY OF COPY OF DOCUMENT.

See EVIDENCE—CIVIL CASES—SECONDARY EVIDENCE—COPIES OF DOCUMENTS. [7 B. L. R., 621
3 B. L. R., A. C., 54
15 W. R., 102
6 W. R., 80

COPY OF DECREE OR JUDGMENT, DEDUCTION OF TIME NECESSARY FOR OBTAINING—

See CASES UNDER LIMITATION ACT, 1877, s. 12 (1871, s. 13).

COPIES OF DOCUMENTS.

See CASES UNDER EVIDENCE—CIVIL CASES—SECONDARY EVIDENCE—COPIES OF DOCUMENTS.

See STAMP ACT, 1862, s. 14. [4 Mad., Ap., 58

COPYRIGHT.

——————— **Infringement of copyright.**—*Evidence.*—Where there is no original matter in the work, the strongest evidence of servile imitation and piracy must be afforded before an action for an infringement of copyright can be successful. ROUSSAC *v.* THACKER AND CO. . . . . 1 Hyde, 9

COPYRIGHT ACT, 1847.

See LIMITATION ACT, 1877, ART. 40 (1871, CL. 11) . . I. L. R., 3 Calc., 17

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—COPYRIGHT [I. L. R., 6 Calc., 499

COPYRIGHT ACT, 1876.

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—COPYRIGHT.
[I. L. R., 6 Calc., 499

COPYRIGHT OF ORNAMENTAL DESIGN.

——— *5 and 6 Vict., c. 100.—24 and 25 Vict., c. 78.*—A registered proprietor of the copyright of an ornamental design within the United Kingdom, under 5 and 6 Vict., Cap. 100 (amended by 6 and 7 Vict., Cap. 65; 13 and 14 Vict., Cap. 104; and 21 and 22 Vict., Cap. 70) cannot sustain an action against any person who applies such design to articles, or who sells any articles to which such design has been applied in British Burmah. BAKER *v.* SUTHERLAND
[8 B. L. R., 298: 16 W. R., 90

CORONER.

——— *Power of Coroner of Calcutta.—Power to commit to prison.*—The Coroner of Calcutta has no power to commit any person to prison pending an inquest. In cases where he has authority to commit, a commitment to the officers deputed to receive prisoners by the statute in force is valid, and it is not necessary that the commitment be directed to the Sheriff. IN RE TAYLOR . 2 Ind. Jur., N. S., 101

CORONER'S INQUEST.

See CRIMINAL PROCEDURE CODE, 1882, S. 176, PARA. 1 (1872, S. 135).
[I. L. R., 3 Calc., 742

CORPORATION, RESTRAINING LIBEL IN RESOLUTION OF—

See INJUNCTION—SPECIAL CASES—PUBLIC OFFICERS WITH STATUTORY POWERS.
[I. L. R., 1 Bom., 132

CORPORATION, SUIT AGAINST—

See PLAINT—FORM AND CONTENTS OF PLAINT—DEFENDANTS.
[2 B. L. R., S. N., 6
15 W. R., 534

CORPORATION, SUIT BY—

See PLAINT—FORM AND CONTENTS OF PLAINT—PLAINTIFFS.
[I. L. R., 12 Calc., 41

CORPUS DELICTI.

See THEFT . . 7 Mad., Ap., 19

CO-SHARERS.

Col.
1. GENERAL RIGHTS IN JOINT PROPERTY 1159
2. CULTIVATION OF JOINT PROPERTY . 1162
3. ERECTION OF BUILDINGS ON JOINT PROPERTY 1165
4. EXCLUSIVE POSSESSION OF PORTION OF JOINT PROPERTY . . . 1169
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CO-SHARERS—*continued.*

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6. SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY . . 1172
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[I. L. R., 3 Calc., 26

See CASES UNDER DECREE—FORM OF DECREE—POSSESSION.

See CASES UNDER HINDU LAW—JOINT FAMILY.

See JURISDICTION OF REVENUE COURT—N.-W. PROVINCES, &c.
[I. L. R., 1 All., 512
I. L. R., 3 All., 144
I. L. R., 4 All., 412
I. L. R., 5 All., 438

See LIMITATION ACT, 1877, ART. 179 (1871, ART. 167)—JOINT DECREE—JOINT DECREE-HOLDERS.
[I. L. R., 3 Calc., 551

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[I. L. R., 1 All., 512

See PARTITION—RIGHT TO PARTITION—GENERAL CASES . 3 B. L. R., Ap., 120

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—CASES WHICH MAGISTRATE CAN DECIDE AS TO POSSESSION.
[I. L. R., 3 Calc., 573

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——— Of joint undivided estate, Right of, to measurement.

See MEASUREMENT OF LAND.
[10 B. L. R., 397, 398, note
401, note, & 403, note
I. L. R., 7 Calc., 69
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[15 B. L. R., 111

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[5 B. L. R., Ap., 73, note

CO-SHARERS—*continued.*

——— Of pattidari estate.

See PRE-EMPTION—RIGHT OF PRE-EMPTION. . I. L. R., 1 All., 272, 291

1. GENERAL RIGHTS IN JOINT PROPERTY.

1. ——— Right of co-sharers.—*Tenants of co-sharers.*—The right of a sharer in a joint estate is a right of common enjoyment of the lands and premises, together with the tenants of the co-sharers, in like manner as the co-sharers themselves would have it. HULODHUR SEN *v.* GOOROO DAS ROY [20 W. R., 126

2. ——— *Occupation by co-sharers of separate portions of estate.*—The legal position of co-sharers in an estate occupying separate portions in it is that each possesses and holds, in respect of his several right, to enjoy that which is his own. If one holds a portion larger than his share the inequality may be rectified by a partition, or if a dispute arise on a division of the annual profits it may be adjusted in a suit for an account. KALEE PERSHAD *v.* LUTAFUT HOSSEIN . 12 W. R., 418

3. ——— *Use of property by co-sharers or tenants-in-common.*—A Court of Equity will not interfere where a tenant-in-common acts reasonably for the purpose of enjoying the property held in common in any way in which an owner can enjoy such property without injury to his coparcener, but the case is different where there has been a direct infringement of a clear and distinct right. GOPEE KISHEN GOSSAIN *v.* HEM CHUNDER GOSSAIN [13 W. R., 322

4. ——— *Manager of khoti tenure.—Right of manager to abandon rights without consent of co-sharers.*—In the absence of evidence of custom rendering the act of one sharer in a khotship (which act involved the sacrifice of important rights) binding upon his co-sharers, a managing khot has, without the assent of his co-sharers, no power to give up rights which belong to them as well as himself. COLLECTOR OF RATNAGIRI *v.* VYANKATRAV NARAYAN SURVE . 8 Bom., A. C., 1

5. ——— Sale by some co-sharers.—*Authority to sell.—Debt due by all the co-sharers.*—The mere circumstance of the existence of a debt due from all the co-sharers is by no means of itself enough to confer authority on some of several co-sharers to dispose of the other share. MAHOMED FAIZ ALI KHAN *v.* GUNGA RAM . 1 Agra, 112

6. ——— Collection of rent in various kinds for joint tenure.—*Sharer in ijmali julkur.*—The sharer of an ijmali julkur is not debarred from collecting his separate julkur jumma if he legally can do so, simply because it suits the purpose of another sharer to receive, in lieu of such a jumma, a consolidated chitti jumma. KASHEE NATH DHUR *v.* GUDADHUR PAUL . . . . 11 W. R., 374

7. ——— Consent to commutation of rent.—*Want of consent of all sharers.*—Where

CO-SHARERS—*continued.*

1. GENERAL RIGHTS IN JOINT PROPERTY —*continued.*

Consent to commutation of rent—*continued.*

a tenant applied for commutation of rent paid in kind, one of three lumberdars was held entitled to insist upon the adjudication on the amount of the rate as directed by law; and the consent of two other lumberdars to accept a lower rate of rent cannot debar this right. ROOPA *v.* SAHIB SINGH [1 Agra, Rev., 58

8. ——— Separate payment of share of rent.—A co-sharer in an under-tenure cannot claim separate payment of his share of the rent without the written consent of the zemindar; and if the zemindar refuses to make a division of the property, application should be made to the Collector under section 27, Act X of 1859. ISSUR CHUNDER GHOSAL *v.* MOOKTORAM PANDA . . 9 W. R., 606

9. ——— Receipts of rent by co-sharers. — *Accounts.* — *Limitation.* — Where persons jointly interested in an estate arranged that the rents should be received by an agent, and they themselves sometimes collected direct from the tenants, such collection being treated as a receipt by the agent or by some one on his behalf, and not as a collection antagonistic to the rights of the other joint tenants, the law of limitation is no bar to taking the back accounts. Where one tenant-in-common receives rents, and then relinquishes his interest in the estate to another, that other is not answerable to the third tenant-in-common for any claim he may have against the first for having received more than his share. KHAJURUNNISSA *v.* AHMED REZA. AHMED REZA *v.* KHAJURUNNISSA [8 B. L. R., 93: 16 W. R., P. C., 1

10. ——— Co-sharer acting as manager.—*Remuneration.*—A volunteer, who acts as manager, cannot claim remuneration from his co-sharers without showing a previous consent on their part to pay him. GUNDO ANANDRAVETAL *v.* KRISTNARAV GOVIND . . . 4 Bom., A. C., 55

11. ——— Measurement of land, Right to.—*Beng. Act VIII of 1869, s. 38.—Fractional proprietor.—Parties.*—A part proprietor of an estate is competent under section 38 of Bengal Act VIII of 1869 to apply for measurement of its lands after making the remaining proprietors parties to the proceedings. ABDOOL HOSSEIN *v.* LALL CHAND MAHTON [I. L. R., 10 Calc., 36: 13 C. L. R., 323

12. ——— Liability for repairs of tank by zemindar.—*Joint and several liability.—Proportionate liability.*—A zemindar had expended certain sums at the defendants' request to repair a tank for the irrigation of lands held by them in common with him. In a suit brought to recover the sums so expended, it was contended that the receiver could only sue the defendants severally for their proportionate shares of the sum claimed. *Held*, that the defendants were jointly and severally liable for the sum sued for. SUNDARAM *v.* SANKARA [I. L. R., 9 Mad., 334

CO-SHARERS—*continued.*

1. GENERAL RIGHTS IN JOINT PROPERTY —*continued.*

13. ——— Purchaser of rights of one of several co-sharers.—*Collections of rent.*—A party who purchases the rights of one of a number of co-sharers comes into all arrangements made in respect to the collections; any express consent by him is not necessary for the payment of his share of the rent to any one else. RAM NATH SINGH *v.* GONDEE SINGH . . . **10 W. R., 441**

14. ——— Purchaser of a share in a joint tenure.—*Severance of tenure by sale of share.—Apportionment of rent.—Parties.*—A sale of a share in a tenure, let out to a tenant in its entirety, does not of itself necessarily effect a severance of the tenure or an apportionment of the rent; but if a purchaser of the share desires to have such a severance, he is entitled to enforce it. If he takes no steps for that purpose, then the tenant is justified in paying the entire rent to all the parties jointly entitled to it. But if the purchaser desires to effect a severance of the tenure and an apportionment of the rent, he must give the tenant due notice to that effect, and then if the parties cannot agree to an apportionment, the purchaser may sue the tenant for the purpose of having the rent apportioned, making all the other co-sharers parties to the suit. It is impossible upon principle to distinguish cases where a tenure is sold privately from those where it is sold by public auction, or, on the other hand, to distinguish cases where a tenure is severed by different portions of its area being sold to different persons, from those where it is sold to different persons in undivided shares. In all such cases the entirety of the joint interest should be considered as severable at the option of the purchaser. ISHWAR CHUNDER DUTT *v.* RAM KRISHNA DASS **[I. L. R., 5 Calc., 902: 6 C. L. R., 421**

15. ——— *Payment of arrears of revenue by one co-sharer.—Charge on share of estate in hands of a purchaser.*—*B.*, the owner of a fractional share in a joint mehal, mortgaged her share to *A.* *A.* obtained a decree on her mortgage, and attached *B.'s* share in the estate, and afterwards purchased the same at the execution-sale. Whilst her share was under attachment, *B.* stopped paying the Government revenue, whereupon the plaintiff, a co-sharer in the estate, paid the whole revenue in order to save the mehal from sale. In a suit brought against *A.* and *B.* for recovery of the sum paid by the plaintiff on behalf of *B.'s* share,—*Held*, that the plaintiff was entitled to have the sum so paid declared to be a charge upon the share of *B.*, which had been transferred to *A.*, but not to a personal decree against *A.* ENAYET HOSSEIN *v.* MUDDUN MONEE SHAHOON **[14 B. L. R., 155: 22 W. R., 411**

See also RAM DUTT SINGH *v.* HORAKH NARAIN SINGH . **I. L. R., 6 Calc., 549**

MOTHOORA NATH CHATTOPADHYA *v.* KRISTO KUMAR GHOSE **[I. L. R., 4 Calc., 369**

CO-SHARERS—*continued.*

1. GENERAL RIGHTS IN JOINT PROPERTY —*continued.*

Purchaser of a share in a joint tenure —*continued.*

and KRISTO MOHINEE DOSSEE *v.* KALI PROSONNO GHOSE **[I. L. R., 8 Calc., 402**

where, however, it was not necessary to decide the point, and no decision on it was given, but the Court expressed an opinion contrary to that held in *Enayet Hossein* v. *Muddun Mohun Shahoon, 14 B. L. R., 155;* and in *Ram Dutt Singh* v. *Horakh Narain Singh, I. L. R., 6 Calc., 549.*

See also HURRI MOHUN BAGCHI *v.* GRISH CHUNDER BANDOPADHYA. **[1 C. L. R., 152**

DEO NUNDUN AGHA *v.* DESPUTTY SINGH. **[8 C. L. R., 210, note**

16. ——— Payment of revenue by one co-sharer.—*Payment to stay sale.*—Where a co-sharer of a portion of a talook is compelled to pay a quota of the Government revenue due on account of a share not his own in order to save the portion of the talook from being sold, he is entitled to a charge upon such share for the money so paid, and such share should be charged even when it has passed subsequently into the hands of a third party. *Enayet Hossein* v. *Muddun Monee Shahoon* (*14 B. L. R., 155: S.C. 22 W. R., 411*) followed. NOBIN CHUNDER ROY *v.* RUP LALL DAS **[I. L. R., 9 Calc., 377**

2. CULTIVATION OF JOINT PROPERTY.

17. ——— Altering property without consent of co-sharers.—*Growing indigo.*—Several persons jointly held lands which were not divided by metes and bounds, but in specified shares. One of the shareholders leased out his share or interest in the lands. The lessee sowed indigo in the joint lands. The other shareholders brought a suit to restrain the lessee of their co-sharer from growing indigo on the land. *Held*, that a co-sharer cannot use ijmali lands so as to alter the condition of the property as regards the other shareholders without their consent; that indigo as a crop being valueless for purposes of distraint, the lessee must be restrained from growing it without the consent of all the proprietors. CROWDER *v.* BHEKDHARI SINGH **[8 B. L. R., Ap., 45: 16 W. R., 41**

HUNOOMAN SINGH *v.* CROWDIE . **23 W. R., 428**

where, however, it was found consent had been given.

18. ——— Cultivation by one co-sharer.—*Right to profits.—Acquiescence.*—Where one of two co-owners of land who are not joint cultivates the land with the acquiescence of the other who stands by and offers no objection, the latter cannot claim a share of the profits, but only his proper share of rent. RAJKISHEN MOOKERJEE *v.* PEAREE MOHUN MOOKERJEE . . . . **20 W. R., 342**

CO-SHARERS—*continued.*

2. CULTIVATION OF JOINT PROPERTY—*continued.*

Cultivation by one co-sharer—*continued.*

19. ——————— *Willingness to pay rent.*—One shareholder alone in a joint estate or his assignee cannot claim to cultivate any portion of the property which is not his zerait, and without the consent of the other sharers, merely on the ground that he is willing to pay a reasonable rent for it. NUNDUN LALL *v.* LLOYD . . **22 W. R., 74**

20. ——— **Lease for cultivation given by one co-sharer.**—*Indigo cultivation.—Landlord and tenant.—Joint property.—Estoppel.—A.* and *B.* were joint owners of a certain piece of land. In the year 1874, *A.* leased his share to the defendant for a term ending in October 1880, for the purpose of growing indigo. At the same time *B.* leased his share to the defendant for the same purpose for a term ending in October 1881. *A.* and *B.* sold their shares to the plaintiff in the year 1879. In January 1881, plaintiff sued to prevent the defendant from growing indigo on the land and for khas possession, on the ground that the lease of *A.*'s share having expired, the defendant was not entitled to retain the land for the purpose of growing indigo under the lease given by *B.* *Held*, that the plaintiff having by his own act become the owner of both shares, he could not, as owner of one share, exercise a right which he was precluded from exercising as owner of the other share; and that the suit should have been dismissed. HOLLOWAY *v.* MUDDUN MOHUN LALL **[I. L. R., 8 Calc., 446: 10 C. L. R., 381**

21. ——— **Waste lands common to all sharers.**—*Enjoyment and use by one co-sharer.*—An individual sharer cannot, without the consent, express or implied, of other co-sharers, make use of waste land common to the whole village in such a way as to exclude permanently other co-sharers from all use or enjoyment of it. The law of joint property entitles another co-sharer to interfere and obtain restoration of the land to its former condition. DOULAT RAM *v.* TARA . . . . **1 Agra, 12**

DIRGPAL RAI *v.* BHONDO RAI . **2 Agra, 341**

22. ——— **Co-sharer as tenant cultivating land separately.**—Proprietors are not entitled to oust their co-proprietors from lands which the latter have, as tenants, brought into cultivation. PRAN KISHORE GOSSAMI *v.* DINOBUNDHOO CHATTERJEE . . . . . **9 W. R., 291**

23. ——— **Exclusive possession and cultivation of land by one co-sharer.**—*Restraining cultivation of indigo.—Damages.*—Where a suit was brought to recover possession of certain lands in which plaintiff and defendant were co-sharers, and to secure damages for the exclusive possession which defendant had enjoyed for some years, and to obtain an injunction against defendant to prevent him from cultivating indigo on the land in suit without the consent of the plaintiff,—*Held* that, though a suit for partition is the best means of settling difficulties between co-sharers who will not agree, every co-sharer in an estate is entitled to joint

CO-SHARERS—*continued.*

2. CULTIVATION OF JOINT PROPERTY—*continued.*

Exclusive possession and cultivation of land by one co-sharer—*continued.*

possession with every other co-sharer, and has a right to prevent any one not having a right of occupancy from cultivating any portion of the land contrary to his or their wishes, and is also entitled to damages for any exclusive possession which can be shown to have been enjoyed. *Held*, also, that it would be an ineffectual way of enforcing plaintiff's right in this case to allow the adverse possession of the defendant and to let plaintiff recover damages from time to time. LLOYD *v.* SOGRA . **25 W. R., 313**

24. ——————— *Mesne profits, Right to, of co-sharer kept out of joint possession.*—Where a five-anna shareholder in an estate sought to be put in joint possession of it with the representative of the owners of the remaining eleven annas, and the latter contended that he had for many years held the entire land in suit and cultivated indigo on it, and that plaintiff's right in the said land was confined to the receipt of rent for it,—*Held*, that plaintiff was entitled to joint possession and management of the land, that defendant could not cultivate indigo on it without the consent of the plaintiff, and that the consent said to have been given to the defendant by the other co-sharers could not bind plaintiff. *Held*, also, that plaintiff was entitled to mesne profits with interest. DEBEE PERSHAD SAHOO *v.* GUJADHUR PERSHAD NARAIN SINGH . . . **25 W. R., 374**

25. ——— **Cultivation of sír land on partition.**—*Reference to arbitration.—N.-W. P. Land Revenue Act (XIX of 1873), s. 125.*—When the co-sharers of a mehal agree to have such mehal partitioned by an arbitrator, they must be understood to agree to the arrangements made by such arbitrator, and if he provides by his award that the sír land of one co-sharer that falls by lot into the share of another co-sharer should be surrendered, that land must be given up by the co-sharer who has hitherto cultivated it. Such co-sharer's consent to such arrangement must be understood to have been given when he agreed to arbitration. Section 125 of Act XIX of 1873 must not be regarded as empowering a co-sharer, who has once given his consent to surrender the cultivation, to continue to cultivate the land against the will of the co-sharer who has become the owner of it by partition. ABHAI PANDEY *v.* BHAGWAN PANDEY . . **I. L. R., 3 All., 818**

26. ——————— *N.-W. P. Land Revenue Act (XIX of 1873), s. 125.*—Sír land of one sharer included on partition in the mehal assigned to another sharer is to be treated in the same way as sír land is dealt with after its proprietor has lost his proprietary right therein. In both cases alike the right of ex-proprietary tenancy comes by force of law into existence. RAM PRASAD RAI *v.* DINA KUAR **[I. L. R., 4 All., 515**

27. ——— **Planting trees on joint land without consent.**—*Permission by one co-sharer to cultivator to plant.*—Where it was stipulated in

CO-SHARERS—*continued.*

2. CULTIVATION OF JOINT PROPERTY—*continued.*

Planting trees on joint land without consent—*continued.*

the wajib-ul-urz that trees could only be planted by cultivators on the common land, with the consent of the proprietors,—*Held* that one out of several co-proprietors (unless he was properly authorised to manage the joint estate) was not competent to give an ijazutnamah to a cultivator to plant a *bagh*, and could not by his single consent dispense with the performance of a condition of which the other sharers had a right to call for the fulfilment. If such an ijazutnamah was given without their consent, express or implied, they have a right to have it set aside. GHAZEEOODEEN HYDER *v.* BHOOLUN

[2 Agra, 344

3. ERECTION OF BUILDINGS ON JOINT PROPERTY.

28. ——— Erection of buildings by one co-sharer.—*Right to removal of buildings.*—*A.* sued *B.* for possession of certain land on which *B.* had erected a building, on the allegation that it belonged jointly to them, as well as for removal of the building from the land. It was found, as a fact, that the land was held jointly by *A.* and *B.* *Held* that *B.* had no right to do anything which altered the condition of the joint property without the consent of his co-sharer, and it was rightly ordered that *B.* should remove the building from the land. GURU DAS DHAR *v.* BIJAYA GOBIND BARAL

[1 B. L. R., A. C., 108 : 10 W. R., 71

HOLLOWAY *v.* WAHID ALI

[12 B. L. R., 191, note : 16 W. R., 140

29. ——— *Right to removal of buildings.*—The plaintiff sued for possession of a one-third share of certain land after demolition of the buildings erected thereon by the defendants who were her co-sharers. *Held*, that the plaintiff was not entitled to a decree for demolition of the buildings, as she had no right to compel her co-sharers to adopt her views of the enjoyment of the property. She could only get a decree for possession of an undivided one-third share. BINDABASINI DEBI *v.* PATIT PABAN CHATTAPADHYA . . 3 B. L. R., A. C., 267

30. ——— *Right to removal of buildings.*—Where two parties were joint owners of land, and one of them erected a wall upon the land without obtaining the consent of his co-sharer,—*Held*, that the Court would not interfere to order the demolition of the wall when there was no evidence to show that injury had been done to the co-tenant of the building by its erection. LALA BISWAMBHAR LAL *v.* RAJARAM

[3 B. L. R., Ap., 67 : 13 W. R., 337, note
S. C. 16 W. R., 140, note : 21 W. R., 373, note

31. ——— *Right to removal of buildings.*—One of several co-sharers of joint undivided property has no right to erect a building on

CO-SHARERS—*continued.*

3. ERECTION OF BUILDINGS ON JOINT PROPERTY—*continued.*

Erection of buildings by one co-sharer—*continued.*

land which forms a portion of such property, so as to materially alter the condition thereof, without the consent of his co-sharers. SHEOPERSAD SINGH *v.* LEELA SINGH

[12 B. L. R., 188 : 20 W. R., 160

32. ——— *Right to removal of buildings.*—In a suit in which it was sought to demolish a building which had been erected by the defendant on land belonging to himself and the plaintiff jointly,—*Held* that, as a copartner, the defendant was entitled to use the whole land, and if in erecting the building he took possession of more land than he would be entitled to on partition, the suit should have been for division of the lands, and not for demolition of the building. DWARKANATH BHOOYEA *v.* GOPENATH BHOOYEA

[12 B. L. R., 189, note : 16 W. R., 10

33. ——— *Exclusive possession by one co-sharer.—Erection of scaffolding.—Criminal Procedure Code, 1872, s. 530, Order under.—Suit to recover joint possession.*—One of several co-proprietors has no right to take exclusive possession of any portion of the land of which he is one of the co-proprietors without the sanction of all of his co-proprietors; and when, after he has taken such exclusive possession, an order has been made by a Magistrate acting under section 530 of the Code of Criminal Procedure confirming the possession taken by him, such order is no answer to a suit brought by one of his co-proprietors to recover joint possession of the portion of land so wrongfully taken by him into his exclusive possession. One of several co-proprietors has no right to erect a nowbutkhana, or a scaffolding supporting a platform for the accommodation of musical performers, upon land of which he is only one of several co-proprietors, without the sanction of all his co-proprietors. RAJENDRO LALL GOSSAMI *v.* SHAMA CHURN LAHORI

[I. L. R., 5 Calc., 188 : 4 C. L. R., 417

34. ——— *Removal of building erected by one of several co-sharers.—Acquiescence.*—In a case where a permanent building has been erected by some or one of several co-sharers on the land jointly held, and another co-sharer subsequently seeks to have the building removed, the principle upon which the Court acts is, that though it has a discretion to interfere and direct the removal of the building, this is not a discretion which must necessarily be exercised in every case; and, a a rule, it will not be exercised unless the plaintiff is able to show that injury has accrued to him by reason of the erection of the building; and, perhaps further, that he took reasonable steps in time to prevent the erection. NOORY LALL CHUCKERBUTTY *v.* BINDABUN CHUNDER CHUCKERBUTTY . I. L. R., 8 Calc., 708

35. ——— *Right to removal of buildings.*—In a suit to obtain an order for the demolition of a house erected on land the joint property

CO-SHARERS—*continued.*

3. ERECTION OF BUILDINGS ON JOINT PROPERTY—*continued.*

Erection of buildings by one co-sharer—*continued.*

of the plaintiff and defendant, even though in strictness the defendant had no right to erect the house without the consent of his co-sharer, the Court ought to enquire whether, under all the circumstances, the ends of justice could not be satisfied by some other remedy. MASSIM MOLLAH *v.* PANJOO GHORAMEE **21 W. R., 373**

36. ——————— *Rights of other co-sharers.*—Defendant having spent large sums of money in improving what was originally putit land by locating ryots and building houses upon it and turning it into a village,—*Held* that plaintiff, his co-sharer, was not entitled to claim possession of a specific share in that village, but only to demand a partition in which plaintiff would obtain compensation by receiving elsewhere land equivalent to that brought into cultivation by the defendant at his own expense. GOKOOL KISHEN SEN *v.* ISSUR CHUNDER ROY . . . . . **18 W. R., 12**

37. ——————— *Compensation for removal.*—If one sharer chooses to build against the wishes of the other co-sharers, he must take the consequences and cannot ask for compensation in case his building is ordered to be pulled down. BISHAMBHUR SHAHA *v.* SHIB CHUNDER SHAHA **[22 W. R., 286**

38. ——————— *Use of land for his own purposes.—Removal of buildings.*—In a suit to recover possession of a share of a talook, on the ground that a co-sharer had dispossessed plaintiff by digging a tank, building a schoolroom, and manufacturing bricks for his own use, the lower Courts refused to compel the defendant to restore the land to its former state. As plaintiff had suffered no injury by what defendant had done, the High Court refused to interfere. *Quære,*—Did the alleged acts constitute dispossession? MOHIMA CHUNDER GHOSE *v.* MADHUB CHUNDER NAG . **24 W. R., 80**

39. ——————— *Lessee of co-sharers.—Lease by some of several co-sharers.—Removal of buildings erected by lessee.—Acquiescence.*—A lessee of co-sharers stands in the place of a co-sharer, and where some of the co-sharers in an estate sought to get their right acknowledged in respect of some lands which other co-sharers had leased out, and also sought to have a thakoorbari, which the lessee had built on it, removed,—*Held,* that the right of the protesting co-sharers to the land in suit was clear enough, but that in order to acquire the right to remove a building, it was necessary not merely to have alleged non-consent, but to prove that objections had been offered before the building was raised. DOORGA LALL *v.* LALLA HULWANT SAHOY **[25 W. R., 306**

40. ——————— *Rights of co-sharers in matters affecting common property.—Sale of property by one co-sharer.*—One of several owners of property is entitled to sue for a declaration that a sale deed, executed by one of the co-owners which endangers his right, will not affect that right, and, if the common property is a house, or land, he is also entitled to resist the erection of any building, or addition to any building, on the common property, and, if such building is erected without his consent, to have the property restored to its original condition. MEHDEE HOSSEIN KHAN *v.* AUJUD ALI **[6 N. W., 259**

41. ——————— *Suit for removal of buildings on joint land.—Civil Procedure Code, 1877 (1882), s. 30.—Parties.—Suit by one of several co-sharers against others affecting joint land.*—A shareholder of an undivided piece of land sued three of his co-sharers, who, he alleged, had trespassed on the land by building thereon, for restoration of the land to its original condition. The Court of first instance tried and determined the suit as brought and framed. The lower Appellate Court dismissed the suit on the ground that, there being many co-sharers, the plaintiff could not alone sue, and under section 30 of the Civil Procedure Code the suit was bad. *Per* STUART, *C. J.*—That the lower Appellate Court was right in holding that section 30 of the Civil Procedure Code applied to the case, but that it was not right in dismissing the suit, but should have remanded it for the procedure provided by that section. Also that the permission mentioned in section 30 is express and not constructive. *Per* BRODHURST, *J.*—That section 30 was not applicable to the case, that section contemplating a case in which there are numerous parties having the same interest in a suit, who are all before the Court, and are all anxious to have the matter in dispute disposed of, but, in order to save trouble and expense, are desirous that one or more of them shall sue or defend on behalf of all in the same interest. *Per* STRAIGHT and TYRRELL, *JJ.*—That section 30 was not applicable to the case, the first part of that section implying that the plaintiff therein contemplated wishes to sue on behalf of other persons similarly interested in suing, they also wishing the same. HIRA LAL *v.* BHAIRON **[I. L. R., 5 All., 602**

42. ——————— *Suit to restrain erection of building and alteration of land.*—The defendant was in possession of land under a pottah granted by the ijaradars of the proprietors, and thereon commenced to build a house and plant a garden. The plaintiff, who had bought the right, title, and interest of one of the proprietors, sued to restrain him. He did not allege any injury. *Held* that such suit would not lie. SRICHAND *v.* NIM CHAND SHAHEE **[5 B. L. R., Ap., 25 : 13 W. R., 337**

See also NABIN CHANDRA MITTER *v.* MAHES CHANDRA MITTER **[3 B. L. R., Ap., 111 : 12 W. R., 69**

CO-SHARERS—*continued.*

3. ERECTION OF BUILDINGS ON JOINT PROPERTY—*continued.*

Erection of buildings by one co-sharer—*continued.*

But see IN THE MATTER OF THAKOOR CHUNDER PARAMANICK [B. L. R., Sup. Vol., 595, at p. 597, note

43. ——— *Right to build temples on joint land.*—The plea of limitation is not applicable to a suit for declaration of title regarding ijmali lands upon which a temple has been built, and an idol established, by another co-sharer. If that shareholder claim exclusive use of the temple, he must prove a possession and enjoyment different from those of a Hindu co-sharer of joint property, particularly with regard to a temple added by him to an ancestral poojah-bari. KISSORYNATH CHOWDHRY *v.* HURRO KANT CHOWDHRY [2 W. R., 183

44. ——— *Right to share in temple built by one co-sharer with separate funds on joint land.*—A co-sharer was held not entitled to a share in a temple, built on common land by another co-sharer out of his separate funds, on the ground that the temple was built on common land. KISHEN SARUP *v.* DESRAJ . . 7 N. W., 179

4. EXCLUSIVE POSSESSION OF PORTION OF JOINT PROPERTY.

45. ——— **Right to exclusive possession.**—*Consent.*—*Injunction.*—One of several co-sharers of joint undivided property has no right to take exclusive possession and alter the condition of any portion of the joint property without the consent of his co-sharers, and the Court will grant an injunction to restrain him from doing so. STALKARTT *v.* GOPAL PANDAY [12 B. L. R., 197: 20 W. R., 168

46. ——— *Joint tenant.*—*Partition.*—A joint tenant is not entitled to khas possession of any portion of a joint and undivided property without a batwarah. HUREE DYAL GOOHO MOJOOMDAR *v.* GOBIND CHUNDER PAL [17 W. R., 387

47. ——— *Arrangement as to occupation of joint property.*—*Suit for profits of portion allotted to another.*—An arrangement come to between the joint owners of land not being a joint Hindu family, by which some parts of the property were to be exclusively in the possession of one or other of them, is sufficient to bar one of them from suing for the profits derived from any portion allotted to the exclusive possession of any other. OODOY TARA CHOWDHRANEE *v.* KHAJA ASANOOLLAH [22 W. R., 180

48. ——— *Arrangement for exclusive possession of one co-sharer.*—When one co-sharer of a joint family is allowed by the other members of the family to have separate and exclusive possession of family property for a long period of years,—such, for instance, as would give him a right on

CO-SHARERS—*continued.*

4. EXCLUSIVE POSSESSION OF PORTION OF JOINT PROPERTY—*continued.*

Right to exclusive possession—*continued.*

a batwarah taking place to insist on having the land which he has enjoyed allotted to him,—the other co-sharers must be taken to have knowingly given him the opportunity of creating subordinate rights or allowing such rights to grow up, and they cannot be permitted afterwards, without showing that they have been deceived in the matter, suddenly to start up and repudiate such subordinate rights. JOTEE ROY *v.* BHEECHUK MEAH . 20 W. R., 288

49. ——— *Liability for rent of some shareholders taking exclusive possession of house.*—The co-sharers in a house who continued to occupyt he whole house to the exclusion of one co-sharer after notice that he would charge them rent for his share of the house, were declared just as liable to pay rent to the co-sharer as they would be for rents of any other species of property. CHUNDERKANT ROY *v.* GOPEEMEE DEBIA . 6 W. R., 17

50. ——— **Exclusive use of portion of property.**—*Effect of, on rights of the others.*—By tacit agreement, coparceners in a joint property may have temporarily an exclusive use of different portions of it without prejudice to the common rights of all, or to the right of each or any of them to enforce at pleasure a partition of the whole. YUSAF ALI KHAN *v.* CHUBBEE SINGH . . . 5 N. W., 122

51. ——— *Adverse use of land by co-sharer.*—*Held* that the defendants, as joint proprietors with the plaintiff, could not by the use of the land with the tacit assent of the plaintiff create a right contrary to his interest, nor would their use of it before they became co-proprietors operate to create any such right. JAHANOBY DEO NARAIN SINGH *v.* UMBICA PERSHAD NARAIN SINGH [17 W. R., 74

52. ——— **Exclusive possession by one co-sharer.**—*Adverse possession.*—Exclusive possession by *A.* of property which originally had been admittedly joint, does not, *per se*, amount to adverse possession as against *A.'s* co-sharers. The Court should further ascertain whether *A.'s* exclusive possession was due to his title being really a separate one from the plaintiff's, and could not be accounted for by the fact of some arrangement having been come to at a previous time between the parties. ASUD ALI KHAN *v.* AKBAR ALI KHAN . 1 C. L. R., 364

53. ——— *Adverse possession.*—*Proof of intention to set up adverse possession.*—When one co-sharer sets up as against another adverse possession of land which had previously been waste, but at some former time had been occupied and then been admittedly held jointly, it is for him to show that he has held possession in such a way as to give distinct notice to his other co-sharers of his intention to set up a title adverse to them. RAKHAL DAS BUNDOPADHYA *v.* INDRU MONEE DEBI [1 C. L. R., 155

CO-SHARERS—*continued.*

5. LEASES BY ONE CO-SHARER.

54. ——— Power to grant lease.—*Consent.*—One of several co-sharers in sir land cannot grant a lease of any portion of it without the consent of the others. CHAHEZ *v.* NUND KISHORE [4 N. W., 15

55. ——— Effect of lease granted by one of several co-sharers.—A pottah granted by one co-sharer in an estate is not binding on the other sharers. GOLUCK CHUNDER CHUCKERBUTTY *v.* TEELUCK CHUNDER SHAH . 2 Hay, 49

56. ——— Effect of lease by one of several co-sharers of his own share.—Although one co-sharer cannot give a good lease of the whole sixteen annas of property which belongs to himself and his co-sharers, yet one co-sharer may give a lease of his own share which would be binding against himself at least. RAM DEBUL LALL *v.* MITTERJEET SINGH . . . 17 W. R., 420

57. ——— Lease by co-sharer of his own share.—*Enjoyment of share of, by lessee.*—An undivided shareholder is not prohibited by law from granting a lease of his share to a third person; all that the other co-proprietor can insist upon is that the lessee should be prevented from dealing with the subject of the lease in any way different from that in which the lessor, his co-proprietor, could deal with it. A joint shareholder or any lessee of a joint shareholder is at liberty to contract with the ryots of the zemindari for any lawful purpose even without the consent of the other co-proprietors. MACDONALD *v.* LALA SHIB DYAL SINGH PAUREY . 21 W. R., 17

58. ——— Long possession under lease.—*Acquiescence.*—*Presumption of authority.*—Long possession under an authentic pottah from one sharer, without interference or disturbance from the others, legally warrants the inference that the grantor had authority to bind his co-sharers. HILLS *v.* ARADHUN MUNDUL . . 10 W. R., 389

59. ——— *Right of ejectment.*—Where land is held jointly and there is no partition, one part-owner cannot insist on the ejectment of a person who has been holding under the other part-owner for 16 or 17 years. BISSESSUR KURMOKER *v.* JUGGOBUNDOO KURMOKER [14 W. R., 183

60. ——— Right of lessee of one co-sharer to hold possession without consent of others.—*Right of ejectment.*—In a suit by a co-sharer for ejectment of a lessee who was holding over after the expiration of his lease at the end of 1275 and after sufficient notice, the defendant pleaded a pottah from the plaintiff's shareholder under which he was entitled to remain to the end of 1282. *Held* that, as defendant's occupation and enjoyment of the land to the end of the year 1275 had been by virtue and under the authority of two separate leases granted by each shareholder, each co-extensive with his share only, and as that granted by the plaintiff

CO-SHARERS—*continued*

5. LEASES BY ONE CO-SHARER—*continued*

Right of lessee of one co-sharer to hold possession without consent of others —*continued.*

had expired in 1275, the defendant had not had exclusive enjoyment of the property as tenant by virtue of the other lease. And though the other co-sharer had granted a new lease when the first lease expired in 1275, yet as the plaintiff refused to do so, and had ever since treated the defendant as a trespasser, the defendant had no right of occupation so far as regarded the plaintiff's share. HAMILTON *v.* RUGHOO NUNDUN SINGH . . . 20 W. R., 70

6. SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY.

(*a*) POSSESSION.

61. ——— Suit for share of estate.—*Sharers in estate sold for arrears of revenue.*—*Act XI of 1859, ss. 10 and 11.*—An eight-anna shareholder in four mouzahs out of six which constituted an estate, was held to be not entitled to sue alone under either section 10 or section 11 of Act XI of 1859. NUNHOO SHAHEE *v.* RAM PERSHAD NARAIN SINGH [21 W. R., 38

62. ——— Suit to recover joint property.—*Parties.*—In a suit to recover property belonging to co-sharers *all* the co-sharers must join. PARAM *v.* ACHAL . . I. L. R., 4 All., 289

BATAHEE BEGUM *v.* KHOOSHAL . 3 Agra, 221

MOOKTA KESHEE DEBEE *v.* OOMABUTTY [14 W. R., 31: 8 B. L. R., 396, note

SUDABURT PERSHAD SAHOO *v.* LOTF ALI KHAN [14 W. R., 339

ALUM MANJEE *v.* ASHAD ALI . 16 W. R., 138

63. ——— *Suit by some of several co-sharers.*—*Parties objecting to be plaintiffs.*—All co-owners must join in a suit to recover property, unless the law otherwise provides: they may agree that property shall be managed and suits conducted by some or one of them, but they cannot invest such person or persons with a right to sue in his own name on their behalf, although, perhaps, a tenant might be estopped from denying the title of his lessor in such case. If some co-owners refuse to sue, the proper course for the rest to adopt is to make them defendants in the case. KUTTUSHERI PISHARETH KANNA PISHARODY *v.* VALLOTIL MANAKEL NARAYANAN SOMAYAJIPAD [I. L. R., 3 Mad., 234

64. ——— *Suit for portion of estate.*—*Shareholder in possession of whole estate on conditions.*—It was held that a shareholder, who was in possession of the joint estate on the understanding that he paid certain fixed allowances to his co-sharers, could maintain alone a suit to recover possession of a portion of the estate. AMIR SINGH *v.* MOAZZUM ALI KHAN . . . 7 N. W., 58

CO-SHARERS—*continued.*

6. SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY—*continued.*

(*a*) POSSESSION—*continued.*

Suit to recover joint property—*continued.*

65. ———— *Suit for possession of property pledged in usufructuary mortgage.* —One of several co-sharers of a joint estate cannot sue in respect of his particular share to get rid of a mortgage entered into jointly by all the co-sharers. UNJOOR SINGH *v.* FUZBOONNESSA . **2 Hay, 155**

66. ———— *Suit for undivided share of putni talook.* —A suit to recover possession of an undivided share of a putni talook, where the title to the share as against the zemindar depends upon a grant made to the plaintiff and others ijmali, cannot rightly proceed until the co-sharers are made parties. PARBUTTY CHURN DOSS *v.* PROTAP CHUNDER SEN . . . . . **23 W. R., 275**

67. ———— *Liability for rent.* —A suit to recover possession is not maintainable against one's co-sharer in respect of property still joint and undivided, nor can rent be legally claimed from him except on the ground of some agreement or undertaking, express or implied. GOBIND CHUNDER GHOSE *v.* RAM COOMAR DEY . **24 W. R., 393**

68. ———— Suit by puttidars of ryotwari village.—*Right to sue jointly.—Custom.*—The puttidars of a ryotwari village have not such a common interest, as puttidars, in all their holdings that they can jointly sue for the recovery of them. If in any case such a right exist, it must be established by evidence. MAYANDY TEVAN *v.* NARANAIYAN . . . . . **4 Mad., 108**

69. ———— Suit by one co-sharer for his share of jote.—*Separation of interests.—Evidence of separation.*—The co-sharers in a certain jote, who were ryots having a right of occupancy, paid their rents separately to the putnidars, who gave each party a separate receipt for his "share of undivided tenure." One of the ryots who alleged that he had been dispossessed brought a suit to recover possession of his separate share of the jote against the other co-sharers and the putnidars, and put the receipts in evidence to show that the putnidars had consented to the jote being divided and held in separate shares,—*Held*, that they were insufficient to do so; and that the suit could not be maintained in its present form. GOBARJAN *v.* MOSHIATOOLAH **[1 C. L. R., 537**

70. ———— Suit for possession against single shareholder for portion of joint estate held separately by agreement.—A suit for possession of land will not lie against a single shareholder for a particular portion of a joint estate held separately under an existing arrangement acquiesced in by the plaintiffs and agreed to by the other co-sharers, nor can the plaintiffs let to a tenant the property in the lawful possession of such shareholder. CHOWDHRY NIL KANT PERSHAD SINGH *v.* AHLAD SINGH . . . . . **5 W. R., 287**

CO-SHARERS—*continued.*

6. SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY—*continued.*

(*a*) POSSESSION—*continued.*

71. ———— Suit by one co-sharer to redeem more than his share.—*Subsequent severance of interests.—Parties.—Time of taking objection.*—In 1805 a two-anna share in certain property held by co-sharers was mortgaged to the defendant. The mortgage was effected by the mortgagor as manager of all the co-sharers in union. In 1848 one of the co-sharers redeemed his share of two pies in the mortgaged property, and a further share of two pies therein was redeemed by a second co-sharer in 1867. The plaintiff was admittedly the owner of another two-pie share; but he now sued the defendant to redeem the whole of the property still unredeemed, *viz.*, a one anna eight pies share of the original mortgage. The defendant objected that the plaintiff could only redeem his own two-pie share, which had become separated from the rest. The plaintiff denied that the estate had been divided. *Held*, that the plaintiff's claim being to redeem all that remained of the estate in the mortgagee's possession, the suit could not be maintained, unless all the other persons interested in the equity of redemption were before the Court either as co-plaintiffs or as defendants. Without their presence the suit could not be properly disposed of, and the excuse, that the defendant did not take objection at the right time, had, under such circumstances, no validity. As owner of a two-pie share, which by consent of all interested had become an estate wholly separated from the other parts of the original aggregate, the plaintiff would have been bound to set forth the transactions on which his right rested. RAGHO SALVI *v.* BALKRISHNA SAKHA RAM . . . . . **I. L. R., 9 Bom., 128**

72. ———— Suit to recover possession of portion of tenure.—*Dispossession of purchaser by mortgagee.—Parties.*—A landlord who was in receipt of a half share of the rent of a certain tenure caused that share of the tenure to be sold in execution of a decree for arrears of rent. After such sale *A.*, the purchaser, took possession. Subsequently the tenant executed a mortgage, and a decree being obtained by the mortgagee the whole tenure was brought to sale in execution thereof and purchased by the mortgagee, who proceeded to oust *A*. In a suit by *A.* to recover possession of his half share of the tenure on the footing of his purchase,—*Held* that, as it appeared that the mortgagor, whose rights and interests only were thus sold, was only one of several co-sharers, in the absence of the co-sharers who were not parties to the suit, *A.* was not entitled to the relief he sought. REILY *v.* HUR CHUNDER GHOSE . . . . **I. L. R., 9 Calc., 722 [12 C. L. R., 398**

73. ———— Suit for possession after foreclosure.—*Power of lumberdars to bind co-sharers in mortgage.*—The lumberdars of a mehal, in order to pay revenue due by them and the other co-sharers of the mehal, transferred the mehal by conditional sale for a term of years, possession of the mehal being delivered to the conditional vendee. The

CO-SHARERS—*continued.*

6. SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY—*continued.*

(*a*) POSSESSION—*continued.*

Suit for possession after foreclosure—*continued.*

mortgage-debt not having been paid within such term, the conditional vendee applied, as against the lumberdars, for foreclosure, and the mortgage having been foreclosed sued all the co-sharers including the lumberdars for possession of the mehal, alleging that the lumberdars had acted in the matter of the conditional sale, not only for themselves, but as agents of the other co-sharers. *Held* that, inasmuch as the other co-sharers had not either expressly or by implication authorised the lumberdars to enter into the particular contract represented by the conditional sale, and as they had not ratified such contract, they were not bound by the conditional sale and foreclosure. BHAJAN LAL *v.* MOTI . . I. L. R., 3 All., 177

74. ——— **Suit to recover possession by setting aside sale.**—*Sale for arrears of revenue.—Splitting suits.—Separation of claims.—A., B., C., D.,* and *E.* were joint lessees, without specification of shares, under Government, of a certain mehal. The estate was sold for arrears of revenue. *A., B., C., D.,* and *E.* each brought a suit separately to set aside the sale. *Held* that, as the estate was single and indivisible, and the cause of action and relief sought in each case was the same, the claim of the lessees could not be split into five distinct suits. BISWANATH BHUTTACHARJEE *v.* THE COLLECTOR OF MYMENSING . . . 7 B. L. R., Ap., 42 [21 W. R., 69, note

75. ——— *Sale for arrears of rent.—Suit by one co-sharer.*—Where a putni talook, belonging to several co-sharers, each of whom collected his own share of rent from the mehal, was sold for arrears of rent, and one of the co-sharers brought a suit in the Munsif's Court to recover possession of his share by setting aside the sale, and valued his suit according to his share, making the other co-sharers defendants,—*Held* that the suit could not be maintained in that form. The cause of action was the sale of the whole estate, and the suit should have been framed and valued accordingly, and brought in a Court in which the rights of all the parties interested in setting aside the sale might have been declared in one suit. UNNODA PERSAD ROY *v.* ERSKINE [12 B. L. R., F. B., 370 21 W. R., 68

76. ——— **Suit for possession on expiry of tenancy.**—*Notice to quit.—Co-sharers, Suit by.—Withdrawal of one co-sharer from the suit.*—Where several co-sharers have served a joint notice to quit, upon which notice they jointly institute a suit for the recovery of the land, the fact that one of the plaintiffs withdraws from the suit will not prevent the remaining plaintiffs from obtaining a decree for possession of their shares of the land. DWARKA NATH RAI *v.* KALI CHUNDER RAI [I. L. R., 13 Calc., 75

CO-SHARERS—*continued.*

6. SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY—*continued.*

(*b*) MISCELLANEOUS SUITS.

77. ——— **Suit by some co-sharers deducting share of those non-consenting.**—*Suit to enforce agreement relating to the whole property.*—The consent of all the sharers to a joint holding being necessary to give validity to any agreement regarding the same, certain sharers in a joint holding cannot, by the device of deducting from their claim a portion of the holding representing the share of some of their co-sharers, non-consenting parties to an agreement, sue to enforce such agreement, all the sharers having an undivided share in every biswa of the joint holding. SHIBBA *v.* RAM LAL [3 N. W., 216

78. ——— **Suit on bond.**—*Liability of some co-sharers for acts of others.—Bond executed for payment of rent due on joint estate.—Putni talook.*—Two out of certain co-sharers in a putni talook executed a mortgage-bond with the object of paying off a quota of the rent due on the estate. In a suit brought on the bond, to which all the co-sharers were defendants,—*Held,* that the liability under the bond only extended to the co-sharers who actually signed the document, and to such of the other co-sharers as, by their presence at the time when the bond was executed, might impliedly be considered to have acquiesced in such execution. MOHESH CHUNDER BANERJEE *v.* RAM PROSONNO CHOWDHRY [I. L. R., 4 Calc., 539

79. ——— **Suit by one of several shareholders for accounts and papers, &c.**—A suit by one of two shareholders to recover certain accounts and papers alleged to have been kept by her agents will lie; such a suit stands upon different grounds from a suit by one of several joint land-owners suing separately for his rent. PUDDOMONEE DOSSEE *v.* BANEE KANT GHOSE . . . 9 W. R., 344

80. ——— **Lumberdar, suit by, for profits without consent or authority of co-sharers.**—*Suit for settlement of accounts.*—The lumberdar of one putti of a mehal, who was a shareholder of both puttis of the mehal, sued the lumberdar of the other putti and a shareholder of such putti for profits divisible among the shareholders of the mehal generally, deducting the share of such profits belonging to the defendants. *Held* that, as the suit was one for settlement of accounts between the body of shareholders in which it was necessary that all of them should be properly represented, and as the plaintiff was suing without their authority, the suit was not maintainable. UDAI RAM *v.* GHULAM HUSAIN . . . . I. L. R., 3 All., 186

81. ——— **Suit for mesne profits.**—*Trespass by unauthorised cultivator of land.*—One of several co-sharers can maintain alone a suit for damages in the shape of mesne profits against a party who has been in exclusive possession of his share of the land by sowing indigo thereon. CHUNDER CHOWDHRY *v.* MACNAGHTEN . 23 W. R., 386

CO-SHARERS—*continued.*

6. SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY—*continued.*

(*b*) MISCELLANEOUS SUITS—*continued.*

82. ——— Suit by one co-sharer to set aside alienation made without his consent.—*Alienation by tenant of co-sharer.*—Although one co-sharer cannot eject a tenant from a holding in an undivided estate in which the tenants are tenants of the whole body of co-sharers, yet a co-sharer is entitled to sue to set aside an alienation made by a tenant to a stranger without consent of the zemindars. SOBHA RAM *v.* GUNGA PERSHAD . . **2 N. W., 260**

83. ——— Assignment of share by one co-sharer without consent of others.—*Right of assignee.*—*Held*, in accordance with the principles laid down by the Privy Council in *Byjnath Lall* v. *Ramoodeen Chowdhry, 21 W. R., 233 : L. R., 1 I. A., 106, viz.*, that one co-sharer in a joint and undivided estate cannot deal with his share so as to affect the other co-sharers, but his assignee takes subject to their rights, that the plaintiffs were not entitled to the relief they sought for, and their suit must be dismissed. SHARAT CHUNDER BURMON *v.* HURGOBINDO BURMON . . . **I. L. R., 4 Calc., 510**

84. ——— Suit for cancellation of leave for forfeiture.—*Parties.*—*Breach of covenant.*—Where it is optional with several joint lessors to avail themselves of a condition of re-entry upon breach of certain covenants, one or more of the lessors cannot insist upon a forfeiture without the consent of the others. *Held*, therefore, in a suit which was brought for the cancellation of a mokurrari lease, and the recovery of sír possession, on the ground of forfeiture for breach of covenant, that all the co-sharers should join as plaintiffs; and that as some of the co-sharers, who were made defendants, appeared and opposed the cancellation of the lease, the suit must be dismissed. REASUT HOSSEIN *v.* CHOWAR SING . . . **I. L. R., 7 Calc., 470 [9 C. L. R., 260**

(*c*) EJECTMENT.

85. ——— Ejectment of tenant taken by all the co-sharers.—*Stranger admitted without consent of all.*—When all the co-sharers have allowed a tenant to enter and occupy land, the tenant cannot be ejected without the consent of all. LUTCHMAN PERSHAD *v.* DABEE DEEN . **3 Agra, 264**

GOUREE SUNKUR SURMAH *v.* TIRTHO MONEE **[12 W. R., 452**

HULODHUR SEN *v.* GOOROO DOSS ROY **[20 W. R., 126**

DINOBUNDHOO GHOSE *v.* DROBO MOYEE DOSSIA **[24 W. R., 110**

86. ——— Suit by some co-sharers to eject tenant taken by others.—One or more co-sharers cannot allow a stranger to occupy a portion of the mouzah without the consent of the other co-sharers, unless they are authorised to act on behalf of the other co-sharers, and the dissentient co-sharers may sue to eject him. LUTCHMUN PERSHAD *v.* DABEE DEEN . . . . **3 Agra, 264**

CO-SHARERS—*continued.*

6. SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY—*continued.*

(*c*) EJECTMENT—*continued.*

87. ——— Ejectment of person put in possession by all the co-sharers.—*Trespassers.*—*Decree.*—Where a tenant has been put into possession of ijmali property with the consent of all the co-sharers, no one or more of the co-sharers can turn the tenant out without the consent of the others; but no person has a right to intrude upon ijmali property against the will of the co-sharers or any of them; if he does so he may be ejected without notice either altogether if all the co-sharers join in the suit, or partially if only some wish to eject him. The legal means by which such a partial ejectment is effected is by giving the plaintiffs possession of their shares jointly with the intruder as explained in *Hulodhur Sen* v. *Gooroo Doss Roy, 20 W. R., 126.* RADHA PROSAD WASTI *v.* ESUF **[I. L. R., 7 Calc., 434 : 9 C. L. R., 76**

GHUNSHYAM SINGH *v.* RUNJEET SINGH **[4 W. R., Act X., 39**

Contra, MURDUN SINGH *v.* NURPUT SINGH **[2 W. R., 290**

and LUCHMUN SAHAE CHOWDHRY *v.* SEAMI JHA **[5 W. R., Act X, 93**

88. ——— Ejectment, Suit for, of trespasser.—*Tenant of one co-sharer.*—Any one of several joint tenants of land may sue to eject a trespasser. The consent of one joint tenant to the possession of a trespasser does not make him less a trespasser with regard to other joint tenants. TEELUK RAI *v.* RAMJUS RAI . . . . **5 N. W., 182**

89. ——— Ejectment, Suit for, by some only of the co-sharers.—Some of the co-sharers are not entitled to sue for ejectment unless all the co-sharers join in the suit. Where, however, the lumberdar collects as manager for the whole community, he can sue for and obtain ejectment without joining the co-sharers as plaintiffs. HIDAYATOOLAH *v.* INDERJEET TEWAREE . . **2 Agra, 282**

90. ——— Suit for ejectment by one of two co-sharers.—*Sole manager of estate.*—Where a suit was brought by one of two co-sharers to recover land from a tenant, not only in the absence of, but against the express desire of, the other co-sharer,—*Held* that the suit was not maintainable, and that the plaintiff could only sue jointly with his co-sharer, though the plaintiff was sole manager of the joint estate. *Umanna* v. *Purshotam, S. A. No. 379 of 1873*, followed. KRISHNARAV JAHAGIRDAR *v.* GOVIND TRIMBAK . . . **12 Bom., 85**

91. ——— Suit to eject trespasser.—*Suit to restrain trespass.*—If ryots are interfered with in the occupation of their land, they have a right to sue for an injunction restraining the trespasser from interference; but if they are ousted, the zemindar has a right to bring an action against the trespasser to recover possession. Where land is held in joint proprietorship, an action to recover it from a stranger in wrongful possession must be brought in

CO-SHARERS—*continued.*

6. SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY—*continued.*

(*c*) EJECTMENT—*continued.*

Suit to eject trespasser—*continued.*

the name of all the proprietors jointly. NUNDUN LALL *v.* LLOYD . . . . **22 W. R., 74**

92. ——— Suit for ejectment of tenant of a fishery.—A suit will not lie to eject a tenant of a joint fishery unless all the joint proprietors are joined as parties. DOLI SATI *v.* IKRAM ALI **[4 C. L. R., 63**

93. ——— Suit by one co-sharer for ejectment of tenant on determination of tenancy.—The purchaser of a two-thirds share of a tank sued to obtain khas possession from the tenant whose sons had purchased the remaining one-third share. *Held* that, on the tenancy being shown to have been determined, the plaintiff was entitled to a decree for khas possession. GOPI NATH CHATTERJEE *v.* MODHU SUDUN DEY . **11 C. L. R., 51**

(*d*) KABULIATS.

94. ——— Suit to enforce joint kabuliat.—Where a kabuliat creates an obligation from a tenant to two parties jointly, the obligation can only be properly enforced by a suit brought by those parties jointly. GOPAL CHUNDER GOOHO *v.* JUGGODUMBA DOSSEE . . . . . **10 W. R., 411**

Even where there is an allegation that the plaintiff has been realising his quota of rent separately for years. KALEE CHURN SINGH *v.* SOLANO **[24 W. R., 267**

95. ——— Suit by one co-sharer on joint kabuliat.—*Parties.*—A kabuliat was executed by one of the defendants to the plaintiff for the entire sixteen annas of an estate, of which the plaintiff admitted, at the time of the execution of the kabuliat, he was only proprietor of eight annas. The owner of the other eight annas share was made a defendant in a suit brought by the plaintiff in the Revenue Court to recover his share of the rent under the kabuliat.—*Held*, that the plaintiff was not entitled to sue separately for his share of the rent, even though he made his co-sharer defendant to the suit. KALINATH BANERJEE *v.* MAHOMED HOSSEIN **[6 B. L. R., 528, note: 13 W. R., 469**

96. ——— *Parties.*—Where a tenant had executed a kabuliat to four persons,—*Held*, two of them could not sue him for arrears of rent in the Collector's Court, making their other two co-sharers, or their representatives, defendants jointly with him. GANGA GOBIND SEN *v.* GOBIND CHANDRA ROY . . . . . **4 B. L. R., Ap., 39**

97. ——— *Parties.*—A kabuliat was executed in respect of certain lands by *B.*, *P.*, and *K.*, in favour of *R.*, by which they agreed to pay to *R.* an annual rent of R9,000. *R.* died, leaving two daughters. In a suit in the Revenue Court by one of the daughters against *B.*, *P.*, and the representatives of *K.*, to recover a moiety of the rents due for

CO-SHARERS—*continued.*

6. SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY—*continued.*

(*d*) KABULIATS—*continued.*

Suit by one co-sharer on joint kabuliat—*continued.*

a certain period under the kabuliat, the other daughter refused to join as a plaintiff, and was not made a defendant,—*Held*, that the plaintiff was not entitled to sue alone, or without making her sister a party to the suit. On her sister's refusal to join as a plaintiff, she ought to have been made a defendant. JAGADAMBA DASI *v.* HARAN CHANDRA DUTT **[6 B. L. R., 526, note: 10 W. R., 108**

98. ——— It is not competent to landlords to whom a joint kabuliat has been given without any specification of shares to institute separate suits, and to call upon the Collector, on the original contract between the parties, to apportion to each plaintiff that share of the rents to which he may be entitled. KALEE CHURN SINGH *v.* SOLANO **[8 W. R., 200**

99. ——— Suit by one co-sharer for kabuliat.—A proprietor of a fractional share of an undivided estate may sue to obtain a kabuliat from the ryot without making his co-sharers parties, when there is no dispute as to his share, and when the tenant has paid him rent separately for his share. RAMNATH RAKHIT *v.* CHAND HARI BHUYA **[6 B. L. R., 356: 14 W. R., 432**

SALEHOONISSA KHATOON *v.* MOHESH CHUNDER ROY . . . . . **17 W. R., 452**

100. ——— *Proprietor of fractional share in estate.*—A proprietor of a fractional share of an undivided estate, though receiving a definite portion of the rent from the ryot, is not entitled to maintain against him a suit for a separate kabuliat in respect of such undivided share. SARATSUNDARI DEBI *v.* WATSON **[2 B. L. R., A. C., 159**

S. C. SURUT SOONDERY DABEE *v.* WATSON **[11 W. R., 25**

101. ——— *Proprietor of fractional share.*—One of the shareholders of an undivided zemindari cannot institute a suit to obtain a separate kabuliat from a ryot for his fractional share thereof. UDAYA CHARAN DHAR *v.* KALITARA DASI . . . . . **2 B. L. R., Ap., 52**

S. C. WOODOY CHUNDER DHUR *v.* KALEE TARA DASSIA . . . . . **11 W. R., 393**

See also INDRA CHANDRA DUGAR *v.* BINDABAN BHARA . . . . . **8 B. L. R., 252 [S. C. 15 W. R., F. B., 21**

(*e*) RENT.

102. ——— Suit for separate share of rent.—*Parties.*—One of several co-sharers cannot sue for his separate share of the rent without making his co-sharers parties to the suit. INDROMONEE BURMONEE *v.* SUROOP CHUNDER PAUL **[12 B. L. R., 291, note: 15 W. R., 395**

CO-SHARERS—*continued.*

6. SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY—*continued.*

(*e*) RENT—*continued.*

Suit for separate share of rent—*continued.*

HURKISHOR DAS BHOOYA *v.* JOOGUL KISHOR SAHA ROY
[12 B. L. R., 293, note: 16 W. R., 281

NANOO ROY *v.* JHOOMUCK LALL DOSS
[12 B. L. R., 292, note: 18 W. R., 376

103. ——————— *Joint property.—Form of Suit.—Parties.*—If ijmali property is let to a tenant at an entire rent, the rent is due in its entirety to all the co-sharers, and all are bound to sue for it; no one co-sharer can sue to recover the amount of his share separately, whether the other co-sharers are made parties or not. But if the land demised ceases to be ijmali and different portions of it become the property of different owners, any one of the owners may sue for so much of the rent as he considers himself entitled to, making the other owners parties to the suit. Where co-sharers of ijmali land let to a tenant at an entire rent brought a suit against their tenant to recover their proportionate shares of the rent, and made the other co-sharers defendants, avowedly for the purpose of obtaining an adjudication of their title as between themselves and the defendants other than the tenant,—*Held* that, as the area of the property had not been divided, as the rent had always been paid in its entirety, and as the title of all the co-sharers remained ijmali, the suit would not lie. ANNODA CHURN ROY *v.* KALLY COOMAR ROY
[I. L. R., 4 Calc., 89: 2 C. L. R., 464

104. ——————— *Suit for arrears of rent by undivided co-sharer against co-sharer.*—An undivided co-sharer cannot maintain a suit for arrears of rent against an occupant of the estate without evidence that the rents due to such co-sharer have been separately collected, or that there was an agreement to pay them separately. Still less can such a suit be maintained where the defendant is himself a co-sharer. DINOBUNDHOO CHOWDHRY *v.* DINONATH MOOKERJEE . . 19 W. R., 168

105. ——————— *Extent of shares admitted.*—In a mehal where by custom each co-sharer collects his proportionate share of rent from the common tenants,—*Held*, that the several co-sharers can, where the extent of their shares is admitted by the tenants, sue to recover their respective shares of rent. HIDAYETOOLLAH *v.* INDERJEET TEWAREE . . . . 2 Agra, 282

106. ——————— *Ascertained shares.*—Shareholders whose shares are clearly ascertained may sue for their respective shares of the rent payable to them without waiting for the other parties entitled to rent joining the suit, or without adding them as parties. UMRIT CHOWDHRY *v.* HYDER ALI . . . . W. R., 1864, Act X, 63
MOHAMMED SINGH *v.* MUGHY CHOWDHRAIN
[1 W. R., 253

CO-SHARERS—*continued.*

6. SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY—*continued.*

(*e*) RENT—*continued.*

Suit for separate share of rent—*continued.*

107. ——————— *Separate allotment and arrangement to pay separately.*—When by a specific arrangement the sharers in an undivided mehal had divided the cultivated lands, assigning definite portions to the shareholders severally, the rents of which they would be entitled to receive from the cultivators cultivating such plots respectively,—*Held* that such sharers stand to such cultivators in the relation of landlord and tenant, and are competent alone to bring suits against their cultivators. *Hidayetoollah* v. *Indeerjeet Tewaree, 2 Agra, 282,* distinguished. JANKEE DASS *v.* MAHOMED
[1 N. W., Part 2, p. 16: Ed. 1873, 76

108. ——————— *Co-sharer occupying more than his own share.*—Where a co-sharer occupies a larger portion than his own share, or the whole estate, by renting the land he occupies from one or more of his co-sharers, he may be sued for the rent by the person or persons with whom he engaged. Where a co-sharer occupies more than his own share, or holds the whole estate by renting the land he occupies from one or more of his co-sharers, the liability of the cultivating shareholder to payment must, in the absence of usage, agreement, or evidence, be deemed single and entire. But if there is an agreement, express or implied, that the occupying shareholder shall pay separately to each of his co-proprietors a definite sum, such sum may be recovered by each co-proprietor by a separate rent suit. KALEE PERSHAD *v.* LUTAFUT HOSSEIN
[12 W. R., 418

109. ——————— *Collusion of other sharers with tenant.*—One of three co-sharers of certain property, the rent of which was paid by the tenant to a person acting as agent of the co-sharers, from whom they received it in proportion to their respective shares, brought a suit against the tenant for her share of the rent, of which she alleged her co-sharers were colluding with the tenant to deprive her. To this suit she made her co-sharers defendants. The defendants alleged that she had not received, and was not entitled to receive, the rent from the tenant; but the lower Courts found these facts in her favour, and gave her a decree. It was objected on special appeal that the suit would not lie, inasmuch as the plaintiff being one of several co-sharers was not competent to sue alone for her share of the rent. *Held* that, under the circumstances, and the co-sharers having been made defendants, the suit was maintainable. DOORGA CHURN SURMA *v.* JAMPA DASSEE . 12 B. L. R., F. B., 289: 21 W. R., 46

110. ——————— *Agreement to pay separately.*—A landlord, one of several co-sharers, cannot sue a tenant of the joint estate for his separate share of the rent unless the tenant has paid or agreed to pay to him separately. GANGA NARAYAN DAS *v.* SARODA MOHAN ROY CHOWDHRY
[3 B. L. R., A. C., 230: 12 W. R., 30

CO-SHARERS—*continued.*

6. SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY—*continued.*

(*e*) RENT—*continued.*

Suit for separate share of rent—*continued.*

RAKHAL CHUNDER ROY CHOWDHRY *v.* MAHTAB KHAN . . . 25 W. R., 221

BRIJOKISHORE BHUTTACHARJEE *v.* OOMA SOONDUREE DEBIA . . . 23 W. R., 37

BYKUNT KYBURTO DOSS *v.* SHUSHEE MOHUN PAUL CHOWDHRY . . . 22 W. R., 526

HARADHUN GOSSAMEE *a.* RAM NEWAZ MISSRY [17 W. R., 414

SREE MISSER *v.* CROWDY . . 15 W. R., 243

NUSSURUT ALI *v.* ABDOOL KAREEM CHOWDHRY [11 W. R., 373

RAMJOY SINGH *v.* NAGUR GAZEE [5 W. R., Act X., 68

111. ——————— *Specification of land of which rent is sued for.*—One of undivided joint sharers of land cannot sue alone for his share of the rent of the land without specifying the land in respect of which the suit is brought. BHYRUB MUNDUL *v.* GUNGARAM BONERJEE [12 B. L. R., 290, note: 17 W. R., 408

112. ——————— *Costs.*—Each of two shareholders in a talook sued separately for his share of the rent due from a tenant who held under one kabuliat,—*Held* that when both the shareholders were before the Court, though in different suits, the suits were maintainable, but that no more costs were to be awarded to the plaintiffs than if they had sued jointly. PYARI MOHAN SING *v.* GAZI [2 B. L. R., A. C., 337: 11 W. R., 270

113. ——————— *Landlord and tenant.—Collusion of other sharers with tenant.*—Where one of a number of co-sharers of certain property, the rent of which was paid by the tenants to a person acting as agent of the co-sharers, from whom they received it in proportion to their respective shares, brought a suit against the tenants for arrears of rent, and it appeared that the agent had been dismissed by the other co-sharers without the consent of the plaintiff, and contrary to her wish, and that she had given notice to the tenants to continue the payment of her share as before and not to pay any newly-appointed agent, and it also appeared that the other co-sharers were colluding with the tenants, and the plaintiff made them parties defendants with the tenants,—*Held*, that such a suit would not lie, and that the proper course to pursue was that pointed out in *Tara Chunder Banerjee* v. *Ameer Mundle, 22 W. R., 394.* JADOO SHAT *v.* KADUMBINEE DASSEE [I. L. R., 7 Calc., 150: 8 C. L. R., 445

114. ——————— *N.-W. P. Rent Act (XVIII of 1873), s. 106.—Lease to mortgagors.*—*B.* and *N.*, the mortgagees of a mehal, granted the mortgagors a lease thereof, the mortgagors agreeing to pay "the mortgagees" a certain rent half-yearly "on account of the right they held in equal shares," and that "in default in payment of such rent the mortgagees should be entitled to sue for payment." The mortgagors having made default in payment of the rent and *N.* refusing to join in a suit against the mortgagors to enforce payment, *B* sued them alone for a moiety of the rent due. *Held per* SPANKIE, *J.*, that section 106 of Act XVIII of 1873 did not apply, and *B.* was entitled separately to sue for the whole of the rent. SHIB GOPAL *v.* BALDEO SAHAI [I. L. R., 2 All., 264

115. ——————— *Joint payment of rent to co-sharers.*—Where a tenant, who held under co-sharers, to whom he had been accustomed to pay his rent jointly, was sued by one of the co-sharers, the others being made defendants to the suit, and pleaded that he had paid the rent to his co-defendants who admitted receipt thereof,—*Held*, the suit should be dismissed; the remedy of the co-sharer who has not received his share of the rent is against his co-sharers, not against the tenant. AHAMUDEEN *v.* GRISH CHUNDER SHAMUNT [I. L. R., 4 Calc., 350

116. ——————— *Collusion of co-sharers with tenant.—Parties.*—A co-sharer, on the allegation that a tenant, in collusion with the rest of the co-sharers in the estate, had withheld the payment of his rent (hitherto paid jointly to all the co-sharers), brought a suit for the recovery of his share of the arrears of rent, making the tenant and all the colluding shareholders defendants to the suit. *Held* that such suit was maintainable. JADU DASS *v.* SUTHERLAND [I. L. R., 4 Calc., 556: 3 C. L. R., 223

117. ——————— *Separate payment of rent.—Admission of claim.—Suit for fractional share of rent.*—The plaintiff, alleging himself to be a fourteen annas shareholder in a zemindari, sued a tenant for a proportionate share of the rent due to him as such shareholder. The other co-sharers were made defendants, but did not contest the suit,—*Held* that, inasmuch as it had been shown that the tenant-defendant had, on previous occasions, paid the plaintiff rent separately, though not in the proportionate share now demanded by him, and it being further to be presumed that the co-sharers admitted the plaintiff's claim, such suit would lie. GUNGARAIN SIRKAR *v.* SREENATH BANERJEE [I. L. R., 5 Calc., 915: 6 C. L. R., 16

118. ——————— *Suit for arrears of rent.—Liability of tenant acquiescing in arrangement for separate payment.*—Where, on the consent of all the shareholders, landlords, a tenant in an undivided property has agreed to pay the different sharers, the rent of the tenure in proportion to their respective shares, and can be and has been sued for the rent of a particular share, it is not open to such tenant to cease from paying the proportionate

CO-SHARERS—*continued.*

6. SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY—*continued.*

(*e*) RENT—*continued.*

Suit for separate share of rent—*continued.*

fraction of the rent due in accordance with his agreement, except on the consent of the owner of that particular share. Where co-sharers in an undivided property acquiesce in a decision declaring one of their number the owner of a recognised share in such property, it is not open to a tenant (who had previously agreed to pay his rent in accordance with the shares of the respective part-owners) to refuse payment of the proportionate share of the rent claimed by such co-sharer as the owner of the recognised share, simply on the ground that he had never before paid rent so proportioned to such co-sharer. LOOTFULHUCK *v.* GOPEE CHUNDER MOJOOMDAR . **I. L. R., 5 Calc., 941 : 6 C. L. R., 402**

119. ——————— *Arrangement for separate payment of rent.—Evidence of arrangement.—Parties.—Suits for arrears of rent.—Suit for kabuliat.—Enhancement of rent.—Cancellation of lease.*—Where it has been arranged between the co-sharers of an estate and their tenant that he shall pay each co-sharer his proportionate share of the entire rent, each co-sharer may bring a separate suit against the tenant for such proportionate share. In the absence of such an arrangement no such suit can be maintained. Such an arrangement may be evidenced either by direct proof or by usage from which its existence may be presumed, and is perfectly consistent with the continuance of the original lease of the entire tenure. But an arrangement of this nature will not enable one co-sharer to sue the tenant for a kabuliat, for a co-sharer who obtains a kabuliat is bound at the request of the tenant to give him a pottah upon the same terms, and the grant and acceptance of a binding lease of any separate share cannot exist contemporaneously with an original lease of the entire tenure. The cancellation and determination of the original lease ought not to be presumed from the mere fact of a separate payment of rent to one or more of the co-sharers. GUNI MAHOMED *v.* MORAN. DOORGA PERSHAD MYTEE *v.* JOYNARAIN HAZRA **[I. L. R., 4 Calc., 96 : 2 C. L. R., 371**

120. ——————— *Presumption as to separate payment of rent.—Agreement for separate payment.*—It has often been decided that, from the fact of rent having been collected for some time by one of several co-sharers separately, an agreement for payment of the separate rent of a share could be presumed. *Held* (on appeal from AINSLIE, *J.*), that the facts of this case were not sufficient to warrant the making of such a presumption. ANOO MUNDUL *v.* KAMALOODDEEN . . . **1 C. L. R., 248**

KAMALOODDEEN *v.* ANOO MUNDUL **[1 C. L. R., 564**

121. ——————— *Rent paid to person without title.*—Where a tenant, knowing that a co-proprietor has been in possession of a share for a very long time, and after distinct notice, paid rent which belonged to the said sharer to another person who had no title at all, it was held that a suit by that single proprietor for his share of the rent was maintainable. DINOBUNDOO ROY *v.* OOMA CHURN CHOWDHRY . . . . **23 W. R., 53**

122. ——————— *Lease.—Suit by one of several joint lessors for balance of rent.—Act XII of 1881 (N.-W. P. Rent Act), s. 106.—M.* and *S.* were joint lessors of certain land by a kabuliat which did not contain any specification of the shares of the lessors. *M.*, stating that the share of rent due to *S.* had already been paid, sued the lessee for the recovery of his own share. The amount claimed was all that remained due on the lease. *Held* that the plaintiff was entitled, as one of the joint lessors, to sue for the balance of rent, and that his suit was therefore not barred by the terms of section 106 of the North-Western Provinces Rent Act (XII of 1881). *Manohar Das* v. *Manzur Ali, I. L. R., 5 All., 40,* referred to. *Quære,*—Whether the kabuliat whereon the suit was based might not be called a "special contract" within the meaning of section 106 of the Rent Act, so as to render that section inapplicable. MURLIDHAR *v.* ISHRI PRASAD **[I. L. R., 6 All., 576**

123. ——————— *Suit by co-sharer making another defendant without asking him to join as plaintiff.*—Two of four persons who were jointly entitled to rent of a talook purchased the talook. One of the two other co-sharers thereupon sued the purchasers for the balance of rent after deducting the amount to which the purchasers were entitled as zemindars, and he made the fourth co-sharer a defendant without having asked him to join as a plaintiff. The lower Appellate Court dismissed the suit as improperly framed. *Held* that the plaintiff was not bound to ask the first co-sharer to join as plaintiff, and that the suit was properly framed. TARINI KANT LAHIRI *v.* NUND KISHORE PATRONOVIS . . . **12 C. L. R., 588**

124. ——————— *Suit by some co-sharers for proportionate amount of rent making others defendants.*—Three out of five co-sharers, proprietors of certain mouzahs, brought a suit against the putnidars for the proportionate amount of the rent due to them, and for the determination of that amount, making the two remaining sharers defendants. *Held* that the suit was properly framed. SREENATH CHUNDER CHOWDHRY *v.* MOHESH CHUNDER BUNDOPADHYA . **1 C. L. R., 453**

125. ——————— *Claim to whole rent or whole balance due.*—One of several co-sharers can bring a suit for rent, making his co-sharers parties, only when he claims in such suit the whole rent due to all the shareholders, or, where any portion of it has been paid, the whole unpaid balance. DINO NATH LAKHAN *v.* MOHURUM MULLICK . . . . . **7 C. L. R., 138**

CO-SHARERS—*continued.*

6. SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY—*continued.*

(*f*) ENHANCEMENT OF RENT.

126. ——— Suit for enhanced rent on agreement of one of several co-sharers.—The rent of a joint undivided tenure cannot be enhanced on the strength of an ikrar executed by one of the coparceners. HEMAYETOOLLAH CHOWDRY *v.* NIL KANT MULLICK . . . **17 W. R., 139**

127. ——— Suit to enhance share of rent.—*Enhancement of rent, Suit for, by one co-sharer.*—Where rent, whether payable in money or in kind, to one person or several, is rendered under an entire contract or obligation, it is not competent for one of several co-sharers to bring a suit to enhance his portion of such rent. The fact of the claimant making the other co-sharers parties defendants in the suit cannot alter his rights, and there being a common interest in all the co-sharers one of the number cannot proceed as if his rights were separate and distinct. MAHOMED SAID-OOD-DEEN *v.* MAHOMED HOSSEIN . . . . . **[2 N. W., 438**

128. ——— *Enhancement, Suit for, by one co-sharer.*—One co-sharer cannot enhance the rent of his share, such an enhancement being inconsistent with the continuance of the lease of the entire tenure. GUNI MAHOMED *v.* MORAN. DOORGA PROSHAD MYTEE *v.* JOYNARAIN HAZRA **[I. L. R., 4 Calc., 96 : 2 C. L. R., 371**

overruling on this point DOORGA PROSHAD MYTEE *v.* JOYNARAIN HAZRA . **I. L. R., 2 Calc., 474**

and TROYLOCHOTARAN CHOWDHRY *v.* MATHOORA MOHUN DEY . . **W. R., 1864, Act X., 41**

129. ——— A suit will not lie by one co-sharer for enhancement of the rent of a fractional part of the joint property. *Quære,*—Is the owner of a fractional share of a superior tenure competent to maintain a suit for enhancement of rent of a fractional share of an under-tenure subordinate to the former? RAJ CHUNDER MOJOOMDAR *v.* RAJARAM GOPE . . . **22 W. R., 385**

130. ——— *Holder of specific share.*—The holder of a specific share in an estate not regularly partitioned may sue for enhancement of his share of the rent. RAM LOCHUN DUTT *v.* PETUMBER PAUL . **W. R., 1864, Act X., 111**

131. ——— A sharer in a joint estate not partitioned, although he may collect separately his share of rent, cannot enhance the rent without the concurrence of his coparceners. SUJUN KOOER *v.* HEITOO . **1 N. W., 165 : Ed. 1873, 244**

132. ——— Right of sharer to enhance rent.—*Admission of claim.*—Where there is no joint lease, and the plaintiff's share is not disputed, a suit for a kabuliat at an enhanced rent will lie. In such a case the suit must be for the enhancement of the rent of the whole of defendant's tenure, to enable the Courts to decide as to the proportion

CO-SHARERS—*continued.*

6. SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY—*continued.*

(*f*) ENHANCEMENT OF RENT—*continued.*

Right of sharer to enhance rent—*continued.*

payable to plaintiff. DOOKEE RAM SIRCAR *v.* GOWHUR MUNDUL . . . . **10 W. R., 307**

133. ——— *Joint notice of enhancement.—Separate suit for rent.*—Although an estate is joint and the notice of enhancement prescribed by section 13, Act X of 1859, was jointly issued by both the proprietors, yet where they collected their quota of rent from each of the common tenants separately according to their respective shares, it was competent to one of them to claim alone for his share of the rent enhanced by the notice. ISREE PERSHAD RAE *v.* TOOLSEE RAM . **3 Agra, 352**

134. ——— *Enhancement of rent of a jote.—Suit by one co-sharer for separate payment of rent.*—A suit by the owner of an undivided share to enhance the rent of a jote, the tenant of which has been in the habit of paying his rent to each sharer separately, will not lie, even though plaintiff's co-sharers be made defendants to the suit. RAJENDRO NARAIN BISWAS *v.* MOHENDRO LALL MITTER . . . . . **3 C. L. R., 21**

135. ——— *Suit by one of two joint khots for enhanced rent.—Notice.*—One of several tenants in common, joint tenants, or coparceners (unless he is acting by consent of the others as manager of an estate) is not at liberty to enhance rent or eject tenants at his pleasure. *Doorga Prosad Mytee* v. *Joynarain Hazra, I. L. R., 2 Calc., 474,* distinguished. BALAJI BAIKAJI PINGE *v.* GOPAL BIN RAGHU KULI . **I. L. R., 3 Bom., 23**

KRISHNARAV *v.* GOVIND **[I. L. R., 3 Bom., 25, note**

HIDAYETOOLLAH *v.* INDERJEET TEWAREE **2 Agra, 282**

136. ——— *Evidence of previous enhancement in a suit by another co-zemindar.*—More than twenty years before the institution of a suit for the enhancement of the rent of a share in a dependent talook, the zemindari under which the talook was held was partitioned under a batwara among three zemindars. A ten-anna share was allotted to one (the present plaintiff), a four-anna share to another, and a two-anna share to a third. The talookdars continued to hold the entire property, and paid the rent apportioned by law severally to each of the parties entitled. In 1861, the owner of the two-anna share obtained a decree against the talookdars for enhancement of the rent of his share. In the present suit against the same talookdars, the defendants contended that the rent of their talook had not been changed for a period of more than twenty years before suit. *Held* that the decree in the suit of 1861 had the effect of enhancing the rent payable for the whole talook, and that the plaintiff could avail herself of that decree, although she was not a party to it.

CO-SHARERS—*continued.*

6. SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY—*continued.*

(*f*) ENHANCEMENT OF RENT—*continued.*

Right of sharer to enhance rent—*continued.*

SARAT SOONDARY DABEA *v.* ANUND MOHUN SURMA GHUTTACK
[I. L. R., 5 Calc., 273: 4 C. L. R., 448

137. ——————— *Arrangement for separate payment of rent.—Suit for arrears of rent at enhanced rates.—Beng. Act VIII of 1869, s. 29.*—One co-sharer cannot (even if he make his co-sharers parties to his suit) sue for the enhancement of his share of the rent, such an enhancement being inconsistent with the continuance of the lease of the entire tenure. BHARRUT CHUNDER ROY *v.* KALLY DAS DEY
[I. L. R., 5 Calc., 574: 5 C. L. R., 545

138. ——————— *Parties.—Enhancement of rent.—Separation of shares.—Act XI of 1859, s. 10.*—Two co-sharers, joint owners of a zemindari, caused their shares to be separately registered in the Collector's office under section 10, Act XI of 1859. Subsequently one of the co-sharers sued certain persons (who held ryoti tenures in the co-sharers' zemindari) for enhancement of rent without making the other co-sharer a party. *Held* that no such suit would lie. *Guni Mahomed* v. *Moran, I. L. R., 4 Calc., 96,* followed. JOGENDRO CHUNDER GHOSE *v.* NOBIN CHUNDER CHOTTOPADHYA . . . I. L. R., 8 Calc., 353

139. ——————— *Notice of enhancement.—Held,* in a suit for enhancement by one co-sharer, to which the other co-sharer was made a party, that one co-sharer is not competent to issue a proper notice of enhancement without the consent of the other co-sharers previously obtained, though the rent has been paid to each co-sharer separately. Under the ruling of the Full Bench, in the case of *Guni Mahomed* v. *Moran, I. L. R., 4 Calc., 96,* he must first establish his right to a separate contract to recover his rent separately on his individual share. KASHEEKISHORE ROY CHOWDHRY *v.* ALIP MUNDUL . I. L. R., 6 Calc., 149: 7 C. L. R., 107

But *see* CHUNI SINGH *v.* HERA MAHTO
[I. L. R., 7 Calc., 633: 9 C. L. R., 37

and ABDOOL HOSSEIN *v.* LALL CHAND MOHTAN
[I. L. R., 10 Calc., 36: 13 C. L. R., 323

140. ——————— *Suit by one co-sharer.—Parties.*—Even if a single shareholder can raise the rent of a joint tenant without the consent of his coparcener, he can only do so in a suit to which all the sixteen annas proprietors must be made parties. GOPAL *v.* MACNAGHTEN
[I. L. R., 7 Calc., 751

BHEEKOO *v.* OOMAR KHAN
[1 N. W., Ed. 1873, 236

141. ——————— *Notice of enhancement.—Parties.*—*A.* and *B.* were taloukdars of a certain village, each having an eight-anna share. A certain ryot held a jote within the village, in respect of which he paid his rent separately—eight annas to *A.* and eight annas to *B.* *A.* served a notice of enhancement on the ryot, but the notice was signed by *A.* only, and it did not appear that the consent of *B.* had been previously obtained. *A.* afterwards instituted a suit for arrears of rent at the enhanced rate, making *B.* a defendant to the suit. *Held,* that the notice of enhancement was sufficient to maintain a suit so framed. BIDHU BHUSHUN BASU *v.* KOMARADDI MUNDUL . I. L. R., 9 Calc., 864

142. ——————— *Suit for enhancement of a proportionate share of the rent by one co-sharer.—Collection of rents separately.*—*A.,* an eight-anna sharer in an undivided estate, who collected his portion of the rent separately, brought a suit upon notice issued by himself against a tenant in which he made the other co-sharers parties defendants to recover arrears of rent at an enhanced rate in proportion to his share. *Held* that such a suit was not maintainable, unless it could be shown that the co-sharers had refused to join as plaintiffs. *Bidhu Bhusun Basu* v. *Komaraddi Mundul, I. L. R., 9 Calc., 864,* distinguished. KALI CHANDRA SINGH *v.* RAJKISHORE BHUDDRO
[I. L. R., 11 Calc., 615

143. ——————— *Enhancement by one out of a number of co-sharers when possible.—Ijmali mehal.—Practice of separate leases by several co-sharers.*—The mere fact of there being other co-sharers in an undivided mehal is not sufficient to put the plaintiff out of Court in a suit for enhancement in respect of a particular plot of land, and the proper issue in such a case is, whether the defendant-tenant has been holding under the plaintiff separately, or under a joint lease from the plaintiff and his co-sharers in the mehal. *Guni Mahomed* v. *Moran, I. L. R., 4 Calc., 96; Jogendro Chunder Ghose* v. *Nobin Chunder Chattopadhya, I. L. R., 8 Calc., 353,* distinguished. RASHBEHARI MUKHERJI *v.* SAKHI SUNDARI DASI
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1. SPECIAL CASES.

1. ——— **Abated suit.**—*Death of plaintiff.—Cost of interlocutory order in abated suit.—Civil Procedure Code, 1859, ss. 210, 296.*—Under sections 210 and 296 of Act VIII of 1859, the representative of a deceased plaintiff in an abated suit is liable for costs of interlocutory orders in the suit. MAHUDDEE ALLEE KHAN *v.* ROHEEMOODEEN [Bourke, O. C., 154

2. ——— **Abated appeal.**—*Death of appellant.—No application for substitution.—Civil Procedure Code (Act X of 1877), ss. 582, 368, 365, and 366.—Per* MITTER, *J.* (GARTH, *C. J., dubitante*).—Notwithstanding that section 582 of the Code of Civil Procedure does not expressly direct that the word "plaintiff" occurring in section 366 shall be held to include an "appellant," yet the power conferred by section 366 on the Court of original jurisdiction to award costs against the estate of a deceased plaintiff, may, by analogy, be taken to be conferred on the Appellate Court. *Lakshmibai* v. *Balkrishna, I. L. R., 4 Bom., 654,* followed. RAJMONEE DABEE *v.* CHUNDER KANT SANDEL [I. L. R., 8 Calc., 440 10 C. L. R., 437

3. ——— **Account, Suit for.**—*Principal and agent.*—Where a defendant, in a suit for an account by his principal, instead of submitting to an account, falsely denied his receipts, his fiduciary position, and his accountability *in toto*, and a decree for an account was made,—*Held* that he should be directed to pay the whole costs of the suit, independently of the result of the account. HURRONATH ROY *v.* KRISHNA COOMAR BUKSHI [L. R., 13 I. A., 123 I. L. R., 14 Calc., 147

4. ——— **Appeal.**—*Appeal irregularly brought after time has been granted to apply to original Court.*—Certain objections were taken in an execution-proceeding, and the Judge before whom the objections were heard passed an order disposing of the objections save as to two, which he decided he had no jurisdiction to entertain. The objector then made a special application to the Judge to obtain time to make an application with reference to these objections to the Court from which the decree had been transferred, and accordingly time was granted him to do so; but, instead of applying, the objector preferred an appeal to the High Court against the order of the Judge disposing of the objections. The High Court, on hearing the appeal, made the appellant pay the costs of the appeal, disapproving strongly of the course taken by the objector. JASSODA KOER *v.* LAND MORTGAGE BANK OF INDIA [I. L. R., 8 Calc., 916 11 C. L. R., 348

5. ——— *Laches in bringing appeal.—Application to High Court's superintendence when appeal lay.*—A suit was appealed to the Judge who remanded it to the lower Court for re-trial; the lower Court dismissed the suit. The plaintiff then presented a petition to the High Court

COSTS—*continued.*

1. SPECIAL CASES—*continued.*

Appeal—*continued.*

praying that the order of the Judge remanding the suit might be set aside under the provisions of section 35, Act XXIII of 1861, on the ground that, as the value of the property in suit was admittedly more than ₹5,000, the Judge had exceeded his powers in hearing the appeal. The High Court held that it had no power under section 35 of Act XXIII of 1861 to entertain the application, as it was open to the petitioner to present an appeal against the order of the Judge remanding the suit, and that he must proceed by way of appeal. The plaintiff having appealed, the order of the Judge was set aside; but it was held that by reason of his *laches* the plaintiff was disentitled to his costs. TUKEE ALI *v.* SAADUT ALI [5 N. W., 137

6. ——— **Attorney.**—*Attorney's lien for costs.—Compromise of suit by parties.—Collusion.*—Where the parties to a suit came to a compromise between themselves without the knowledge of the plaintiff's attorney, when the suit was at such a stage that it did not appear that the plaintiff was entitled to recover anything, and there was no proof that he was to receive anything from the defendant on the compromise, or that the compromise was not a *bonâ fide* one,—*Held*, the plaintiff's attorney was not entitled to have the compromise set aside, on the ground that he might thereby be deprived of his costs. A clear case of fraud and collusion must be made out to entitle the attorney to the interference of the Court. RAMANATH DUTT *v.* MATUNGINEE DOSSEE [12 R. L. R., 110

7. ——— *Compromise of suit by parties out of Court, without knowledge of attorneys.—Taxation and payment of costs.*—After the filing of the plaint a suit was compromised out of Court by the parties without the intervention or knowledge of the attorneys. The plaintiff's attorney applied to his client for payment of costs, and on his refusal to pay he applied to the Court that his bill should be taxed and that his client should thereupon pay it, and the Court granted the application. ISWAR CHANDRA DUTT *v.* ISWAR CHANDRA GHOSE [9 B. L. R., Ap., 19

8. ——— **Attorney and client.**—*Order directing client to pay costs.*—It is not the practice to make an order directing a client to pay his attorney the costs of suit when taxed. Such an order can only be made in a regular suit by the attorney against his client. DOMUN *v.* EMAUM ALLY [I. L. R., 7 Calc., 401

9. ——— *Mortgagor and mortgagee.*—Where in a mortgage deed the mortgagee covenanted to re-convey on being paid principal and interest, and "all costs and charges as between attorney and client," and the mortgagee, in default of repayment of the mortgage-money, obtained an *ex parte* decree for sale, the Court should award him costs as between attorney and client. CHUNDER COOMAR CHATTERJEE *v.* ESSEN CHUNDER CHATTERJEE . . 1 Ind. Jur., N. S., 222

COSTS—*continued*

1. SPECIAL CASES—*continued.*

Attorney and client—*continued.*

10. ——————— *Redemption, Suit for.—Costs between party and party.—Practice.*—In a suit upon a mortgage of certain property, *A.*, who had purchased the property in question subject to the mortgage sued upon, in execution of a decree upon another mortgage paid off the amount due to the plaintiff for principal and interest, and applied to the Court that he might be made a party, and that upon his paying the plaintiff the costs of the suit to be taxed as between party and party, the plaintiff should be directed to re-convey the property to him free from all encumbrances. *Held* that the practice was to make the costs in such circumstances payable as between attorney and client, and not as between party and party. OBHOY CHURN SEN *v.* DABENDRO NATH MULLICK . . . **8 C. L. R., 437**

11. ——— **Award.**—*Application to file an award.—Act VIII of 1859, s. 327.*—Where an application under section 327, Act VIII of 1859, was considered as a regular suit, the Judge was right in decreeing costs as in a regular suit. ROY PRIYANATH CHOWDHRY *v.* PRASANA CHANDRA ROY CHOWDHRY **[2 B. L. R., A. C., 249**

S. C. PREONATH CHOWDHRY *v.* RAMDHUN **11 W. R., 104**

12. ——— **Bombay Minors' Act (XX of 1864).**—*Suit to recover costs of proceedings under.*—An action brought to recover costs of proceedings held under Act XX of 1864 is not maintainable when the Court, before which such proceedings were taken, has made no order as to the payment of such costs. KABIR VALAD RAMJAN *v.* MAHADU VALAD SHIWAJI . . **I. L. R., 2 Bom., 360**

13. ——— **Certificate under Act XL of 1858.**—*Costs of opposing grant of certificate.*—Where the widow of a deceased proprietor, as the guardian of his minor son, put in a petition for a certificate under Act XL of 1858, in which she represented that she was in possession of the whole of the deceased's property, specifying a particular pergunnah and its appurtenances,—*Held* that, though she did not expressly ask for a certificate to manage the particular pergunnah named, as her petition was so worded as to obtain, and had the effect of obtaining, a certificate of that tenor, she must be held liable for the costs of a party entitled to object to the grant of such a certificate, and appealing with a view to its amendment. FEDA HOSSEIN *v.* KHAJOOROONNISSA . . . . . **9 W. R., 459**

14. ——— **Collector.**—*Costs of investigation into conduct of Ameen.—Power to award costs.*—Upon the application of the Collector, who was a party to a suit, an enquiry was held by the Subordinate Judge into the conduct of a Civil Court Ameen, who had made a local investigation in the suit. The Ameen was acquitted, and the Collector ordered to pay his costs, including vakeel's fees. *Held* that, as in the case of miscellaneous proceedings, the Civil Court was competent to award such costs against the Collector. IN THE MATTER OF COLLECTOR OF TIRHOOT . . . **14 W. R., 390**

COSTS—*continued.*

1. SPECIAL CASES—*continued.*

15. ——— **Co-sharers.**—*Separate suits for share of rent.*—Each of two shareholders in a talook sued separately for his share of the rent due from a tenant who held under one kabuliat. *Held* that no more costs were to be awarded to the plaintiffs than if they had sued jointly. PYARI MOHAN SINGH *v.* GAZI . **2 B. L. R., A. C., 337 : 11 W. R., 270**

16. ——————— *Pro formâ defendants.—Suit for contribution against co-sharers.*—When co-sharers who have paid their share of revenue assessments are made defendants in a suit for contribution, together with other co-sharers, whose proportion was paid by the plaintiff, the defendants who have paid are entitled to their costs of appearing, &c., notwithstanding that the plaintiff may have made no claim against them, but has joined them merely for the sake of conformity. GOLAM AHMED SHAH *v.* BEHARY LALL **[Marsh., 239 : 1 Hay, 500**

17. ——————— *Pro formâ defendants.—Suit for partition.*—Where co-sharers were made consenting defendants only in order to plaintiff's obtaining a complete decree for partition, it was held that plaintiff ought to pay the co-sharers' costs, which, however, should be a small sum, sufficient to cover the costs of their appearing. RAMPUTTY KOER *v.* KALEE CHURN SINGH **[14 W. R., 94**

18. ——————— *Suit for contribution against co-sharers, some of whom only were defaulters in payment of revenue.*—Where the plaintiff, one of several co-sharers, paid the shares of revenue due by other co-sharers to save the estate from sale, and then brought a suit for the balance of the revenue, after deducting his own share, against all the co-sharers, the lower Court made the plaintiff pay the costs of the defendant who had not made default in payment of revenue. *Held* that, since the payment by the plaintiff of the full amount of revenue was an act whereby all the shareholders benefited, inasmuch as the mere payment of their respective shares by the shareholders who did not default would never have protected the estate, the plaintiff was entitled to get the costs of his suit against all the shareholders, to be levied from them in the proportion of their respective shares in the estate. RADHA JIBON MUSTOFEE *v.* FORLONG . **2 Hay, 122**

19. ——— **Defendants.**—*Conduct rendering them liable to costs.—Costs given to plaintiff though suit be dismissed.*—A defendant who, although he has a good defence, has by his conduct induced the plaintiff to sue him, may be made liable for the plaintiff's costs though the suit be dismissed. LALLAH BHUGWAN DOSS *v.* AKBAR **[1 Ind. Jur., N. S., 390**

20. ——————— *Conduct rendering them liable for costs.—Defendant refused costs though claim against him dismissed.*—Where a party's admissions and conduct induced the supposition of his liability for a claim, the Court refused him his costs,

COSTS—*continued.*

1. SPECIAL CASES—*continued.*

Defendants—*continued.*

although the suit against him founded on such claim was dismissed. SREENAUTH ROY *v.* GOLUCK CHUNDER SEIN . . . . . **15 W. R., 348**

21. ——————— *Unscrupulous conduct of defendant.*—Where the plaintiff brought a series of charges and claims, the bulk of which he abandoned at the hearing and was defeated on others, costs were, on account of the defendant's unscrupulous conduct, given to the plaintiff, though he only recovered judgment to a trifling amount. RAMGOPAUL CHATTERJEE *v.* BHOBUNMOHUN BANERJEE **[Cor., 126**

22. ——————— *Defendant colluding with plaintiff.*—A defendant who colludes with the plaintiff, and induces him to bring a suit for his benefit, may be ordered to pay the costs of his co-defendants in the Court below. It seems that he may also be ordered to pay the costs of an appeal by the plaintiff. BHYROO RAOOT *v.* ANOOROODEB DEO NARAIN SINGH . . . . . **Marsh., 608**

23. ——————— *Separate appearance of.—Common defence.*—Where the defence is common and not separate, one set of costs should be awarded to all the defendants, even though they appear by separate vakeels. DE ASSIS (VICAR-GENERAL OF THE PORTUGUESE MISSION IN BENGAL) *v.* DE AUGOS . . . . . **17 W. R., 188**

24. ——————— *Separate appearance of.—Common defence.*—Several defendants were sued in respect of the same matter and their defences were identical, but they appeared separately. *Held* that, in dismissing the suit, the Judge properly allowed the defendants the costs of a joint defence. JOYKISHEN MOOKERJEE *v.* HURRYBUNGSO BURRAL **[Marsh., 95 : 1 Hay, 162**

KASSEE NAUTH ROY CHOWDHRY *v.* HULLODHUR ROY . . . . . **2 W. R., 60**

25. ——————— *Separate appearance of.—Separate defences.*—Under the Code of Civil Procedure it is the duty of the first Court to ascertain the costs of suit, *i.e.*, the costs of all the parties to the suit; but when the first Court does not consider that the defendants have properly severed in their defence and properly employed different vakeels, the Court ought not to allow more than one set of costs to the defendants, and should only specify in its decree the costs so allowed. RAM CHUNDER SEN *v.* DOORGA NATH ROY . . **2 C. L. R., 152**

26. ——————— *Separate appearance of.*—In a suit against several defendants to recover possession of land, one of them stated in defence that he had nothing to do with it, and made good his defence. The other defendants claimed to be entitled to the land, and proved their title. The disclaiming defendant appeared by a separate pleader, and incurred a separate set of costs. *Held*, that the Sudder Ameen rightly awarded a separate set of costs to him, and the Judge had not exercised a sound discretion in modifying the Sudder Ameen's decree, by awarding one set of costs only to all the defendants. RAMCHANDRA GOSWAMI *v.* MATILAL BAGCHI **[2 B. L. R., A. C., 169**

S. C. RAM CHUNDER GOSSAIN *v.* MUTTY LALL BAGCHEE . . . . . **11 W. R., 19**

27. ——————— *Separate appearance of.—Suit to recover endowed property.*—Certain landed property, alleged to have been sold to an idol, and registered in the name of the vendee's infant son as shebait, had, after the death of that son, been mortgaged twice by the vendee, who succeeded to the office of shebait, and was mortgaged subsequently, on the death of the vendor, by his widow, to pay off the charge created by her husband. The last mortgage was foreclosed, and the mortgagee obtained a decree for possession. In a suit for the recovery of the property by a descendant of the vendee claiming as shebait of the idol, it was held that the zemindar and the putnidar, who were both compelled to appear for the protection of their interests, and whose defences were not necessarily identical, were entitled to separate costs. GOBIND NATH ROY *v.* LUCHMEE KOOMAREE . . . **11 W. R., 36**

28. ——————— *Separate costs allowed to separate defendants.—Receipt for costs.*—Where two separate sets of defendants were allowed separate costs, *Held*, it was not necessary to keep the whole amount in Court after levying it from the plaintiffs, until a joint receipt could be given by the whole of the defendants: the proper course was to give notice to the second set of defendants to come in and show what portion of the costs they were entitled to. NUFFER CHUNDER PAUL *v.* NUDUROONISSA BEEBEE **[9 W. R., 387**

29. ——————— *Costs of defendant with separate interests consenting to decree.*—The rules relating to pleaders' fees passed by the Court on 13th June 1866 do not provide for the case of defendants who have separate interests, and who consent to a decree, the amount of costs to be allowed in such a case being in the discretion of the Court. RAMPUTTY KOER *v.* KALEE CHURN SINGH **[14 W. R., 94**

30. ——————— *Costs of ijmali-holders as defendants.*—Ijmali-holders, defendants, should be represented ijmali by one pleader and one set of pleadings, and are not entitled to separate costs. BRINDABUN CHUNDER CHOWDHRY *v.* RAM COOMAR CHOWDHRY . . . **1 W. R., 139**

31. ——————— *Separate defence on charge of misappropriation.—Joint charge.*—Under a charge against several defendants for having jointly misappropriated property, one defendant is not bound to entrust his defence to the counsel for the others, but each has a right to defend himself, and is entitled to separate costs if successful. NILKANTH SURMA *v.* SOOSELA DEBIA . . **6 W. R., 324**

COSTS—*continued.*

1. SPECIAL CASES—*continued.*

Defendants—*continued.*

32. ——————— *Imputation of fraud, when unsustained.*—The appellant, defendant, continuing to impute fraud to the respondent, plaintiff, which he could not sustain, was deprived of his costs in appeal. LEWIN *v.* MORRISON [2 Agra, Pt. II, 151

33. ——— Respondent.—*Constructive notice to purchaser.—Secrecy in transaction.*—Where the respondent had been guilty of secrecy in a transaction with constructive notice of which he sought to affect a purchaser as appellant, the High Court gave the appellant his costs in both Courts. HORMASJI TEMULJI *v.* MANKUVARBAI [12 Bom., 262

34. ——— Fraud.—*Putting forward fabricated documents.*—Where an ikrarnamah relied on by the respondents and on which the case depended was found to be fabricated, and the appellant was successful, no order was made as to costs, fabricated documents having also been put forward on behalf of the appellant. COOMARI RODESHWAR *v.* MANROOP KOER . . . . . L. R., 13 I. A., 20

35. ——— Fresh suit wrongly brought.—*Bringing fresh suit where appeal is the proper course.*—Where the Court refused to execute a decree given on terms of a petition embodying a compromise, and the applicant, instead of appealing, which was his proper course, brought a suit on the decree, the Court refused to give him his costs, but gave all costs in favour of the defendant. RUTTNESSUR CHATTERJEE *v.* GOOROO CHURN CHATTERJEE . 9 W. R., 296

36. ——— Government.—*Suit for compensation for lands taken for railway.*—The plaintiff, as ijaradar, claimed a sum of money as compensation for land taken compulsorily for the purpose of a railway, and which had been awarded and was lying in deposit. A farmer of the lands under him claimed a portion of the same sum as compensation for the residue of his lease. *Held* that the farmer was entitled to such compensation, and that, in apportioning the costs of a suit brought to try the question, in which the ijaradar was plaintiff and the Government and the farmer defendants, the farmer was entitled to receive from the ijaradar the costs of his demand to the extent to which it was established, and the plaintiff to receive from the farmer the costs applicable to an excess in the demand of the farmer beyond that which he succeeded in establishing; and that Government was entitled to receive the costs which it had incurred from both parties, in the proportion in which each had failed in establishing his claim. NUBEEROODEEN AHMED *v.* THE RAILWAY COMMISSIONERS . . . Marsh., 91: 1 Hay, 157

37. ——————— *Survey proceedings.—Allegation of misconduct and collusion of survey officers.*—The act of the survey authorities in demarcating lands is a necessary and legal act, and Government cannot be saddled with costs unless it can be proved that its officers are wilful wrong-doers.

COSTS—*continued.*

1. SPECIAL CASES—*continued.*

Government—*continued.*

A mere allegation of the plaintiff, to the effect that the defendant had colluded with the survey officers, is no reason for saddling the Government with costs. COLLECTOR OF MOORSHEDABAD *v.* RAMMOHUN DOSSEE . . . . . 1 Hay, 520

38. ——— Grounds of appeal.—*Practice.*—If grounds of appeal which are absolutely untenable are joined with grounds which are tenable, in order to bring a case within the rule as to the value authorising an appeal as of right, this matter may be considered in regard to the question of costs. HURRO DURGA CHOWDHRANI *v.* SURUT SUNDARI DEBI . . . . . I. L. R., 8 Calc., 332

39. ——— Guardian.—*Guardian ad litem.—Misconduct.*—Where a guardian *ad litem* of an infant had been guilty of gross misconduct in putting executors to proof of a will which he wished to upset for his own private purposes, and which, the evidence showed, was to his knowledge duly executed by the testatrix in a sound state of mind,—*Held* that he was liable for the costs of the suit. GOOLAM HOSSEIN NOOR MAHOMED *v.* FATMABAI [I. L. R., 8 Bom., 391

40. ——————— *Guardian ad litem.—Decree for costs against.—Civil Procedure Code, 1877, s. 458.*—The Civil Procedure Code does not authorise a Court to decree costs against the guardian of a defendant except in the case referred to in section 458. NARASIMHA RAU *v.* LAKSHMIPATI RAU . . . I. L. R., 3 Mad., 263

41. ——— Indemnity, Contract of.—*Costs incurred in course of ascertaining and settling claim.*—In 1864 a lease of a house was granted to *A.* for a term of ten years. The lease contained a covenant to repair. *A.* died, and *B.*, his administrator, assigned the lease to another, and it ultimately became vested in the plaintiff. In 1872 the plaintiff assigned the lease to the defendants, "under and subject to the covenants" therein contained. The defendants failed to repair, and after the term had expired, *C.*, the representative of the lessor, sued *B.* for arrears of rent and damages for non-repair. *B.* defended the suit, but *C.* obtained a decree against him for R6,167-3 and costs, amounting in all to R8,328-3. His own costs amounted to R1,491-1. In 1876 *B.* paid *C.* the R8,328-3. In 1877 *B.* sued the plaintiff for the amount which he had been compelled to pay *C.*, and for the amount of his own costs. The plaintiff gave notice to the defendants to intervene and defend if they desired; but they did not reply, and the plaintiff consented to a decree for R6,932-12-11 with costs. Thereupon the plaintiff instituted the present suit to recover from the defendants the sum recovered from him by *B.*, together with his own costs of defence. *Held* that, in the case of contracts of indemnity, the liability of the party indemnified to a third person, is not only contemplated at the time of the indemnity, but is the very moving cause of that contract; and in cases of such a nature costs reasonably incurred in resisting, or

COSTS—*continued.*

1. SPECIAL CASES—*continued.*

Indemnity, Contract of—*continued.*

reducing, or ascertaining the claim may be recovered. *Held*, therefore, that the costs incurred by *B.* in the suit instituted against him by *C.*, and those incurred by the plaintiff in the suit by *B.* against him, were reasonably and properly incurred, and that he was entitled to recover them from the defendants. PEPIN *v.* CHUNDER SEEKUR MOOKERJEE [I. L. R., 5 Calc., 811: 6 C. L. R., 167

42. ——— **Interpleader suit.**—*Lien of plaintiff on fund for costs.*—The plaintiff in a properly instituted interpleader suit is entitled to his costs, and has a lien for them on the fund. SECRETARY OF STATE *v.* MAHOMMED HOSSAIN [1 Mad., 360

43. ——— **Jurisdiction.**—*Want of jurisdiction.—Power to give costs.*—After notice served upon, and appearance made by, the defendant, it appeared that the Civil Court had no jurisdiction, but that the suit ought to have been instituted in the Revenue Court. *Held* that the Civil Court had jurisdiction to order the defendant his costs, and that as he had been unnecessarily brought before the Court, it ought to order him his costs. GOPAL CHUNDER GHOSE *v.* DHURUNDHUR ROY [Marsh., 311: 2 Hay, 188

44. ——— *Want of jurisdiction, Dismissal of suit for.*—When a suit is dismissed for want of jurisdiction, the Court will give costs. PUNCHANUN GHOSE *v.* BROJENDRONARAIN DEB . . . . 1 Ind. Jur., N. S., 38

JUGGESHUR BUNWAREE GOBIND *v.* CHUNDER SIRCAR . Marsh., 375: 2 Hay, 344

45. ——— *Want of jurisdiction.—Quære,*—Whether the High Court can give costs in a case in which it has declined jurisdiction. JARDINE, SKINNER AND COMPANY *v.* MONEY [14 W. R., 312

Express power is now given to the Court by section 220 of the Civil Procedure Code, 1882, to give costs in such a case.

46. ——— *Judge exceeding his jurisdiction.—Application for consequent costs.*—When a Judge exceeds his jurisdiction, a party claiming costs in consequence thereof must apply for them when objecting thereto. RAKUB DOSS *v.* SOORAJ MULL . . . . . Bourke, O. C., 131

47. ——— **Landlord and tenant.**—*Construction of contract to pay costs.—M. C. M. and* others took a share of a turuff in putnee by executing a kabuliat in favour of *R. L. D.* and others, which contained a stipulation that if a suit brought by certain parties against the former, and then pending in the High Court, were decided against the lessors, the lessees would pay whatever costs of suit might be payable by the lessors, and if decided in favour of the lessors, the costs awarded would go to the lessees. The case was decided against the lessors. *Held*, on the construction of the kabuliat, that the lessees

COSTS—*continued.*

1. SPECIAL CASES—*continued.*

Landlord and tenant—*continued.*

were liable to pay the whole of the costs paid by the lessors,—not only the costs to which they were justly liable on account of their own share, but also all costs that might be recoverable from them; but *quære,*—whether the Small Cause Court Judge should provide for the lessees being enabled to use the rights which the lessors would have for recovering in a suit for contribution the costs which they had paid on behalf of the other parties to the suit. RAJ LUCKHEE DEBIA *v.* MOHESH CHUNDER MOJOOMDAR [14 W. R., 191

48. ——— **Letters of administration.**—*Concealment of material facts on application.*—An applicant for letters of administration to the estate of a widow, having concealed the existence and claims, of which he was aware, of the relatives of the deceased husband of the widow, on the application being dismissed, was ordered to pay the costs of the application and of the caveats entered by some of the relatives of the deceased husband. JAIKISONDAS GOPALDAS *v.* HARKISONDAS HULLOCHANDAS . . . I. L. R., 2 Bom., 9

49. ——— **Misjoinder.**—*Dismissal for misjoinder*—The legal result, when a suit is dismissed for misjoinder, is that the plaintiff pays the defendant's costs. MUTHRA PERSHAD *v.* BUNDEE ROY [5 N. W., 20

50. ——— *Suit rejected for misjoinder.*—Where a plaint had been rejected as having been filed against several persons who had different defences, it was held to be within the discretion of the Judge, in appeal, to dismiss the suit and saddle the plaintiff with the costs of all the defendants, notwithstanding that all the latter, except one set, admitted the claim, and retired from the contest. KOSSELLA KOER *v.* BEHARY PATUCK [12 W. R., 70

51. ——— *Suit against several defendants dismissed for multifariousness.*—In a suit against 34 defendants to recover 3,820 bigahs of land, 13 came in and defended separately, each in respect of his own portion of the land claimed. The suit was dismissed for multifariousness. Fixing a certain valuation (R5,440) for the suit so far as it was dismissed, the Judge allowed each defendant full costs upon that valuation, or a vakeel's fee of R257 to each defendant, being in many instances greater than the value of the property in dispute. *Held* that this could not be a just and equitable way of awarding fees, and that the best plan in the present case was to allow each defendant in respect of a plot exceeding 20 bigahs and not exceeding 40 bigahs, three gold mohurs; and of a plot less than 20 bigahs, two gold mohurs. ROODUR NARAIN ROY *v.* COOMAR NARAIN PATNAIK [13 W. R., 320

52. ——— **Mortgage.**—*Costs of enforcing mortgage.*—A mortgagee is, as a general rule, entitled to the costs of enforcing his security; but

COSTS—*continued.*

1. SPECIAL CASES—*continued.*

Mortgage—*continued.*

where the Court, in consideration of his usurious bargain, declines to award them wholly or in part, the High Court will not interfere. CARVALHO *v.* NURBIBI . . . **I. L. R., 3 Bom., 202**

53. ——— **Parties.**—*Parties added at hearing, Liability of, for costs.*—The plaintiffs having filed their plaint against parties *primâ facie* liable to them upon the contract, and having opposed a claim made by the original defendants to have the suit dismissed as against them on their paying money into Court, and to have third parties added as defendants,—*Held* that the plaintiffs having succeeded against the third parties ordered to be added as defendants, the added defendants were liable for the whole costs. ASSARAM BURTEAH *v.* THE COMMERCIAL TRANSPORT ASSOCIATION **[2 Ind. Jur., N. S., 113**

54. ——— *Parties in Court below not made parties to appeal.*—In the first Court the Government obtained their costs; the opposite party appealed, but did not make the Government a respondent. On appeal the decree of the first Court was reversed. *Held* that the Government not having been made a party to the appeal were entitled to recover their costs in the first Court. GOVERNMENT *v.* LALJI SAHU . **1 B. L. R., S. N., 23**

BHOYRUB CHUNDER DOSS *v.* WAJEDUNNISSA KHATOON . . . . **6 C. L. R., 234**

55. ——— *Parties unnecessarily joined.—Parties who have no interest in suit.*—Where parties who have no interest in a suit are unnecessarily made co-defendants, the lower Court ought, as a general rule, to award them costs; but as by section 187, Act VIII of 1859, the awarding of costs is left to the discretion of the Court, no appeal lies from its decision. COLLECTOR OF DACCA *v.* KUMALAKANT MOOKERJEE . . **2 W. R., 33**

56. ——— *Parties unnecessarily joined.—Disclaimer of interest.—Discretion as to costs.*—Although the question of costs is within the discretion of a Court, yet the Court is bound to give some reasons for the exercise of that discretion. A party disclaiming all interest in a suit, and unnecessarily made a party to it, is entitled to costs. SHUNT BUKSH *v.* LALLA NUND RAM . **11 W. R., 48**

57. ——— *Parties unnecessarily joined.—Suit for foreclosure.—Disclaiming defendants.*—Suits for foreclosure may be dismissed with costs against disclaiming defendants. MACKINTOSH *v.* NOBINMONEY DOSSEE **[2 Ind. Jur., N. S., 160**

58. ——— *Party unnecessarily joined in suit.*—One of several judgment-debtors jointly liable under a decree, having paid a larger amount than was due as between himself and his co-defendants, brought a suit to recover from them the excess paid by him. One of the defendants having paid more than his share, the claim against him was

COSTS—*continued.*

1. SPECIAL CASES—*continued.*

Parties—*continued.*

dismissed by the Principal Sudder Ameen, who nevertheless, on the ground that it was necessary to make him a party, awarded him no costs. *Held* that it was not necessary to make this defendant a party, and that costs should not have been refused. *Held*, also, that the scale on which costs should be awarded to him depended on what plaintiff claimed against him, and that he was entitled to costs on the usual scale on the amount for which the suit was brought. KASHEENATH SEIN *v.* CHUNDERMONEE DEBIA **[9 W. R., 288**

59. ——— *Party unnecessarily joined.—Collector.*—Where a Collector had been unnecessarily made a party to a suit in which damages might have been awarded against him had he not appeared, he was held entitled to his costs. In his appeal from the Judge's order passed in favour of the plaintiff, and disallowing his own claim for costs, a defendant unnecessarily made a co-defendant a respondent. As this respondent could not be injured in any way in this appeal, it was held by the Chief Justice (MITTER, J., dissenting) that, although the appeal was dismissed, the co-defendant was not entitled to costs simply because he had been present watching the case. COLLECTOR OF THE 24-PERGUNNAHS *v.* WILKINSON . . . **12 W. R., 444**

60. ——— *Party unnecessarily joined.—Defendant improperly brought before the Court.*—Where a plaintiff improperly brings a defendant before a Court and his suit is dismissed, the defendant should not be deprived of costs merely because the Court considers the defence a fabrication to meet the plaintiff's claim. DEVARAKONDA NARASAMMA *v.* DEVARAKONDA KANAYA **[I. L. R., 4 Mad., 134**

61. ——— *Party disclaiming interest though denying plaintiff's title.—Suit for possession of land.—Non-occupation of land by defendant.—Denial of plaintiff's title.—Exemption from costs.*—In a suit for recovery of the possession of land in which the plaintiff recovers a decree, it is no ground for exempting a defendant from costs that he did not himself occupy any part of the land if he has denied the plaintiff's title in the suit, or was instrumental as the agent of others in dispossessing the plaintiff. KOOMEROONISSA BEGUM *v.* HUNOOMAN DOSS . . . **Marsh., 122: 1 Hay, 266**

S. C. HUNOOMAN DOSS *v.* KOMEERUNNISSA BEGUM **[W. R., F. B., 40**
1 Ind. Jur., O. S., 42

62. ——— **Partition.**—*Suit for partition by one of several co-sharers.*—The costs of a suit for partition by one shareholder of a putni talook against his co-sharers, as well as of effecting a partition, must be borne by each party, as such expenses are not caused by any wrongful act of either party, but by the nature of their tenancy. SAMASUNDARI DEBI *v.* JARDINE, SKINNER AND CO. **[3 B. L. R., Ap., 120: 12 W. R., 160**

COSTS—*continued.*

1. SPECIAL CASES—*continued.*

Partition—*continued.*

63. ——————— *Hindu widow.*—In a suit by a childless Hindu widow for partition of her late husband's estate, from which she alleged that she had been ejected by the defendant, the reversionary heir, the widow consented to a decree for partition, whereby a moiety of the property was allotted to her for the estate of a Hindu widow, and the parties were ordered to pay their own costs respectively. There was nothing in the decree to show that the defendant had been guilty of any misconduct, or that there was any necessity for the suit. An application by the widow that her costs of suit might be paid by the sale absolutely of the share allotted to her was refused. KISTOKAMINY DOSSEE *v.* MIRTOONJOY DUTT . **11 B. L. R., Ap., 35**

64. ——————— *Costs on unjustifiable partition suit.—Civil Procedure Code, 1859, s. 187.*—The costs in a partition suit where the property is of so small a value that it is likely to be wholly absorbed by the expenses, and where the suit by a joint holder is therefore brought unjustifiably and to the detriment of the others ought to be paid by the plaintiff. BHOOBUN MOHUN DEY *v.* DINONATH DEY . . **1 Hyde, 122**

65. ——— **Partnership.**—*Suit relating to partnership.*—Under ordinary circumstances, the costs of a partnership suit should be paid out of the assets of the partnership, or, in default of assets, by the partners in proportion to their respective shares, unless any partner denies the fact of a partnership, or opposes obstacles to the taking of the accounts, and so renders a suit necessary, when he is usually made to pay the costs up to the hearing. RAM CHUNDER SHAH *v.* MANICK CHUNDER BANIKYA **[I. L. R., 7 Calc., 428 : 9 C. L. R., 157**

66. ——————— *Suit on hath-chitta.—Some partners denying debt, others admitting debt.*—In a suit brought against several partners to recover a sum of money on a hath-chitta, some of the partners denied the debt and the partnership, whilst others admitted both the partnership and the liability; the Court found in favour of the plaintiffs, and gave them a decree for the amount sued for with costs, and ordered the defendants who had disputed the debt and the fact of the partnership to pay the costs of the other defendants who had admitted their liability. JUGGUT CHUNDER ROY *v.* ROOP CHAND SHAW **[I. L. R., 6 Calc., 811**

67. ——— **Payment into Court.**—*Money paid into Court at settlement of issues.*—At the settlement of issues, defendant paid money into Court, which plaintiff took out in part satisfaction of his claim, and raised an issue as to damages. The plaintiff subsequently accepted the sum paid in full satisfaction and withdrew the suit. *Held*, that the plaintiff was entitled to his costs up to and including those of the settlement of issues. ARDESIR LIMJI *v.* SORABJI PESTANJI . . . **1 Bom., 70**

COSTS—*continued.*

1. SPECIAL CASES—*continued.*

Payment into Court—*continued.*

68. ——————— *Deposit of costs.—Admission.*—A deposit of costs, accompanied by a prayer that they should be enquired into upon a particular principle, does not imply an admission on the part of the depositor of his obligation to pay costs to the extent of the deposit. LEELANUND SINGH *v.* COURT OF WARDS . **14 W. R., 387**

69. ——— **Payment out of Court.**—*Failure to join in application to take money out of Court.—Suit for share of money.*—A suit by *A.* having been decreed and execution proceedings taken out, the judgment-debtors paid into Court the amount decreed. Subsequently the decree-holder (*A.*) and his cousin (*M.*) put in a petition intimating that the money belonged to them in equal shares, and the Court afterwards held a proceeding in the presence of the vakeel that no steps had been taken by his client to take out the money and that the name of *M.* had been registered with that of *A.* as decree-holders, and the money was available for payment on their joint application. Eventually *M.* sued *A.* for a moiety of the amount. The Subordinate Judge, holding that it was entirely owing to the passive opposition of *A.* that the money could not be drawn out from the Court, decreed the claim with costs. *Held* that the decision of the Subordinate Judge was correct and just. AJOODHYA DOSS *v.* MUTHOORA DOSS . . . . . **23 W. R., 14**

70. ——— **Plaintiffs.**—*Separate appearance of plaintiffs.*—Plaintiffs in the same interest should be represented by the same pleader or set of pleaders, no costs being allowed for others. JANKIBAI *v.* ATMARAM BABURAV . **8 Bom., A. C., 241**

71. ——— **Pleas taken out of time.**—*Pleas taken after hearing of evidence.—Plea of res judicata.*—Costs not allowed where the plea of *res judicata* was not raised until after all the evidence had been taken. RUN BAHADOOR SINGH *v.* LUCHO KOOER **[I. L. R., 6 Calc., 406 : 7 C. L. R., 251**

72. ——————— *Plea taken on appeal for first time.—Appeal succeeding on point taken for first time.—Respondent's costs.*—Where the appellants succeeded on a point taken by them for the first time in appeal they were ordered to pay the respondent's costs of appeal. HARIDAS PURSHOTAM *v.* GAMBLE . . . . **12 Bom., 23**

73. ——— **Printing and translations.**—*Decree of Privy Council.*—When the Privy Council decrees not only a certain specified sum as the costs of the appeal to England, but also awards the costs incurred in the Courts in India, the decree-holder is entitled to the costs of translating the record of the appeal and of transmitting it to England. ASGUR ALI *v.* NUGENDRO CHUNDER GHOSE **[23 W. R., 463**

See MADAN THAKUR *v.* LOPEZ **[9 B. L. R., Ap., 22 : 18 W. R., 253**

COSTS—*continued.*

1. SPECIAL CASES—*continued.*

Printing and translation—*continued.*

UMATUL FATIMA *v.* AZHUR ALI
[9 B. L. R., Ap., 23, note : 15 W. R., 356

SARODA PRASAD MULLICK *v.* LUCHMIPAT SINGH DUGAR . **9 B. L. R., 23, note : 18 W. R., 89**

and NIL MADHUB DOSS *v.* BISSUMBHUR DOSS
[21 W. R., 411

74. ——————— *Appeal to Privy Council.*—Costs of printing and translation, certified by the Deputy Registrar of the High Court, are a necessary part of the costs of an appeal to the Privy Council. The amount of such costs is left to be ascertained by the High Court, and is not assessed by the Privy Council Office. RAM COOMAR GHOSE *v.* PROSUNNO COOMAR SANNYAL
[I. L. R., 10 Calc., 106

75. ——— **Official Assignee.**—*Payment of costs personally.—Civil Procedure Code, XIV of 1882, s. 219.—Practice.*—If the Official Assignee defends a suit he is liable, in the event of failure, to be ordered to pay the plaintiff's costs in the same way as any other defendant, and if the estate be insufficient to pay the costs, he will have to bear them personally. It is for him to protect himself by getting a guarantee of indemnity from the parties who set him in motion. BEVIS *v.* TURNER
[I. L. R., 7 Bom., 484

76. ——— **Remand.**—*Stamp on plaint.—Pleader's fees.*—Where a suit was decided after trial, and the decision being reversed by the High Court on appeal, the case was remanded with orders allowing the plaintiff to amend his plaint, but requiring him to pay all the costs of the first two hearings,—*Held* that the stamp for the plaint was properly included in the costs of the second hearing in the Court below, and that, as the case was sent back for re-trial and not as a mere remand, the whole of the pleader's fees should be paid for the second trial. MADHUB CHUNDER BERA *v.* RAM LOCHUN BERA
[14 W. R., 143

77. ——— **Service of summons by mistake.**—*Service on wrong person.*—In a suit brought by the plaintiffs against *A.*, the summons was by mistake served upon *B.*, who thereupon filed a written statement denying his liability and alleging that he was erroneously described in the title to the plaint. On the day of the hearing of the case the plaintiffs' agent saw *B.* for the first time, and ascertained that he was not the real defendant in the suit. *Held* that *B.*, having done nothing to mislead the plaintiffs as to his identity, was entitled to his costs of suit. LONDON, BOMBAY, AND MEDITERRANEAN BANK *v.* MAHOMED IBRAHIM PARKAR
[I. L. R., 4 Bom., 619

78. ——— **Small Cause Court suits.**—*Act IX of 1850.—Suit on a mortgage.*—When a suit is brought for the principal sum and interest due on a mortgage, the High Court gave costs, although the decree was for less than R1,000, as the Small Cause Court had no jurisdiction. MIRTUNJOY DUTT *v.* KAMEENEE DOSSEE . **1 Ind. Jur., N. S., 95**

79. ——————— *Suit on a contract.—Suit which ought to have been brought in Small Cause Court.*—Where an action on a contract was brought in the High Court, and judgment was given to the plaintiff for R454-13-4,—*Held* that, as the amount so found due was less than R500, the plaintiff could not have his costs, unless the Judge who tried the cause certified that the action was fit to be brought in the High Court. The 37th clause of the Charter of the High Court does not give the Court an uncontrolled discretion as to costs in civil suits. SABAPATI MUDALIYAR *v.* NARAYANSAMI MUDALIYAR . . . . . **1 Mad., 115**

80. ——————— *Civil Procedure Code, 1859, s. 187.—Portion of costs given to losing party.*—Portion of the costs awarded to the defendant in exercise of the discretion given by Act VIII of 1859, section 187, where in a suit for some jewels it appeared on the evidence of the plaintiffs that they were not worth so much as stated in the plaint, and the suit might have been brought in the Small Cause Court. SOUDAMINEY DOSSEE *v.* JUGGOMOHUN SEN
[1 Hyde, 172

81. ——————— *Act XXVI of 1864, s. 9.—Small Cause Court suit brought in High Court.*—The fact that a suit was brought in the High Court because it was thought necessary to attach the defendant's property before judgment, which could not have been done by the Small Cause Court, does not take the case out of the operation of section 9, Act XXVI of 1864. HURRAN CHUNDER GANGOOLY *v.* SHIB CHUNDER MITTER
[2 Hyde, 237

82. ——————— *Small Cause Court Act (XXVI of 1864), s. 9.—Mortgage.*—In a suit by a mortgagee, the prayer of the plaint was for a decree for R300 with interest, and for foreclosure or sale in default of payment. *Held*, that it was an action within section 9 of Act XXVI of 1864, and, therefore, the plaintiff was not entitled to costs. KHETTRAMOHAN CHATTERJEE *v.* KISORIMOHAN BOSE . . . . . **1 B. L. R., O. C., 27**

83. ——————— *Certificate under Act XXVI of 1864, s. 9.—Appellate Court, Power of.*—Where in an action in the High Court founded on contract a verdict was found for the plaintiff for a sum less than R1,000, and the Judge who tried the case awarded costs without certifying under section 9, Act XXVI of 1864, that the action was fit to be brought in the High Court,—*Held* that the Court might supply the omission on appeal. NOBOCOOMAR DOSS *v.* KEWATA MUG . . **10 B. L. R., 358**

S. C. KEWATA MUG *v.* NOBOCOOMAR DOSS
[19 W. R., 207

84. ——————— *Suit on decree of Small Cause Court.*—In a suit upon a decree of the Small Cause Court brought by reason of there being

COSTS—*continued.*

1. SPECIAL CASES—*continued.*

Small Cause Court suits—*continued.*

no process of that Court whereby satisfaction of its decree could be obtained,—*Held* that the High Court had power to award to the plaintiff his costs of suit. Under the circumstances of the case costs were not given. MADAN MOHAN BOSE *v.* LAWRENCE **[1 B. L. R., O. C., 66**

85. ——————— *Act XXVI of 1864, s. 9.—Set-off.*—Where the defendant proved a set-off against the plaintiff, and thus reduced the amount which he (plaintiff) was entitled to recover from the defendant, for breach of contract,—*Held* that, notwithstanding the provisions of section 9 of Act XXVI of 1864, the plaintiff was entitled to his costs. KISHORCHAND *v.* MADHOWJI **[I. L. R., 4 Bom., 407**

86. ——— **Special appeal.**—*Costs of special appeal after remand by High Court.*—If a case after being decided in appeal by the Zilla Court is brought before the High Court in special appeal and is remanded, the costs of the special appeal can only be recovered if the High Court's order of remand provides that they are to abide the decision on appeal below. DIGAMBUR CHATTERJEE *v.* RAM ROODRO GUNGOPADHYA . . . . **13 W. R., 39**

87. ——— **Suit or appeal only partly decreed.**—*Discretion of Court in awarding.*—It is not correct in law or justice to say that costs must be invariably awarded in proportion to the amount decreed and dismissed. The Court can exercise the largest discretion in the matter; but this discretion is to be exercised with special reference to all the circumstances of the case, including the conduct of the parties. SHEO DYAL TEWAREE *v.* JUDOONATH TEWAREE. SHEO DYAL TEWAREE *v.* BISHONATH TEWAREE. SHIB DYAL TEWAREE. *v.* BISHONATH TEWAREE. JUDOONATH TEWAREE *v.* BISHONATH TEWAREE **[9 W. R., 61**

88. ——————— *Failure as to portion of special appeal.*—Where a special appellant to the High Court failed as to a portion of his appeal, the costs of that Court were decreed against him. HEERA RAM BHUTTACHARJEE *v.* ASHRUF ALI **[9 W. R., 103**

89. ——————— *Proportionate costs on partial decree.*—In cases of partial decree, costs should be awarded to both parties in proportion to the amount decreed and dismissed. NINBOORA *v.* HEERARAM MISSER . . . **1 Hay, 277**

90. ——————— *Costs to defendants on sum in excess of what plaintiff is entitled to.*—When a plaintiff has asked for a sum which is in excess of what the Court holds him entitled to, and to which a lower rate of pleader's fee or of stamp duty applies than to the rest of the claim, the defendant who succeeds in that part of the case is entitled to recover the costs applicable to that particular part of the subject-matter (BAYLEY, *J.*, dissenting). BAMASOONDERY DEBIA *v.* ROGERS . . **7 W. R., 127**

Upheld on review . . . **8 W. R., 55**

COSTS—*continued.*

1. SPECIAL CASES—*continued.*

Suit or appeal only partly decreed—*continued.*

91. ——————— *Claim partly decreed and partly dismissed.*—If a plaintiff claims in respect of two distinct matters, and succeeds as to one and fails as to the other, the costs will be apportioned so as to give each party the costs applicable to that matter upon which he has succeeded. TARACHAND MOOKERJEE *v.* JADOONATH MOOKERJEE **[Marsh., 79 : 1 Hay, 141**

JADOONATH MOOKERJI *v.* TARACHAND MOOKERJI **[1 Ind. Jur., O. S., 102**

92. ——————— *Order decreeing costs in proportion.*—An order decreeing to plaintiff his costs in proportion, must be taken to mean as if costs were given in proportion to the amount decreed and dismissed; so that, except when there is a distinct order restricting costs to the plaintiff, the defendant is entitled to his costs on the portion of the claim dismissed, although the order does not in words provide for it. BYKUNTNATH CHOWDHRY *v.* MOHESSUREE . . . . **4 W. R., Mis., 9**

93. ——————— *Unsuccessful plaintiff as to whole claim.*—Where a plaintiff is entitled to some part of his claim, he ought not to be deprived of the benefit of the decree by such an order as to costs as would make him liable to the defendant for more than he would himself recover. RAM CHUNDER CHOWDHRY *v.* MARIOTT . **15 W. R., 465**

94. ——————— *Plaintiff only partly successful.—Pressure by defendants to sue.*—Although the plaintiff was unable to satisfy the Judge below as to each item of property for which she sued, and did not obtain a decree for the full amount claimed, yet she was held entitled to recover the whole of the costs incurred by her in a suit into which she had been forced by the defendants for the recovery of her property. SHIB PERSHAD CHUCKERBUTTY *v.* GUNGA MONEE DEBEE . . . . **16 W. R., 291**

95. ——————— *Costs between party and party.—Calculation of costs.—Portion of claim allowed and part disallowed.*—Where the decree in a suit directed the payment of costs by the plaintiff and defendants respectively, in proportion to the amounts decreed and disallowed, the Second Subordinate Judge, before whom the matter came, gave the plaintiff costs at the rate of 5 per cent. on the amount decreed, up to R5,000, and to the defendants at the rate of 2 per cent. on the amount disallowed, on the ground that such was in accordance with the practice not only of the Court of the Moonsif, but of the First Subordinate Judge of the District. *Held* that the method adopted was erroneous, and that the proper mode of giving effect to such a decree was to calculate the amount of the costs of the suit as laid, and then divide the entire sum proportionately between the parties according as they have respectively succeeded or failed. *Bamasoondery Debia* v. *Rogers, 7 W. R., 127,* followed. LECKIE *v.* JOY GOBINDO NATH ROY . . . . **7 C. L. R., 114**

COSTS—*continued.*

1. SPECIAL CASES—*continued.*

Suit or appeal only partly decreed—*continued.*

96. ——————— *Set-off of costs ordered on the disposal of a preliminary point against costs awarded at the final disposal of the suit.—Costs of partly successful appeal.*—It is not the usual practice, when costs of an interlocutory proceeding have been disposed of, to consider that an award of the general costs of the suit interferes with the order as to the partial costs. A prior decree having given the costs incurred on the disposal of a preliminary point to the party successfully raising it, a later decree, without expressly referring to the former, gave the costs of the suit, generally, to the opposite side. *Held* that the costs due under the prior decree should be set off against those due under the later. Although an appellant only partly succeeded in his appeal, the whole of his claim having been opposed in the Courts below on an untenable ground,—*Held*, that there was no reason for departing from the general rule that the defeated party should pay the costs. RADHA PERSHAD SINGH *v.* RAM PARMESWAR SINGH . **I. L. R., 9 Calc., 797: 13 C. L. R., 22**

97. ——————— *Suit for damages.—Decree for nominal damages.—Costs to defendant on difference.*—Where a suit for damages was partially decreed on a finding of nominal damages, and costs on the amount undecreed were awarded to the defendant with interest,—*Held* that there was no good reason for such a course, and no ground of justice for saddling the plaintiff with defendant's costs. MOSEEHUN *v.* MUNOORUN . . **24 W. R., 69**

98. ——————— *Consequential costs.—Partial relief.*—Costs are not consequential upon partial relief being granted in a suit involving a much larger subject-matter, a portion of which is still *sub judice*, and cannot therefore be given by the High Court upon a decree of the Privy Council, if not provided for by the decree. LEELANUND SINGH *v.* COURT OF WARDS . . **14 W. R., 387**

99. ——————— *Administrator General's Act II of 1874, s. 35.—Plaintiff succeeding as to part of claim only.*—In April 1885, *A.* entered into an agreement in writing with *B.*, whereby he agreed to act as the manager of *B.'s* zemindaries and other landed properties for three years, on certain terms therein mentioned. The agreement was duly registered. On the 15th of June 1882, *B.* sued the Administrator General of Bengal, as administrator of *A.'s* estate, to recover certain sums of money, set forth in detail in the plaint, as having been received by *A.* and not accounted for, stating that they had been misappropriated by *A.* *Held* that, under the special terms of the Administrator General's Act, II of 1874, the plaintiff (having succeeded as to part of his claim only), was not entitled to any costs as against *A.'s* estate, but was liable to pay costs on the portion of his claim which was disallowed. HARENDER KISHORE SINGH *v.* ADMINISTRATOR-GENERAL OF BENGAL . . . **I. L. R., 12 Calc., 357**

COSTS—*continued.*

1. SPECIAL CASES—*continued.*

100. ——————— **Summary suit for possession.**—*Cases under s. 15, Limitation Act, XIV of 1859.—Act XX of 1865.—Pleader's fees.*—In cases under section 15, Act XIV of 1859, it was in the discretion of the Court to give costs, either as provided in section 1 of the rules passed by the High Court under Act XX of 1865, or (if the proceedings be a miscellaneous case) according to section 8 of those rules. RADHA KRISTO CHAKLANUVIS *v.* KALEE PROSSONO ROY . . . **15 W. R., 268**

101. ——————— **Tender.**—*Amount stipulated for in contract not tendered.—Right of plaintiff to come to Court for determination of amount of compensation.*—In a suit on a bond which stipulated for interest at 6 per cent. and 24 per cent. interest from date of loan in case the terms of the bond were not complied with, the defendant tendered what he considered sufficient compensation to the plaintiff before suit, and claimed exemption from payment of interest and costs. *Held* that, as the defendant had not tendered the amount stipulated for in the bond, the plaintiff was justified in coming to the Court to obtain a decision as to the rate of compensation which should be paid and was entitled to his costs. VENGIDESWARA PUTTER *v.* CHATU ACHEN **[I. L. R., 3 Mad., 224**

102. ——————— **Third persons, Payment of costs by.**—*Civil Procedure Code, 1859, s. 187.—Power of Court to order costs to be paid by person not a party to the suit.—Sham plaintiff.*—*A. L. D.* and others, having got a decree in a suit in which *S. B. D.*, a purdah-nashin, was plaintiff, a rule *nisi* was obtained by them against *J. C. S.* & another, on the ground that he was the real plaintiff and *S. B. D.* only a nominal one. It appeared that *S. B. D.* had no means of her own, but lived in the house of *J. C. S.*, who could explain nothing of her circumstances, or why she was residing in his house; but he stated that she had purchased the former plaintiff's right in the suit against a decree, she having been previously uninterested in the matter, and the only reason suggested for her doing so was that a small portion of the premises in question would serve for carrying out a religious purpose said to be entertained by her. The Court found that *S. B. D.* was only a sham plaintiff, and that *J. C. S.* was the real one, and the rule was made absolute. *Held*, that the words "another party" in section 187 of Act VIII of 1859 should be read as if identical with "another party to the suit." *Held*, also, that the Court cannot, by its judgment in any given suit, deal directly with persons not before it in that suit: that the Court has the same power of directing that the costs of any party to a suit for the recovery of land shall be paid by a person who is not on the record, as the late Supreme Court had, and as the Courts at Westminster still possess and exercise: that the recovery of costs from the real plaintiff in a suit in which the plaintiff on the record is only a sham one, is not a step in the proceedings in any particular suit, nor can it be made the subject of a separate plaint, but is of the nature of a substantive proceeding *in personam*, and is within the equitable

COSTS—*continued.*

1. SPECIAL CASES—*continued.*

Third persons, Payment of costs by—*continued.*

jurisdiction of the Court: that if the plaintiff on the record in a suit be only a sham one, the defendant may proceed against the real plaintiff for costs: that the real plaintiff in a suit, in which the one on the record is a sham plaintiff, is liable for the costs. BAMA SUNDERY DOSSEE *v.* ANUNDOLOLL DOSS . [Bourke, O. C., 44

Affirmed on appeal . Bourke, A. O. C., 96

S. C. JOINTEE CHUNDER SEIN *v.* ANUNDO LALL DAS . . . . 14 W. R., O. C., 1

103. ——— *Person setting Court in motion for improper purpose.—Champerty and maintenance.*—Where the Court finds any person, though not a party to the suit, guilty of champerty or maintenance, and setting in motion the process of the Court for improper purposes, such person will be made to pay the costs of such proceeding. JUGGESSUR COOWAR *v.* PROSSONO COOMAR GHOSE [1 Ind. Jur., N. S., 282

104. ——— *Order for payment of costs by person not party to the suit, and after dismissal of suit.—Power of Mofussil Courts.*—The plaintiffs brought a suit for the recovery of certain property, and *R.* and *B.* being desirous of entering into a transaction for the purpose of assisting the plaintiffs to recover it, agreed that they should receive one half the property that might be recovered in consideration of their assistance in recovering it; they thereupon purchased from the plaintiffs for a nominal sum one half their interest in the property, but instead of taking a conveyance in their own names and joining as plaintiffs in the suit, they took a conveyance in the name of one *S.*, an indigent member of their family, and dependent on them for support, and caused the suit to be brought in the name of *S.* and the plaintiffs jointly. The Judge found that *S.* had been put forward by *R.* and *B.* in order to save themselves from having to pay the costs of the suits which were brought to establish the claim, in case they should be unsuccessful, and was of opinion that *R.* and *B.* were the real plaintiffs in the suit, though acting in the name of *S.* Two suits had then been brought by the plaintiffs and *S.*, which were dismissed, and decrees for costs given in favour of the defendants; and the Judge ordered that the names of *R.* and *B.* should be added to the decrees for costs. *Held*, that though the Judge might have had power to make the order whilst the suits were pending before him, he had no power to make such order after dismissing the suits. Mofussil Courts have no power to make orders *in pœnam* against persons who are not parties to the suit, such as is possessed by the Original Side of the High Court. RAMNIDHY KOONDOO *v.* AJOODYARAM KHAN [11 B. L. R., Ap., 37: 20 W. R., 123

105. ——— *Payment of costs by person not party to suit.—Plaintiff's costs.*—Circumstances under which the Court will order costs of the suit, or of parties to the suit, to be paid by third persons not parties to the suit. BAMASUNDARI DASI *v.* RAMNARAYAN MITTER . [8 B. L. R., Ap., 65

106. ——— *Sham defendant.*—The Court will not order a person not on the record to pay the costs decreed against the defendant, when the latter is a real and not a sham defendant, and himself did the wrongful act on which the suit was based, and has an interest in the subject-matter of the suit; and when the plaintiff knew before the trial the circumstances under which he afterwards sought to make such third person responsible for the costs, and might have added him as a defendant on the record. PRANKUMARI DASI *v.* ABINASH CHANDRA MOOKERJEE . 9 B. L. R., 210

See CHUNDER KANT MOOKERJEE *v.* RAMCOOMAR KOONDOO [13 B. L. R., 530: 22 W. R., 138

107. ——— *Payment or security for costs by person not a party to the suit.—Suit against stranger to suit for costs.—Civil Procedure Code (1859) s. 73.*—Where it appears that the plaintiff in a suit is in fact suing on behalf of another person who is not a party on the record, the ordinary practice is to require security for costs, and to stay the proceedings till it is given. The rejection by the Court of an application under Act VIII of 1859, section 73, to have a stranger, who has an interest in the suit, made a co-plaintiff on the record, cannot give a ground for an action against such stranger for costs incurred in the suit, which would not otherwise lie. The cases in which persons other than parties to the suit have been held liable to costs in England, relate to applications either in the cause itself or to the disciplinary and summary jurisdiction of the Courts. They give no support to the contention that an independent action will, under such circumstances, lie. RAM COOMAR COONDOO *v.* CHUNDERKANTO MOOKERJEE [I. L. R., 2 Calc., 233: L. R., 4 I. A., 23

108. ——— *Payment of costs by persons made parties without their consent.*—Persons who without their consent are made parties to a suit in the appellate stage, cannot be made liable for costs simply because they encouraged the plaintiff to bring the suit and provided him with the necessary funds. WATSON AND COMPANY *v.* HURGOBIND SOOKUL . . . . . 22 W. R., 35

109. ——— **Transfer of case from undefended to defended board.**—*Practice.*—The costs of a transfer of a case from the undefended to the defended board must be borne by the party making the application. BINDOO MADHUB MITTER *v.* WOOMES CHUNDER PAUL . . 2 Hyde, 86

BHOYRUB CHUNDER DOSS *v.* CHUNDI CHURN MITTER . . . . . Bourke, 238

110. ——— **Transfer of case from chambers into Court.**—*Payment of costs of*

COSTS—*continued.*

1. SPECIAL CASES—*continued.*

Transfer of case from chambers into Court—*continued.*

summons as condition precedent to proceeding with a suit.—Practice.—The Court will not order as a condition precedent to proceeding to the hearing of a suit, the payment of the costs of a summons adjourned from chambers into Court and there dismissed with costs. SOOKABAI *v.* LAKSHMIBAI [12 Bom., 9

111. ——— **Trustees.**—*Separate set of costs.*—Trustees will be allowed a separate set of costs on appeal. PETERS *v.* MANUK [13 B. L. R., 383: 22 W. R., 175

112. ——— *Trustee delaying in assigning the legal estate.—Costs.—Cestuis que trust, Conveyance by, and suit by purchaser to compel trustee to join in the conveyance.*—A trustee who acts unreasonably in delaying to join in a conveyance, though guilty of no actual misconduct, further than that shown by an unwarrantable delay in doing that which he is bound to do, will be made to pay the costs of a suit brought against him for the purpose of compelling him to do his duty, notwithstanding that neither an offer to pay such costs as he might incur attending the conveyance, nor a tender of a release from his position as trustee, has ever been made to him; he, however, will still be allowed his costs attending the conveyance when completed. MACKERTICH *v.* REBEIRO [I. L. R., 11 Calc., 628

113. ——— **Valuation of suit.**—*Discretion as to costs.*—A Judge is not bound to give costs at a certain valuation. KHODA BUKSH *v.* MOWLA BUKSH . . . . . 14 W. R., 255

114. ——— *Stamp duty.—Mistake of Court in law.*—A defendant is only chargeable as costs with that amount of stamp duty which can legally be demanded from the plaintiff, and not with any excess he may have had to pay through a mistake in law by the Court. AJOODHYA CHOWBEY *v.* DAIBEE SINGH . 3 Agra, Rev., 5

115. ——— *Appeal.—Court Fees Act, 1870, s. 12.—Discretion as to costs.*—An appellant was held to have acted rightly in putting in his appeal upon the valuation of the plaintiff as approved of by the first Court, although that valuation had been greatly over-estimated, and the Appellate Court was held to have been justified in awarding costs in proportion to what it considered the proper valuation. There is nothing in section 12 of the Court Fees Act to preclude a Judge from exercising his discretion as to costs. MUTHOORANATH MOJOOMDAR *v.* MOHOBUTTOONNISSA BIBEE [20 W. R., 206

116. ——— **Vexatious litigation.**—*Successful party ordered to pay costs.*—The Court departed from the general rule that a successful party is entitled to his costs, in a case where the appellant had manifestly acted vexatiously towards the respondent, and, as a protest against frivolous litigation, ordered the appellant to pay the respondent's costs. GYANEE RAM *v.* PALEE RAM . 2 N. W., 73

117. ——— **Will.**—*Costs of opposing will by heirs of deceased.*—The heirs of a deceased person have a right to insist upon an adverse will being proved in solemn form by the attesting witnesses, and ought not to be saddled with the adverse party's costs when occasioned by such opposition as they were entitled to offer. MATUNGINEE DOSSEE *v.* HUREE PERSHAD MUNDUL . . . 24 W. R., 25

118. ——— **Withdrawal of suit.**—*Omission to obtain leave to bring another.—Civil Procedure Code, ss. 97 and 187.*—The High Court has no power, under the Civil Procedure Code, to award costs to the defendant when the plaintiff withdraws, not having asked leave to do so, with liberty to bring another suit for the same matter. BRASS *v.* TIREVEMGADA PILLAI . . . 1 Mad., 247

119. ——— *Order for costs made in absence of, and without notice to, plaintiff.*—The plaintiffs on the day fixed for hearing asked for permission to withdraw a suit, which was granted *ex parte.* Before the order was drawn up, the defendants' pleaders, hearing that the suit had been withdrawn, applied for their costs. The application was allowed, and the order was prepared, costs being awarded to the defendants. *Held* that, as the defendants had been summoned, the lower Court should neither have passed an order allowing the suit to be withdrawn without notice to the defendants, nor should it, without notice to the plaintiffs, have passed an order charging them with costs. MISSER DEBEE PERSHAD *v.* BULDEO PERSHAD . 5 N. W., 116

2. COSTS OUT OF ESTATE.

120. ——— **Administration suit.**—*Next friend.—Unnecessary suit.—Liability of next friend for costs.—Adoption of suit by plaintiff.—Costs of solicitor of next friend where suit unnecessary.—Solicitor's lien on estate recovered or preserved by suit.—Preservation of estate from future risk.—Appointment of receiver.—Insane executrix.—Act II of 1874, s. 35.*—The plaintiff, who was a minor, sued by her next friend (her husband) for the administration of her father, Purshotam Ramji. The defendants in the suit were the plaintiff's mother, Nanbai, who was the widow and executrix of Purshotam Ramji, and one Burjorji, who had been appointed by Nanbai to act for her during her absence on pilgrimage. The plaint alleged that Nanbai was insane and unfit to manage the estate, and that Burjorji was mismanaging and wasting it. A receiver was appointed shortly after the filing of the suit. At the hearing the suit was dismissed as against Burjorji, and the Court ordered that his costs should be paid by the plaintiff's next friend, being of opinion that he was the real actor in the suit, and that it would be unfair to make the plaintiff's estate bear the costs of proceedings in which she had no real voice. The Court was further

COSTS—*continued.*

2. COSTS OUT OF ESTATE—*continued.*

Administration suit—*continued.*

of opinion that at the time the suit was filed, Nanbai was not of unsound mind, but that she had subsequently become insane. The usual accounts were ordered to be taken as against Nanbai. The result of taking these accounts was that her administration of the estate as executrix was found to be unimpeachable, and in December 1883 the Court made an order directing that the next friend should pay the costs of the infant plaintiff. The next friend became insolvent, and his solicitors (the respondents) obtained an order from the Judge in chambers that the receiver should pay their costs out of the estate in his hands. The plaintiff appealed. The respondents contended that the plaintiff had adopted the suit, and that they had a lien for their costs—at any rate so far as they were incurred for the recovery and preservation of the estate. *Held* that the respondents were not entitled to be paid out of the estate. The plaintiff had done no overt act signifying her adoption of the suit, and the fact that she remained passive was consistent with her disapproval of it, as the decree did not immediately affect her, or require her to take action until the death of her mother Nanbai. *Held*, also, that the property in the hands of the receiver could not be held to have been recovered by means of the suit, as it appeared that the investments were of a perfectly legitimate nature; that there was no cause for alarm with respect to the safety of the property, and that the suit, so far as it was based on alleged danger to the estate, was quite uncalled for. It was argued for the respondents that the appointment of a receiver preserved the estate from future risk arising from the fact that the executrix Nanbai was of unsound mind. *Held* that the mere fact that the appointment of a receiver would preserve the estate from a possible danger in the future, could not bring the case within the ordinary rule as to solicitor's lien. DEVKABAI *v.* JEFFERSON, BHAISHANKAR, AND DINSHA . . . **I. L. R., 10 Bom., 248**

121. ——— Administrator General's Act II of 1874, s. 18 & s. 35.—*Conflicting claims to property in possession of Administrator General under order of Court.—Costs of Administrator General in a suit to recover such property, how paid.—Expenses of taking care of such property incurred by Administrator General.*—The plaintiff and defendants Nos. 2, 3, 4, and 5 were the daughters of one *S.*, who died in Bombay on the 9th November 1885. Shortly after the death of *S.* the plaintiff went to Delhi, leaving certain ornaments and other valuables belonging to her locked up in a box, which also contained certain property which had belonged to her mother *S.* The box remained in the house in which the plaintiff had resided with *S.* The key of the box was taken by the plaintiff to Delhi. During the plaintiff's absence one of her sisters (defendant No. 3), presented a petition to the High Court, alleging that all the property in the said box belonged to her deceased mother *S.*, and was in danger of being misappropriated by the plaintiff. Upon these allegations the Court on the 16th January 1886 made an order, under section 18 of Act II of 1874, directing

COSTS—*continued.*

2. COSTS OUT OF ESTATE—*continued.*

Administrator General's Act II of 1874, s. 18 & s. 35—*continued.*

the Administrator General to "take possession of the property of *S.*, and hold the same, subject to the further order of the Court." Pursuant to this order the Administrator General took possession of the box and all its contents. The plaintiff, admitting that some of the ornaments in the box had belonged to the estate of *S.*, sued to recover the remainder of the ornaments therein, which she alleged belonged to herself, and which she specified in a separate list. Defendant No. 3 denied her claim, and contended that all the property belonged to the estate of *S.* The other sisters of the plaintiff (defendants Nos. 2, 4, and 5) admitted the plaintiff's claim. The Court held that the plaintiff had proved her claim, and directed that her property should be delivered over to her by the Administrator General. *Held*, as to costs, that the Administrator General was in the position of an interpleading plaintiff, and that he was entitled, in the first instance, to recover his costs from the losing claimant (defendant No. 3). Failing recovery from defendant No. 3, he was entitled to be paid his costs out of the estate of *S.*, and if and in so far as that estate proved insufficient, he was entitled to recover them out of the property which was the subject-matter of the suit. *Held*, also, that the costs of the Administrator General included the expenses incurred by him in taking care of the property entrusted to him by the order of the Court; such expenses to be apportioned according to the amounts respectively belonging to the estate of *S.* and to the plaintiff, and to be paid accordingly out of the said estate and out of the property of the plaintiff. AMIR JAN *v.* RIVETT-CARNAC . . **I. L. R., 10 Bom., 350**

122. ——— Unsuccessful suit while in possession pending appeal.—*Reversal of decree for possession on appeal.—A.*, under a decree against *B.*, took possession of *B.'s* estate, and continued a litigation which had been commenced by *B.'s* manager, and in which he was unsuccessful, and charged with the costs of suit. *B.* meanwhile, having appealed to the Privy Council, obtained a decree restoring her to possession of the estate. *Held*, that *A.* could not recover the costs he was charged with from the estate. HURO MONEE *alias* HURO MONEE DEBIA *v.* RAM KISHORE ACHARJEE **[6 W. R., Mis., 124**

3. INTEREST ON COSTS.

123. ——— Discretion of Court.—*Execution of decree.*—The Court, in executing a decree, has no power to allow interest on costs when not mentioned in the decree. The proper course for obtaining such interest is to apply to the Court which passed the decree to amend it. ULFUTUNNISSA *v.* MOHAN LAL SUKUL . **6 B. L. R., Ap., 33**

124. ——— Costs of translation and printing.—*Execution of decree of Privy Council.*—When on appeal to the Privy Council it was ordered that the decree of the High Court be reversed

COSTS—*continued.*

3. INTEREST ON COSTS—*continued.*

Costs of translation and printing—*continued.*

with £276-12-2 costs, and that the decree of the Zilla Court be affirmed with costs in the Courts below, in execution of the decree it was held that the decree-holder was entitled to the costs of translation and printing incurred by him for transmission of the record to the Privy Council, and that he was entitled to interest upon those costs, but not to interest upon the said £276-12-2. MADAN THAKUR *v.* LOPEZ [9 B. L. R., Ap., 22

S. C MUDDUN THAKOOR *v.* MORRISON [18 W. R., 253

125. ——— Refund of costs paid under decree subsequently reversed.—*Money paid under good decree.*—Costs paid in compliance with a decree subsequently reversed, may be ordered to be refunded by the Court which made the original decree. A party to a suit whose case has been dismissed in both the lower Courts with costs, is entitled, when the decrees of the lower Courts are reversed by the Privy Council and the case remanded for re-trial, to apply for a refund of the costs already paid under the decrees of the lower Courts, but not for interest on such costs. Such an application need not be made to the Privy Council, but may be made to the Court in which the suit was instituted. DORAB ALLY KHAN *v.* ABDOOL AZEEZ [I. L. R., 4 Calc., 229: 3 C. L. R., 358

126. ——— Where a decree under which costs were recovered is reversed, no express order is needed for refund of the costs; the party who recovered having no right to retain the same. Interest is awardable on costs to be so refunded. KEDAR NATH PAKRASEE *v.* DOYA MOYEE DEBIA . . . . . 20 W. R., 49

4. SCALE OF COSTS.

127. ——— Costs on highest scale.—In the Court below a decree was passed in favour of the plaintiff, with costs on scale No. 3. On appeal, the decree as to costs was altered, it being ordered that each party should pay his own costs, to be taxed on scale No. 2. BULDEO NARAYAN *v.* SOHYMGKOUR [6 B. L. R., 581

See also MILLER *v.* GOURIPORE COMPANY [8 B. L. R., 285

COTTON FRAUDS ACT (Bombay Act IX of 1863).

See APPEAL IN CRIMINAL CASES—ACTS—BOMBAY COTTON FRAUDS ACT. [3 Bom., Cr., 12

See MAGISTRATE, JURISDICTION OF— [3 Bom., Cr., 12

1. ——— s. 2.—*Possession of adulterated cotton.*—Possession of adulterated cotton, even though accompanied by a knowledge that the cotton is adulterated, is not sufficient to sustain a conviction of fraudulent adulteration or deterioration of cotton under the Cotton Frauds Act. No criminality attaches to such possession till the cotton is actually offered for sale or compression. REG. *v.* HANMANT GAVDA . . I. L. R., 1 Bom., 228

COTTON FRAUDS ACT (Bombay Act IX of 1863), s. 2—*continued.*

2. ——— ss. 2 & 8.—*Offering adulterated cotton for compression.—Fraudulent intention.*—To constitute the offence of offering adulterated cotton for compression under section 8 of Bombay Act IX of 1863, it is not necessary to prove that the accused had a fraudulent intention, or that he had knowledge of the cotton having been adulterated, or deteriorated, or mixed, as described in section 2 of that Act. REG. *v.* PREMJI BHAGVAN [10 Bom., 295

3. ——— s. 2.—*Mixing cotton.*—Ginning together two varieties of cotton which had been mixed before constitutes "mixing" within the meaning of section 2 of Bombay Act IX of 1863. REG. *v.* CHOUTHMAL LACHHIRAM . . 11 Bom., 144

——— ss. 6 & 14.

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—ADULTERATION. [I. L. R., 3 Bom., 384

COTTON FRAUDS REGULATION (Bombay Regulation III of 1829).

——— s. 1, cl. 1.—*Charge under.*—Cotton having been sold subject to examination by an inspector, the mere fact of cotton of two different qualities being found in one of the bales is not sufficient to support a charge under section 1, clause 1, of Regulation III of 1829 (Bombay). REG. *v.* RATTANJI BHUKAN . . . . 1 Bom., 17

COUNSEL.

See ADVOCATE . 14 B. L. R., Ap., 12
[5 B. L. R., Ap., 70

See CASES UNDER BARRISTER.

See COMMISSION—CIVIL CASES.
[8 B. L. R., Ap., 101
Cor., 7
12 B. L. R., Ap., 4

See INSOLVENT ACT, s. 36.
[11 B. L. R., Ap., 33
I. L. R., 3 Bom., 270

See PRACTICE—CIVIL CASES—MOTIONS.
[B. L. R., Sup. Vol., 609

See RIGHT TO BEGIN . 9 B. L. R., 417

——— Adjournment for convenience of—

See PRACTICE—CIVIL CASES—AFFIDAVITS.
[9 B. L. R., Ap., 10
10 B. L. R., 57

COUNSEL—*continued.*

——— **Giving instructions to, on reference to High Court.**

See LETTERS PATENT, HIGH COURT, CL. 10 [8 B. L. R., 418

——— **Refreshers to—**

See PRACTICE—CIVIL CASES—COUNSEL'S FEES . . I. L. R., 12 Calc., 551

1. ——— **Practice as to hearing.**—Where the senior counsel was absent when an appeal was opened, the Court allowed him to follow his junior. DODS *v.* STEWART . 8 B. L. R., 340 [17 W. R., 49

2. ——— **Privilege of speech.**—Question as to the extent of privilege of speech accorded to counsel and advocates considered. REG. *v.* KASHINATH DINKAR . . . 8 Bom., Cr., 126

3. ——— **Arguments.**—*Per* NORMAN, *J.*—It is improper in argument to endeavour to influence a Court by reference to a course which another Court might think fit to adopt, or to the view which the Appellate Court might take of its proceedings, or even to refer to the likelihood of an appeal. JUGGERNAUTH SAHOO *v.* MAHOMED HOSSEIN [15 W. R., 173

4. ——— **Power to bind client.**—*Appeal to Privy Council.—Agreement by counsel not to appeal.—Binding agreement on client.*—Where the counsel for the appellant had agreed, at the hearing of the case on appeal before the High Court, that, if the High Court would restrict its judgment to a finding on one of several issues, his client would not appeal to England. *Held* that that agreement was binding, and that the appeal could not be heard. AMIR ALI *v.* INDERJIT KOER [9 B. L. R., 460: 14 Moore's I. A., 203

5. ——— **Right to appear in Criminal Courts.**—A counsel or pleader is entitled to appear and act on behalf of the prosecution in a criminal case. CHANDI CHARAN CHATTERJEE *v.* CHANDRA KUMAR GHOSE . . . 5 B. L. R., Ap., 70

6. ——— *References to High Court under s. 434, Criminal Procedure Code (Act XXV of 1861).*—In a reference to the High Court under section 434 of the Criminal Procedure Code, counsel are not heard as a matter of right, but of indulgence of the Court. ANGELO *v.* CARGILL [9 B. L. R., 417: 18 W. R., Cr., 41

REG. *v.* DEVAMA . . I. L. R., 1 Bom., 64

7. ——— **Right of counsel to conduct prosecutions.**—*Public prosecutor.—Criminal Procedure Code, 1872, ss. 59, 60, 235, 251, 252.*—Whether or not a private complainant is permitted, under section 59 of the Code of Criminal Procedure, to conduct a case as prosecutor, he may instruct counsel who shall be entitled to appear under No. 7, Chapter XI of the High Court Rules, and the Public Prosecutor may, thereupon, avail himself of the counsel's services under section 90. The effect of section 235 of the Code, read with sections 59 and 60, is to make every case tried by the Court of Session a case falling within the provisions of section 60,—that is to say, the Public Prosecutor may always avail himself of the services of counsel retained by a private individual, and in so doing he does not deprive himself of the management of the case. Where the assistance of counsel has once been accepted, that assistance is not excluded at the stages of the trial (summing up by the prosecutor and his reply) to which sections 251 and 252 apply. IN RE NARAYAN M. PENDSHE . . . . . 11 Bom., 102

8. ——— **Right of counsel or attorney to conduct prosecution.**—*Presidency Magistrate's Act, s. 129.—Criminal Procedure Code, 1882, s. 495.*—With the exception of the Advocate General, Standing Counsel, Government Solicitor, or other officer generally or specially empowered by the Local Government in that behalf, no person, whether counsel or attorney, can claim the right to conduct the prosecution of any criminal case without the permission of the Presidency Magistrate. EMPRESS *v.* BUTOKISTO DASS . . I. L. R., 6 Calc., 59 [6 C. L. R., 374

COUNTERFEITING COIN.

1. ——— **Test of whether coin is money.**—*Penal Code, ss. 230, 231.*—The test of whether a coin is money or not, is the possibility of taking it into the market and obtaining goods of any kind in exchange for it. For this its value must be ascertained and notorious,—*Held*, therefore, that to counterfeit a coin of the Emperor Akbar's time was not an offence under sections 230 and 231 of the Penal Code. REG. *v.* BAPU YADAV [11 Bom., 172

2. ——— **Penal Code, s. 239, Application of.**—Section 239 of the Penal Code is directed against a person other than the coiner, who procures, or obtains, or receives counterfeit coin, and not to the offence committed by the coiner. QUEEN *v.* SHEOBUN *alias* SHEOPERSHAD . . 3 N. W., 150

3. ——— **Penal Code, s. 241.**—*Delivery of coin not genuine.*—The gist of an offence under section 241, Penal Code (passing as genuine coin known to be counterfeit), is that a person should deliver or attempt to induce any other person to receive as genuine coin known to be counterfeit. QUEEN *v.* SOORUT . . . 4 N. W., 62

4. ——— **Coin not forming legal tender.**—*Penal Code, s. 230.—Act XIX of 1872.—Coins.—Money.*—It is not necessary, to satisfy the ordinary definition of money, that a coin should be a legal tender receivable at a value in rupees fixed by law. Gold mohurs which, although they do not pass at an absolutely fixed value, yet have a current value, not ascertainable merely by weighing them as lumps of gold, but attaching to them as coin, are coins "for the time being used as money" within the meaning of Act XIX of 1872. QUEEN *v.* KUNJ BEHARRE . . . . . 5 N. W., 187

COUNTERFEITING COIN—*continued.*

5. ——— **Proof of fabrication.**—*Guilty knowledge.*—Where the charge is one of counterfeiting Queen's coin, direct proof of fabrication is not necessary to render the person punishable under the sections of the Penal Code with reference to the uttering of false coin. PARUSHULLAH MUNDUL *v.* KHEROO MUNDUL. QUEEN *v.* GURIB SHEK. RAM RUTTON SAHA *v.* BAWOOL MUNDUL . [23 W. R., Cr., 4

6. ——— **Uttering coins.**—*Coins of unusual kind.—Penal Code, s. 239.—Evidence.*—Evidence of the possession and attempted disposal of coins of an unusual kind is relevant on a charge of uttering such coins soon afterwards when the *factum* of uttering is denied. QUEEN-EMPRESS *v.* NUR MAHOMED [I. L. R., 8 Bom., 223

COUNTERFEITING GOVERNMENT STAMP.

——— *Penal Code, s. 260.*—The passing off a one-anna stamp as a one-rupee stamp is not counterfeiting a one-rupee stamp. QUEEN *v.* SHUBROOP CHUNDER DOSS . . . 2 W. R., Cr., 65

COURT.

——— *Place of trial of criminal case.—Open Court.—Pronouncing judgment in private house.—Criminal Procedure Code, 1861, s. 279.*—Where a Magistrate conducted and closed the trial in the established Court-house, but could not by reason of illness pronounce judgment, which he did at his private house,—*Held* that the procedure being exceptional and in no way prejudicial to the prisoner could not be quashed as illegal under section 279 of the Criminal Procedure Code, 1861. GOVERNMENT *v.* HOLASEE SINGH . . . 1 Agra, Cr., 17

"COURT," MEANING OF—

See CONFESSION—CONFESSIONS OF PRISONERS TRIED JOINTLY. [I. L. R., 4 Calc., 483

See EVIDENCE ACT, 1872, s. 3. [13 B. L. R., Ap., 40

COURT OF CO-ORDINATE JURISDICTION.

See INJUNCTION—SPECIAL CASES—EXECUTION OF DECREE. [I. L. R., 4 Calc., 380

COURT-FEES, PAYMENT OF—

See PAUPER SUIT—APPEALS. [I. L. R., 1 Bom., 75

See PAUPER SUIT—SUITS. [I. L. R., 1 Bom., 7
I. L. R., 1 All., 230, 596

COURT-FEES, RIGHT OF GOVERNMENT TO RECOVER—

See PAUPER SUIT—SUITS. [2 B. L. R., Ap., 22

COURT FEES ACT (VII of 1870).

See CASES UNDER STAMP ACT XXVI OF 1867.

See CASES UNDER VALUATION OF SUIT.

1. ——— **Copy of decree made under old stamp laws.**—Where a decree had been prepared while the old stamp laws were in operation, and R6 were awarded in it as the value of the stamps for a copy thereof, the Court allowed a copy to be taken for R4 by a party applying after Act VII of 1870 came into operation. IN THE MATTER OF HUREEHUR MAHTOON . . . . 14 W. R., 167

2. ——— **Practice.**—*Petition of appeal.—Making up stamp fee.*—There is no illegality in making up the stamp fee chargeable in an appeal by means of any number of stamps of smaller values. DAWD ALI *v.* NADIR HOSSEIN . 16 W. R., 153

TARANEE CHURN NYABACHUSPUTTY *v.* TARANATH GOOHO . . . 12 W. R., 449

HURO MONEE *v.* KRISTO INDRO SHAHA [17 W. R., 220

But when a stamp of the full value is available, parties should use as small a number of stamps as possible. KHAJOOROONISSA *v.* ROHIMOONISSA [16 W. R., 152

——— s. 4.

See VALUATION OF SUIT—SUITS. [I. L. R., 1 Bom., 538

——— ss. 5 & 7, cl. 8.—*"Value."—Suit to set aside attachment on land.*—The meaning of clause 8, section 7 of the Court Fees Act, VII of 1870, is, that a person suing to set aside an attachment on land shall in no case be called upon to pay a higher fee than he would have to pay if he were suing for possession of the land. Accordingly, in a suit for setting aside a summary attachment, under Bombay Act I of 1865, placed by the Collector on land held on a settlement for a period not exceeding thirty years, the value was held to be five times the assessment, and the stamp duty calculated upon it irrespective of the actual market value, or the amount for which the land was attached. COLLECTOR OF THANA *v.* DADABHAI BOMANJI [I. L. R., 1 Bom., 352

——— s. 6.

See ACT XL OF 1858, s. 3. [I. L. R., 12 Calc., 542

See VALUATION OF SUIT—SUITS. [I. L. R., 10 Bom., 610

1. ——— *Applications not required to be in writing.*—Applications to the Court, not required by the Civil Procedure Code to be in writing, do not fall within the 6th section of the Court Fees Act. The term "application" in schedule II of the Court Fees Act, when read with section 6, must be construed to mean an application in writing. TETLEY *v.* ADMINISTRATOR GENERAL OF BENGAL [2 N. W., 418

COURT FEES ACT (VII of 1870), s. 6 —*continued.*

2. ——————— *Act XL of 1858, s. 3.—Certificate of guardianship.—Period from which authority of guardian dates.*—Section 6 of the Court Fees Act (VII of 1870), which says that a certificate under Act XL of 1858 (among other documents) "shall not be filed, exhibited, or recorded in any Court of Justice, or received or furnished by any public officer," unless a certain fee be paid, means that such certificate cannot come into existence until the person who has the permission of the Court to obtain it deposits the requisite amount of stamp duty. SAHAI NAND *v.* MUNGUIRAM MARWARI **[I. L. R., 12 Calc., 542**

3. ——————— *Court fee on set-off.*—In a suit to recover a sum of money due as wages, the plaintiff alleging that the defendant had engaged him to sell cloth on his account at a monthly salary, the defendant claimed a set-off as the price of cloth which he alleged the plaintiff had sold on his account on commission. *Held* that the Court fee payable on the claim for set-off was the same as for a plaint in a suit. AMIR ZAMA *v.* NATHU MAL **[I. L. R., 8 All., 396**

——————— **s. 7.**

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES—VALUATION OF APPEAL . . . **18 W. R., 21**

See VALUATION OF SUIT—SUITS.
[I. L. R., 9 Bom., 22
I. L. R., 8 Mad., 516
I. L. R., 8 All., 438
11 C. L. R., 91

——————— **s. 7, cl. 1.**

See s. 17 . . **I. L. R., 3 All., 131**

——————— **s. 7, cls. 1 & 2, and s. 11.**—*Suit for compensation for use and occupation.*—The plaintiffs sued, by virtue of a deed of conditional sale which had been foreclosed, for, among other things, compensation in the nature of rent for the use and occupation of a house from the date of suit to the date on which possession of the house should be delivered to them, the defendants having purchased the house subsequently to the conditional sale but before the foreclosure. *Held, per* SPANKIE, *J.*—That clause 2, section 7 of the Court Fees Act, did not apply to the claim, nor was it one for money within the meaning of clause 1 of that section, but one for which section 11 of that Act provided. *Per* OLDFIELD, *J.*—That Court fees were leviable in respect of the claim, with reference to clause 1, section 7, and section 11 of the Court Fees Act. CHEDI LAL *v.* KIRATH CHAND . . **I. L. R., 2 All., 682**

——————— **s. 7, cls. 2 & 4.**

See VALUATION OF SUIT—SUITS.
[I. L. R., 8 Mad., 384

COURT FEES ACT (VII of 1870), s. 7, cl. 4 (c).

See SCH. II, ART. 17, CL. 3.
[I. L. R., 2 Bom., 219

1. ——————— *Suit for declaratory decree.—Consequential relief.*—In a suit for a declaratory decree to set aside a summary order under Act VIII of 1859, section 246, where the plaintiff asked also for an order "confirming possession after declaration of title" it was held that consequential relief was sought and that the stamp fee leviable was the *ad valorem* fee prescribed by the Court Fees Act. BOHUROONISSA BIBEE *v.* KUREEMOONISSA KHATOON . . . . **19 W. R., 18**

2. ——————— *Declaratory decree.—Consequential relief.—Suit to establish right to attached property.—Court Fees Act, 1870, sch. II, art. 17.*—In a suit, under section 283 of Act X of 1877, for a declaration of her proprietary right to certain immoveable property attached in the execution of a decree, the plaintiff asked that the property might be "protected from sale." *Held,* that consequential relief was claimed in the suit and Court fees were therefore leviable under section 7, clause 4 (*c*), and not under schedule II, article 17 (iii) of Act VII of 1870. RAM PRASAD *v.* SUKH DAI . **I. L. R., 2 All., 720**

3. ——————— *Declaratory decree.—Consequential relief.—Court fees.*—In a suit for a declaration of proprietary right in respect of a house in which the removal of an attachment of such house in the execution of a decree was sought, the plaintiff did not, as section 7 of the Court Fees Act directs, state in his plaint the amount at which he valued the relief sought, nor did the Court of first instance cause him to supply this defect. On appeal by the plaintiff from the decree of the Court of first instance dismissing his suit, the lower Appellate Court demanded from the plaintiff Court-fees in respect of his plaint and memorandum of appeal computed on the market value of such house, the plaintiff having only paid in respect of those documents respectively the Court fees payable in a suit for a declaration of right where no consequential relief is prayed. *Held* that the market value of the property could not be taken by the lower Appellate Court to be the value of the relief sought, as the plaintiff did not seek possession of the property, and that, as the valuation of the relief sought rested with the plaintiff and not the Court, and as in this instance the declaration of right claimed necessarily carried with it the consequential relief sought, of which the value was merely nominal, further Court fees could not be demanded by the lower Appellate Court from the plaintiff. OSTOCHE *v.* HARI DAS **[I. L. R., 2 All., 869**

4. ——————— *Suit to have a lease set aside and buildings erected by lessees demolished.—Suit for possession of land and demolition of buildings erected thereon.—Declaratory decree.—Consequential relief.*—Certain co-sharers of a village sued to have a lease of certain land, the joint undivided property of the co-sharers, which the other co-sharers had granted, set aside, and to have the buildings erected on such land by the lessees de-

COURT FEES ACT (VII of 1870), s. 7, cl. 4 (c)—*continued.*

molished, on the ground that such lease had been granted without their consent, without which it could not lawfully be granted. They valued the relief sought at R100. The value of the buildings of which they sought demolition was R3,000. *B.* sued *N.* claiming, *inter alia*, possession of certain land, and to have certain buildings erected thereon by the defendant demolished. *Held*, by STRAIGHT, BRODHURST, and TYRELL, *JJ.*, with reference to the first suit, that it was one for a declaratory decree in which consequential relief was prayed, and fell under section 7, article 4, clause (*c*), Court Fees Act, 1870, and such relief being valued at R100, had been properly instituted in the Munsif's Court. JOGAL KISHOR *v.* TALE SINGH . **I. L. R., 4 All., 320**

BINDESHRI CHAUBEY *v.* NANDU **[I. L. R., 4 All., 320**

5. ——————— *Suit to set aside mortgage.—Specific Relief Act (I of 1877), s. 39.—Suit for declaratory decree.—C.'s* father mortgaged certain land to *D.* *A.* purchased the instrument of mortgage and sued *C.*, whose father had died, upon it, and obtained a decree enforcing the mortgage. *C.* then mortgaged a moiety of the land to *B.*, and subsequently sold the same moiety to *A.* *A.* sued *B.* for the cancellation of the instrument of mortgage to *B.* *Held* that the suit was in the nature of a simple declaratory suit. KARAM KHAN *v.* DARYAI SINGH. . **I. L. R., 5 All., 331**

6. ——————— *Suit to set aside a trust-deed and to recover trust-money.—Appeal by trustee.—Duty payable on memorandum of appeal.—A.* brought a suit against *B.*, a trustee, and others, to set aside a trust-deed and to recover R2,50,000, the amount of the trust-money, and valued his suit at R2,50,000. *A.* obtained a decree. *B.* appealed and sought to affix to his memorandum of appeal a ten-rupee stamp, under article 17 (clause 6) of schedule II of Act VII of 1870. *Held*, that the duty payable on the memorandum of appeal was the same as that paid on the plaint in the suit. MAHOMED MASIK *v.* MALKAI MUKADRAI UZWA BADSHAH MEHAL SAHEBA . . . **I. L. R., 10 Calc., 380**

7. ——————— *Suit for a declaration and injunction.—Stamp.—Consequential relief.*—The plaintiff sued to obtain a declaration that he was entitled to the exclusive management of certain devasthan immoveable and moveable property. His plaint, which bore a ten-rupee stamp, contained a prayer for an injunction. The Subordinate Judge rejected the plaintiff's claim on the ground that he had not paid the proper stamp fees. On appeal to the High Court,—*Held* that the plaint was insufficiently stamped. The injunction prayed for would be consequential relief, and clause 4 (*c*) of section 7 of the Court Fees Act VII of 1870, was therefore applicable. The appellant was accordingly required to state in the memorandum of appeal at what amount he valued the relief sought, in order that the fee might be computed. RAGHUNATH GANESH *v.* GANGADHAR BHIKAJI **[I. L. R., 10 Bom., 60**

COURT FEES ACT (VII of 1870), s. 7, cl. 4 (f).

8. ——————— *Application to wind up a partnership under s. 265, Contract Act.—Suit for an account.*—An application to the Court to wind up a partnership made under section 265 of the Contract Act, IX of 1872, is in the nature of a suit for an account and should be stamped accordingly. ABAD ALI PRADHAM *v.* JAMIRUDDIN MAHOMED **[13 C. L. R., 160**

9. ——————— *Appeal.—Contract Act, s. 265.*—The stamp duty payable on an appeal from an order made by a District Judge on an application under section 265 of the Contract Act (IX of 1872) should be an *ad valorem* fee, as in a suit for accounts, under section 7, clause 4 (*f*) of the Court Fees Act, VII of 1870. *Javali Ramasami* v. *Satham Bakam, I. L. R., 1 Mad., 340*, and *Lachman Lall v. Ram Lall, I. L. R., 6 Calc., 321*, approved. LADUBHAI *v.* REVICHAND **[I. L. R., 6 Bom., 143**

10. ——————— *Suit for accounts.—Stamp.—Plaint.—Contract Act (IX of 1872), s. 265.*—The stamp duty payable on an application to the District Court under section 265 of the Contract Act (IX of 1872) for an account and winding up of partnership should be an *ad valorem* fee under section 7, clause 4 (*f*) of the Court Fees Act (VII of 1870). BHOGILAL *v.* POPATBHAI **[I. L. R., 7 Bom., 125**

——————— **s. 7, cl. 5, Subdivision (a).**—*Subordinate tenure-holder.—Assessment of Court-fee in suit for possession of a fractional part of an estate.*—The assessment of the Court-fee in a suit by a subordinate tenure-holder to recover possession of a definite portion of an entire estate paying a permanently-settled annual revenue to Government, should be made under the first part of subdivision (*a*), clause 5 of section 7 of the Court Fees Act. HUBIBUL HOSSEIN *v.* MAHOMED REZA **[I. L. R., 8 Calc., 192 : 10 C. L. R., 385**

——————— **s. 7, cl. 8.**—*Suit to restore attachment.—Civil Procedure Code, 1859, s. 246.*—A stamp of R10 is sufficient for the plaint or memorandum of appeal in a suit brought, under section 246 of Act VIII of 1859, to restore an attachment upon a house which has been removed at the instance of an intervenient under that section. A person whose property was attached was not compelled to resort, in the first instance, to an application under section 246 of the late Civil Procedure Code (Act VIII of 1859). There was nothing to prevent him from commencing his litigation by a regular suit, if such were his pleasure. Clause 8 of section 7 of the Court Fees Act (VII of 1870) would apply to such a suit. The language of that section is not limited to suits to set aside any special kind of attachments on land. It is large enough to include suits brought, in pursuance of the permission given by section 246 of Act VIII of 1859, to set aside attachments on land as well as other suits for that purpose brought independently of that section. The term "land" in clause 8, section 7, of the Court Fees Act does not include a house.

COURT FEES ACT (VII of 1870), s. 7, cl. 8—*continued.*

Quære,—Whether that clause includes all suits to set aside attachments upon land, or all such suits, except where the result of setting aside the attachment would be to alter or set aside a summary decision or order of any Civil Court not established by Letters Patent, or of Revenue Court. DAYA CHAND NIM CHAND *v.* HEM CHAND DHARAM CHAND [I. L. R., 4 Bom., 515

1. ——— **s. 7, cl. 9.**—*Suit against a mortgagee for the recovery of a portion of property mortgaged.*—In cases in which it is competent to the mortgagor to sue to recover a portion of the mortgaged property, the debt must be regarded as distributed over the whole property; and as regards the portion of the property sued for, "the principal money" expressed to be secured, must be taken to be the proportionate amount of the debt for which such portion of the property is liable. BALKRISHNA *v.* NAGVEKAR . I. L. R., 6 Bom., 324

2. ——— *Redemption suit.—Separate memorandum of appeal presented by each of two appellants, Proper fees chargeable on.*—A decree having been given by the lower Courts in a redemption suit, directing that the mortgaged property should be redeemable on payment of the amount expressed to be secured by the mortgage-deed, *viz.*, R1,152-15-4, to the defendants,—*viz.*, R568-9-8 to the defendant Umarkhan and R584-5-8 to the defendant Moro and two others,—appeals were preferred to the High Court by Umarkhan and Moro, each of them presenting a separate memorandum of appeal. A question arose as to what Court fees should be levied on them. On reference by the Taxing Officer of the Court,—*Held* that the Court fees to be computed upon each memorandum of appeal was, under section 7, clause 9 of the Court Fees Act, VII of 1870, to be according to the principal money expressed to be secured by the deed of mortgage, *viz.*, R1,152-15-4. UMARKHAN *v.* MAHOMED KHAN [I. L. R., 10 Bom., 41

——— **s. 10.**

See RES JUDICATA—JUDGMENTS ON TECHNICAL POINTS . I. L. R., 8 All., 282

1. ——— *Civil Procedure Code, 1877, s. 54.—Rejection of plaint.*—Section 54 of Act X of 1877, which directs that a plaint *shall be rejected* in certain cases, applies only to the initial stages of a suit before a plaint has been registered, whereas the application of section 10 of the Court Fees Act, which directs that a suit shall be dismissed in a certain case, is not susceptible of restriction to any particular stage. VALIYA KESAVA VADHYAR *v.* SUPPEN NAIR [I. L. R., 2 Mad., 308

2. ——— **s. 10 and ss. 12, 28.**—*Order requiring additional Court-fee on claim passed subsequent to decree.—Decree prepared so as to give effect to subsequent order.—Civil Procedure Code, ss. 54, 56, 584.*—A Judge, after disposing of an appeal on the 1st March 1883, again took it up, and on the 21st March 1883, directed the appellant to pay additional Court-fees on her memorandum of appeal. On the 2nd May 1883, the appellant paid the additional Court fees under protest, and a decree was then prepared, bearing date the 1st March 1883, but it referred to and carried into effect the subsequent order of the 21st March and the 2nd May. *Per* MAHMOOD, *J.*, that as soon as the Judge had passed the decree of the 1st March 1883, he ceased to have any power over it, and was not competent to introduce new matters not dealt with by the judgment; that the order of the 21st March and the deposit of the 2nd May, whether right or wrong, were not proceedings to which effect could be given in the antecedent decree of the 1st March, 1883; and that the decree was *ultra vires* to that extent, and was therefore liable to correction in second appeal under section 584 of the Civil Procedure Code. The powers conferred by sections 54 (*a*) and (*c*) and 55 read with section 582 of the Civil Procedure Code, or by section 12 of the Court Fees Act (VII of 1870) read with clause (ii) of section 10, are intended to be exercised before the disposal of the case, and not after it has been decided finally so far as the Court is concerned. The powers conferred by section 28 of the Court Fees Act cannot be exercised by an order passed after the decision of the case to which the question of the payment of Court fees relates, and even assuming that they can be so exercised, such an order, though it may be subject to such rules as to appeal or revision as the law may provide, cannot be given effect to by making insertions in an antecedent decree. *Per* OLDFIELD, *J.*—That the Court had power to make the order it did, inasmuch as the collection of Court fees was no part of a Judge's functions in the trial of a suit which could be said to have ceased with its determination; and the provisions of the Court Fees Act fixed no time within which the presiding Judge could exercise his power of ordering documents to be stamped, and seemed, on the other hand, to contemplate the exercise of that power at any time subsequent to the receipt, filing, or use of a document, and to make the validity of the document and the proceedings relative thereto dependent on the document being properly stamped. MAHADEI *v.* RAM KISHEN DAS . . . . I. L. R., 7 All., 528

——— **s. 11.**

See s. 7 . . I. L. R., 2 All., 682

——— *Interest accruing on decree in suit for money lent.*—The Court Fees Act (No. VII of 1870), section 11, is not applicable to interest accruing upon a decree in a suit which is neither for mesne profits nor for immoveable property, nor for an account, but simply an action for money lent. KRISHNARAV *v.* ANTAJI VIRUPUKSHA [12 Bom., 227

——— **s. 12.**

See APPEAL—ACTS—COURT FEES ACT, 1870 . I. L. R., 2 Bom., 145, 219 [19 W. R., 214 23 W. R., 296

COURT FEES ACT (VII of 1870), s. 12 —*continued.*

See APPELLATE COURT—REJECTION OR ADMISSION OF EVIDENCE ADMITTED OR REJECTED BY COURT BELOW—VALUATION OF SUIT, ERROR IN—
[I. L. R., 6 Bom., 302
3 C. L. R., 79
I. L. R., 7 Calc., 348
I. L. R., 9 Bom., 355
I. L. R., 7 All., 528

See COSTS—SPECIAL CASES—VALUATION OF SUIT . . 20 W. R., 206

See VALUATION OF SUIT—SUITS.
[I. L. R., 1 All., 360
I. L. R., 4 Mad., 204
12 C. L. R., 148
12 B. L. R., 113, 115, note
25 W. R., 39
I. L. R., 1 Bom., 538, 543
I. L. R., 10 Bom., 610
I. L. R., 1 Mad., 40

——— s. 14 and sch. I, art. 5.—*Application for review filed after time.*—An application for a review of judgment having been made on the first day after the vacation, after the ninetieth day from the date of the judgment which it was sought to review, it appeared that the ninetieth day fell during the vacation when the High Court was closed. *Held* that the full fee leviable on the memorandum of appeal must be paid in the first instance, but that the Court, if satisfied that the delay was not caused by the *laches* of the applicant, might direct a refund of one half of such fee. IN THE MATTER OF DOORGA PROSUNNO GHOSE . . . 9 C. L. R., 479

——— s. 16.

See PAUPER SUIT—APPEALS.
[I. L. R., 1 Bom., 75

——— *Alteration in form of decree on appeal.*—Where plaintiff prayed for a separation into two equal shares of the whole property to which she and the defendant were jointly entitled, and the lower Court decreed to her joint and undivided possession of her half share, and she also succeeded in the whole of her claim as before the High Court in special appeal,—*Held* that, as the separate possession by partition is a form of decree at the option of the plaintiff, the Court was in justice bound to grant her request, that the decree should be re-framed in such a manner as to award possession to her in severalty, without regard to any stamp fee. Section 16 of the Court Fees Act refers to a case where a party losing substantially a portion of his claim is precluded from reasserting it before the Appellate Court without paying the proper stamp fee. BISSONATH CHATTERJEE *v.* MADHUBMONEE DABEE . . 15 W. R., 511

1. ——— s. 17.—"*Distinct subjects.*"—*Distinct causes of action.*—*Held* (SPANKIE, *J.*, dissenting) that the words "distinct subjects" in section 17 of Act VII of 1870 mean distinct causes of action or distinct kinds of relief. *Per* SPANKIE, *J.*—Such words mean every separate matter distinctly

COURT FEES ACT (VII of 1870), s. 17 —*continued.*

forming a subject of the claim. CHAMAILI RANI *v.* RAM DAI . . . I. L. R., 1 All., 552

2. ——— *Civil Procedure Code, (1859), s. 9 (1877), ss. 44, 45.*—*Multifarious suit.*—"*Distinct subjects.*"—*Plaint.*—*Memorandum of appeal.*—*Held* that the words "distinct subjects" in section 17 of the Court Fees Act, 1870, mean distinct and separate causes of action. *Chamaili Rani* v. *Ram Dai, I. L. R., 1 All., 552,* observed on. The plaintiff sued his brothers and a nephew for his share, according to the Hindu law of inheritance, and under a will, of the moveable and immoveable property of his deceased uncle, by the cancelment of a deed of gift of the immoveable property in favour of the nephew. *Held, per* STUART, *C. J.*, and STRAIGHT, *J.*, that, under section 17 of the Court Fees Act, 1870, the plaint and memorandum of appeal in the suit were chargeable with the aggregate amount of the fees to which the plaints or memoranda of appeal in separate suits for the moveable and immoveable property would have been liable under that Act. *Per* OLDFIELD, *J.*, that Court-fees were leviable on the plaint and memorandum of appeal on the total value of the claim, the suit not being one of the nature to which section 17 of the Court Fees Act referred. MUL CHAND *v.* SHIB CHARAN LAL . . I. L. R., 2 All., 676

3. ——— "*Distinct subjects.*"—*Plaint and memorandum of appeal.*—The plaintiffs sued, in virtue of a conditional sale which had been foreclosed, for (i) possession of a house, (ii) compensation, in the nature of rent, for its use and occupation from the date of foreclosure to the date of suit, and (iii) like compensation from the latter date to the date on which possession of the house should be delivered to them, the defendants having purchased the house subsequently to the conditional sale but before the same was foreclosed. The plaintiffs stated that their cause of action arose on the date of foreclosure. *Held* (SPANKIE, *J.*, dissenting) that the suit embraced "distinct subjects" within the meaning of section 17 of the Court Fees Act, 1870, and the plaint and memorandum of appeal were chargeable with the aggregate amount of fees to which the plaints or memoranda of appeal in separate suits for the different claims would have been liable. CHEDI LAL *v.* KIRATH CHAND . . I. L. R., 2 All., 682

4. ——— "*Distinct subjects.*"—*Suit for specific moveable property or for compensation.*—"*Multifarious suit.*"—*A.*, to whom a certificate of administration in respect of the property of a minor had been granted in succession to *B.*, whose certificate had been revoked, sued *B.* claiming the delivery of specific moveable property of various kinds belonging to the minor, which had been intrusted to *B.*, and *B.* detained, or the value of each kind of property as compensation in case of non-delivery. *Held* that the suit did not embrace "distinct subjects" within the meaning of section 17 of the Court Fees Act, 1870, and the Court fees payable in respect of the plaint in the suit should be computed under clause 1, section 7 of that Act, according to the total value of the claim. AMAR NATH *v.* THAKURDAS
[I. L. R., 3 All., 131

COURT FEES ACT (VII of 1870), s. 17 —*continued.*

5. ——— *Multifarious suit.—Court-fees on plaint and memorandum of appeal.—Court Fees Act, 1870, sch. 1, art. 1.*—The rule laid down in section 17 of the Court Fees Act regarding multifarious suits is subject to the proviso at the end of article 1, schedule I of that Act, and the maximum fee leviable on the plaint or memorandum of appeal in such a suit is under that proviso R3,000. RAGHOBIR SINGH *v.* DHARAM KUAR **[I. L. R., 3 All., 108**

6. ——— *Suit for possession and mesne profits.—Stamp fee payable on appeal.*—For the purposes of determining the stamp fee payable on an appeal to the High Court, in a suit for possession and for mesne profits, the claim for possession and mesne profits is to be taken as one entire claim. *Chedi Lal* v. *Kirath Chand I. L. R., 2 All., 682,* dissented from. KISHORI LAL ROY *v.* SHABUT CHUNDER MOZOOMDAR **[I. L. R., 8 Calc., 593 10 C. L. R., 359**

——— **s. 19.**

See WRITTEN STATEMENT. **[I. L. R., 5 Bom., 400 12 C. L. R., 367**

——— **s. 19, cl. 17.**—*Stamp on memorandum of appeal by judgment-debtor in custody from order refusing application to be declared insolvent.*—A judgment-debtor, whilst in custody, applied to the Court, under Chapter XX of the Civil Procedure Code, to be declared an insolvent. The application was refused, and the judgment-debtor appealed against the order rejecting his application. No Court fee was affixed to the memorandum of appeal. *Held* that no Court fee was leviable, under clause 17 of section 19 of the Court Fees Act. KALI PROSAD BANERJI *v.* GISBORNE AND COMPANY **[I. L. R., 10 Calc., 61 : 13 C. L. R., 156**

See s. 10 . **I. L. R., 7 All., 528**

——— **s. 28.**

See APPELLATE COURT—REJECTION OR ADMISSION OF EVIDENCE ADMITTED OR REJECTED BY COURT BELOW—UNSTAMPED DOCUMENTS. **[I. L. R., 2 All., 682**

See APPELLATE COURT—REJECTION OR ADMISSION OF EVIDENCE ADMITTED OR REJECTED BY COURT BELOW—VALUATION OF SUIT, ERROR IN— **[I. L. R., 7 All., 528**

——— **s. 31.**

See SCH. II, ART. 1(*b*) . **8 Bom., Cr., 22**

See COMPENSATION—CRIMINAL CASES—FOR LOSS OR INJURY CAUSED BY OFFENCE **I. L. R., 7 Mad., 345**

——— *Order to repay fine under.—Retaining fee in deposit.*—An order to repay a fee under section 31 of Act VII of 1870 is an integral part of the sentence, and the fee should be treated as a fine imposed by the Court, and may be retained in deposit pending an appeal, where an appeal lies. ANONYMOUS . . . . **5 Mad., Ap., 28**

COURT FEES ACT (VII of 1870), s. 31 —*continued.*

——— **sch. I, art. 1.**

See s. 17 . . **I. L. R., 3 All., 108**

1. ——— *Petition to wind up partnership.—Contract Act (IX of 1872), s. 265.—Plaint.*—An application for the winding up, by the Court, of the business of a firm after the termination of partnership, under section 265 of the Contract Act (IX of 1872), whatever it be called, is essentially a plaint, and must be paid for in fees at the same rate as any other plaint for an account extending to a like amount of valuation. ERAKSHAH DHANJISETH *v.* ADARJI DORABJI **[I. L. R., 7 Bom., 535**

See ABAD ALI PRADHAM *v.* JAMIRUDDIN MAHOMED . . **13 C. L. R., 160**

2. ——— *Application to file award.—Civil Procedure Code, 1882, s. 525.*—The proper Court fee upon an application to file an award under section 525 is the Court fee prescribed for applications, and not the Court fee upon a plaint. BIJADHUR BHUGUT *v.* MONOHUR BHUGUT **[I. L. R., 10 Calc., 11**

S. C. PALUT BHUGUT *v.* MONOHUR BHUGUT **[13 C. L. R., 171**

3. ——— *Memorandum of appeal from an order under section 331 of the Civil Procedure Code (Act XIV of 1882).—Practice.*—A memorandum of appeal from an order under section 331 of the Civil Procedure Code (Act XIV of 1882), should be stamped with an *ad valorem* duty as provided by article 1, schedule I of the Court Fees Act, VII of 1870. NARAYAN RAGHUNATH *v.* BHAGVANT ANANT . . . **I. L. R., 10 Bom., 238**

4. ——— *Proviso.—Appeal under Beng. Act XI of 1862, s. 9.—Appeal not "otherwise provided for."*—An appeal from an order of a lower Appellate Court on an application under section 9, Bengal Act VI of 1862, not being otherwise provided for by the Court Fees Act, may be admitted on a 6-anna stamp. PURIAG BHUGGUT *v.* DONZELLE **[14 W. R., 21**

——— **sch. I, art. 3.**

See REGISTRATION ACT, 1871, s. 2. **[6 Mad., 351**

1. ——— **sch. I, arts. 4 & 5.**—*Application for review.*—An application for review of judgment, such as is alluded to in articles 4 and 5, schedule I of the Court Fees Act (VII of 1870), does not include an application for a new trial in a Small Cause Court in the mofussil. GOPEENATH ROY *v.* RAM JOY . . . . . **14 W. R., 249**

COURT FEES ACT (VII of 1870), sch. I, arts. 4 & 5—*continued.*

2. ——————— *Stamp. — Petition of review.*—When a plaint or memorandum of appeal comprises a number of claims, and a portion only of such claims has been allowed by the judgment, the party seeking a review should be required to stamp his application with a fee sufficient to cover the amount of the claims in regard to which he wishes the Court to review its judgment: Act VII of 1870, schedule I, articles 4 and 5. *In re* MANOHAR G. TAMBEKAR . . I. L. R., 4 Bom., 26

3. ——————— and s. 14.—*Review of judgment.—Stamp duty.—Ninety days.—Computation of time.—Limitation Act, 1877, s. 5.*—In computing the period of eighty-nine days from the date of decree, within which an application for review of judgment may be presented on payment of half the fee leviable on the plaint or memorandum of appeal (under article 5 of schedule I of the Court Fees Act, 1870), the time during which the Court is closed for vacation cannot be excluded. IN RE KOTA [I. L. R., 9 Mad., 134

——————— **sch. I., art. 5.**

See SCH. II, ART. 1 . 7 Bom., A. C., 109

——————— *Stamp.—Review.*—The stamp fee on an application for review must be calculated on the amount that would be obtained if the review were granted, and not necessarily on the whole value of the suit. ANONYMOUS . 7 Mad., Ap., 1

——————— **sch. I, art. 7.**—*Notes of judgment furnished to parties.—Copies of decrees.*—Notes of judgment furnished to parties under the Rules of Practice for the guidance of Small Cause Courts are copies of decrees which require a stamp under article 7, schedule I, of Act VII of 1870. ANONYMOUS [6 Mad., Ap., 24

See ANONYMOUS CASE . 6 Mad., Ap., 12

1. ——————— **sch. I, art. 11.**—*Ad valorem fee.—Property subject to a mortgage.—Stamp duty found insufficient on taking account.*—By clause 11, schedule I, Act VII of 1870, "The Court Fees Act, 1870," an *ad valorem* duty of two per cent. on the amount or value of the estate is chargeable for probate of a will, where the amount or value of the property, in respect of which probate is granted, exceeds R1,000. The term "value" in the Act apparently means market value, and the market value of mortgaged property is the equity of redemption. An executor having applied for probate in respect of property which was alleged to be charged and mortgaged in excess of its value, no fee was charged for the probate of the will. In such a case, however, if it be found, when the accounts are filed, that sufficient stamp duty has not been paid, payment of any deficiency can be enforced. IN THE GOODS OF MACLEAN . . . . 6 N. W., 214

2. ——————— *Probate granted to second executor when leave has been reserved to him to take out probate.*—No stamp duty is payable under the Court Fees Act, 1870, on probate granted to a second executor, to whom leave was reserved to take out probate when the first probate was granted. IN THE GOODS OF AMEERUN . 15 W. R., 496

COURT FEES ACT (VII of 1870), sch. I, art. 11—*continued.*

3. ——————— *Letters of administration.*—Before the passing of the Court Fees Act, the Administrator General obtained letters of administration to a certain estate, limited until the will should be proved; and the fixed duty prescribed by the Succession Act was paid in respect of such letters of administration. The will was proved, and a petition presented for general letters of administration with the will annexed, after the passing of the Court Fees Act. *Held* that the fee therein prescribed must be paid on the amount of the property irrespective of the duty paid on the grant of the former letters of administration. IN THE GOODS OF CHALMERS

6 B. L. R., Ap., 137: 21 W. R., 246, note

4. ——————— *Letters of administration with will annexed.*—The Administrator General obtained letters of administration with a copy of exemplification of probate of the will annexed, and the full *ad valorem* duty prescribed by schedule I, clause 11 of the Court Fees Act, was paid on the amount of the property. Subsequently, the Administrator General produced a document referred to in the will of the testator, and obtained an order for letters of administration with a copy of the exemplification of probate of the will annexed, and of the document produced as part of the will, in lieu of the former letters of administration. *Held* that he was not liable to pay a second *ad valorem* duty. IN THE GOODS OF MOSSON . . 6 B. L. R., Ap., 139

5. ——————— *Property subject to a trust.*—Where property was conveyed by *T.* to *L.* on trust to pay the income to *T.* for her life, and after her death to hold the property for her children in such manner or form as she should by will appoint, and *T.* afterwards intermarried with *G.* and shortly afterwards made a will of which she appointed her husband and the trustee of the settlement executors,—*Held* that the *ad valorem* duty prescribed by schedule I, clause 11 of the Court Fees Act, was not payable in respect of such trust property. The words of that clause mean property which the deceased was possessed of or entitled to. IN THE GOODS OF GEORGE

[6 B. L. R., Ap., 138: 15 W. R., 457, note

6. ——————— *Letters of administration—Trust property.—Financial Resolution, 2004, 14th July, 1871.*—*A.* and *B.* were brothers joint in estate. *A.* died unmarried, leaving no relative except *B.* *B.* obtained grant of letters of administration of the estate of *A.*, consisting of a half share of certain property, the other half share of which was claimed by *B.* to belong to himself. By Financial Resolution No. 2004, 14th July 1871, the fees chargeable under schedule I, article 11 of the Court Fees Act, were remitted in respect of letters of administration relating to "property which a deceased person was possessed of as a trustee for any other person." *Held* that *B.'s* half share should be treated as trust pro-

COURT FEES ACT (VII of 1870), sch. I, art. 11—*continued.*

perty, and exempted from the 2 per cent. *ad valorem* fee. IN THE GOODS OF BRINDABUN GHOSE

[11 B. L. R., Ap., 39 : 19 W. R., 230

7. ———— *Letters of administration.—Estate of Hindu in hands of deceased daughter's representatives.—Trust property.*—On the death of a Hindu lady, who had succeeded to her father's property, for the estate of a Hindu daughter, it appeared that certain Government promissory notes, which formed a portion of the father's property, were then standing in her own name. On an application by the sons for letters of administration to her estate,—*Held* that, on her death, the grandfather's estate became, in the hands of her representatives, trust property in respect of which no duty was payable under the Court Fees Act. IN THE GOODS OF JOYMONEY DOSSEE . . 14 B. L. R., 184

8. ———— *Property on which there is a mortgage or incumbrance.— Duty on letters of administration.*—When letters of administration are granted in respect of property which is subject to a mortgage, the value of the property for the purpose of estimating the *ad valorem* duty payable under the Court Fees Act, is the value of the entire property, less the amount of the incumbrance. A duty paid on former letters of administration, which were afterwards cancelled, was allowed to be deducted from the amount payable for fresh letters of administration. IN THE GOODS OF INNES

[8 B. L. R., Ap., 43 : 16 W. R., 253

9. ———— *Letters of administration, Duty payable on.*—A suit for a division of a joint estate having terminated in a settlement, the terms of which were embodied in a decree, the receivers who had been appointed, *pendente lite*, endorsed and transferred certain securities and shares to one of the parties, *D.*, pursuant to the decree. The Bank of Bengal Account Department and the companies concerned having refused to recognise the transfer, *D.* applied for letters of administration in respect of the securities and shares in question, claiming exemption from the duty prescribed by the Court Fees Act, schedule I, clause 11, on the ground that she ought not to have been required to obtain such letters, her right having been declared by a decree of the High Court. *Held* that the prescribed duty must be paid, and that there was no ground of exemption from it. IN THE GOODS OF SRINATH DASS . . . 20 W. R., 440

10. ———— *Letters of administration, Duty payable on.—Debts due by deceased.—Letters limited to collect rents.*—The fee payable for letters of administration under Act VII of 1870, schedule I, article 11, is to be calculated on the amount or value of the property in respect of which the letters are sought, without deducting therefrom the debts due by the deceased. Where letters are granted limited for the purpose of collecting the rent of a house, the duty is to be assessed on the value of the house. IN THE GOODS OF RAM CHANDRA DAS

[9 B. L. R., 30
18 W. R., 153

COURT FEES ACT (VII of 1870), sch. I, art. 11—*continued.*

11. ———— *Appointment by will.*—Where a person having a life-interest in a fund, with a general and absolute power of appointment thereover, exercises such power by will, no *ad valorem* fee is payable in respect of such fund under the Court Fees Act. IN THE GOODS OF ORAM

[12 B. L. R., Ap., 21
21 W. R., 245

12. ———— *Letters of administration.—Doubtful debt.*—The uncertainty of recovering a debt due to the estate of a deceased person is not a sufficient ground for a proportionate reduction of the fee payable in respect of letters of administration to such estate. IN THE GOODS OF BEAKE

[13 B. L. R., Ap., 24
21 W. R., 397

13. ———— *Value of annuity.—Property subject to a mortgage.*—For the purpose of determining the probate fee in respect of an annuity, the word "value" in the Court Fees Act, VII of 1870, schedule I, clause 11, must be taken to mean the market value of the annuity, and not ten times the amount of a yearly payment. Where the property, in respect of which probate is sought, is mortgaged, the amount of the mortgage incumbrance must be deducted from the market value of the property, and the probate fee charged on the balance. IN RE WILL OF RAMCHANDRA LAKSHMANJI . . . I. L. R., 1 Bom., 118

14. ———— *Executors obtaining second grant of probate.—Grant of probate before Court Fees Act came into force.*—Executors obtaining a second grant of probate subsequent to the enactment of the Court Fees Act of 1870 (the first grant having been taken out previously to that enactment) are not exempted from the payment of the *ad valorem* duty chargeable under that Act, although the full fee then chargeable by law had already been paid at the time when the first probate was taken out. IN THE GOODS OF GASPER

[I. L. R., 3 Calc., 733
2 C. L. R., 436

15. ———— *Probate duty.—Annuity charged on property of testator.*—Where it appeared that property disposed of by a will was bequeathed to the testatrix subject to the payment thereout of an annuity for life to a person who survived her,—*Held* that the *ad valorem* fee prescribed by schedule I, clause 11, of the Court Fees Act ought to be levied upon the value of the property, less the capitalised value of the annuity. IN THE GOODS OF RUSHTON

[I. L. R., 3 Calc., 736

16. ———— *Letters of administration.—Liability of property on which duty has been paid in England.—Fees.*—A testator died in England, and his executrix proved his will there, and then in this Court, paying duty in each country on the assets there. On the death of the executrix the Administrator General obtained letters of administration *de bonis non* of the testator's unad-

COURT FEES ACT (VII of 1870), sch. I, art. 11—*continued.*

ministered property valued at a greater sum than the sum on which duty was originally paid in this country by the executrix, but which sum was made up of assets from England upon which duty had already been paid there,—*Held* that, as the assets were within the jurisdiction of this Court at the time of the grant of administration, and the Administrator General could not have obtained possession of them otherwise than by virtue of the grant, they were liable to the *ad valorem* fee prescribed by clause 11, schedule I of the Court Fees Act. IN THE GOODS OF MURCH [I. L. R., 4 Calc., 725

17. ——— **and art. 12.**—*Trust property.*—The term property, in clauses 11 and 12 of schedule I of the Court Fees Act, includes not only property to which the deceased was beneficially entitled during his lifetime, but also all property which stood in his name as trustee, or of which he was possessed benami for others. IN THE GOODS OF BERESFORD . 7 B. L. R., 57: 15 W. R., 456

——— **sch. I, cl. 12.**

See SCH. II, ART. 11. [7 B. L. R., 57: 15 W. R., 456

See CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE . 6 Mad., 131

1. ——— *Probate duty, Exemption from.—Interest in partnership property.*—The testator, a member of the firms of *G. A. & Co.*, of Calcutta, and *O. G. & Co.*, of Liverpool, died in England, leaving a will, of which he appointed *G.* in England and *O.* in Calcutta his executors. As a partner in the Calcutta firm, the testator was entitled to a share in an indigo concern and in certain immoveable property in Calcutta, and his share in these properties was, on his death, estimated, and the money value thereof paid to his estate by the firm in Liverpool, and probate duty had been paid thereon by *G.* in obtaining probate of the will in England. Shortly after the testator's death, the indigo concern was contracted to be sold, and the testator's name appearing on the title-deeds as one of the owners, *O.* applied for probate of the will, to enable him to join in the conveyance and in any future sale of the other immoveable property. An unlimited grant of probate was made to *O.*, who claimed exemption from probate duty in respect of the properties, on the grounds (*a*) that duty had already been paid in England on the testator's share in them, and (*b*) that there was no amount or value in respect of which probate was to be granted in India. *Held*, on a case referred by the taxing officer, that *O.* was not entitled, in obtaining probate, to exemption from the probate duty payable under schedule I, clause 12 of the Court Fees Act, in respect of the properties. IN THE GOODS OF GLADSTONE . . . . I. L. R., 1 Calc., 168

2. ——— *Application for certificate of heirship.*—In cases in which the value of property in respect of which a certificate of heirship is sought exceeds R1,000, the stamp duty should be calculated on the whole amount, and not on the excess over R1,000, under Act VII of 1870, schedule I, article 12, but the exceeding R1,000 is the condition of liability. ANONYMOUS [5 Mad., Ap., 45

——— *Certificates of administration to estate of deceased.*—The Court-fee stamp to be imposed on a certificate of administration ought not to be assessed on a valuation, including property absolutely denied by the applicants to belong to the intestate's estate until the contrary be proved. NITTYO KALI DABEA *v.* KADER NATH CHATTERJEE . . . . . 5 C. L. R., 368

1. ——— **sch. II, art. 1 (a).**—*Civil Procedure Code, 1859, s. 281.—Act XXIII of 1861, s. 8.—Examination of defendant.*—When the plaintiff, in order to make the proof referred to in section 281, Act VIII of 1859, chooses to examine the defendant, he must pay for the oath and the cost of reducing the deposition of the witness to writing. It would be otherwise under section 8, Act XXIII of 1861, in which case the fee is demandable from the applicant. EDMOND *v.* NIERSES [8 B. L. R., Ap., 42: 16 W. R., 84

2. ——— *Fees for translations.*—When portions of khatta books are translated, each portion translated is treated as a separate document, and any portion less than a folio is charged for under the Court Fees Act as a whole folio. The portions containing less than a folio are not to be taken together and charged according to the whole number of folios they contain. BRAJANATH DHAR *v.* BHABO MOHAN DHAR . . . 6 B. L. R., Ap., 137

3. ——— *Petition for new trial in Small Cause Court.—Court Fees Act, 1870, sch. I art. 5.*—A petition for a new trial in a Small Cause Court is, under the Court Fees Act (VII of 1870) properly stamped with a one-anna stamp, as it falls within schedule II, article 1 of that Act, and not under schedule I, article 5. CHOTA LAL JAMNADAS *v.* BULAKIDAS JETHA . . 7 Bom., A. C., 109

4. ——— *Stamp for application for probate or administration.*—The stamp requisite for an application for a probate of a will, or letters of administration, is not required to be proportionate to the value of the property involved, as such applications come under the provisions made in article 1, schedule II, Act VII of 1870, for common applications and petitions. IN THE MATTER OF JUDOONATH SADHOOKHAN . . . . . 15 W. R., 40

5. ——— *Application by witness for return of document.*—Stamp duty is not chargeable on an application by a witness for the return of a document filed by him in obedience to summons. ANONYMOUS CASE . . . 15 W. R., 237

6. ——— **sch. II, art. 1 (b).**—*Petition to withdraw suit.—Agreement.—Bond.*—A petition, stamped as an agreement, having been presented to a

COURT FEES ACT (VII of 1870), sch. II, art. 1 (b)—*continued.*

District Court by the parties to a suit, informing the Court that they had entered into an agreement, whereby, *inter alia*, the defendant was bound to deliver to the plaintiff certain wood, and requesting that the suit might be removed from the file, the District Judge impounded it, levied a sum for insufficient stamp duty and a penalty, on the ground that it was a bond, and forwarded it to the Collector. Upon a reference made by the Board of Revenue at the instance of the Collector,—*Held* that the duty leviable was a Court fee stamp under article 1 (*b*) of schedule II of the Court Fees Act, 1870. REFERENCE UNDER STAMP ACT, 1879 **[I. L. R., 8 Mad., 15**

7. ——— **and s. 31.**—*Complaint of illegal seizure and detention of cattle.—Act III of 1857, s. 14.—Order to repay stamp to complainant.*—The illegal seizure and detention of cattle, to which section 14 of Act III of 1857 refers, is not an "offence" within the meaning of section 31 and schedule II, art. 1, clause (*b*), of the Court Fees Act, VII of 1870. Complaints of such illegal seizure and detention do not require a stamp. If such complaints be stamped it is not competent for the Court to direct that the accused shall repay the amount of such stamp to the complainant. REG. *v.* AVJI BIN NARU . . . . . **8 Bom., Cr., 22**

——— **sch. II, art. 5.**

See VALUATION OF SUIT—SUITS.
[11 C. L. R., 91

——— **sch. II, art. 10 (a).**—*Stamp Act, sch. I, art. 50 (b).—Power to vakeel to obtain copies from Collector's office.—Stamp.*—A document authorising a vakil to apply for copies of records from the Collector's office is properly stamped with a Court fee stamp under article 10 (*a*) of schedule II of the Court Fees Act, 1870, and does not require to be stamped as a power-of-attorney under article 50 (*b*) of schedule I of the Stamp Act, 1879. REFERENCE UNDER STAMP ACT, 1879, s. 46 . . **I. L. R., 9 Mad., 146**

——— **sch. II, art. 11.**

See VALUATION OF SUIT—APPEALS.
[I. L. R., 7 All., 565
I. L. R., 8 Mad., 22

1. ——— *Application to set aside order directing award to be filed.*—An application to the High Court to set aside an order of a District Court, reversing an order of a Court of first instance directing an award made without the intervention of a Court to be filed, should be treated as an application for a miscellaneous special appeal. Such an application may be made on a stamp of the value of two rupees, under schedule II, art. 11, of the Court Fees Act (VII of 1870). LAKSHMAN SHIVAJI *v.* RAMA ESU . . **8 Bom., A. C., 17**

2. ——— **cl. (b).**—*Appeal from order under s. 331 of the Civil Procedure Code (Act X of 1877), as amended by s. 52 of Act XII of 1879.*—Appeals from orders under section 331

COURT FEES ACT (VII of 1870), sch. II, art. 11, cl. (b)—*continued.*

of Act X of 1877, as amended by section 52 of Act XII of 1879, are chargeable with the same Court-fee as is required in the case of appeals from decrees. MAHBUBAN *v.* UMRAO BEGUM. SHAYAMA SUNDURI DASI *v.* WATSON AND COMPANY
[I. L. R., 8 Calc., 720: 11 C. L. R., 98

——— **sch. II, art. 17, cl. 1.**

See VALUATION OF SUIT—SUITS.
[I. L. R., 9 Bom., 20
I. L. R., 10 Bom., 610

1. ——— *Suit to contest award of Settlement Officer.—Mad. Act XXVIII of 1860, s. 25.*—A suit under (Madras) Act XXVIII of 1860, section 25, to contest the award of a Settlement Officer, falls within the terms of article 17 (1) of schedule II of the Court Fees Act. ANNAMALAI CHETTI *v.* CLOETE . . **I. L. R., 4 Mad., 204**

2. ——— *Suit to set aside order under Act VIII of 1859, s. 246.—Stamp.*—A suit, brought under the provisions of section 246 of Act VIII of 1859 to set aside an order allowing a claim to attached property and releasing the property from attachment, is a suit to try the title and establish the right of the person who brings the suit: and such a suit must be valued according to the value of the property, and cannot be brought upon a stamp of R10, under article 17 of schedule II of the Court Fees Act. MUFTI JALALUDDEEN MAHOMED *v.* SHOHORULLAH
[15 B. L. R., Ap., 1: 22 W. R., 422

3. ——— *Suit after rejection of claim to attached property.—Ad valorem stamp.*—In execution of a decree by the defendant, certain property was attached as being that of the judgment-debtor. The plaintiff preferred a claim, but his claim was disallowed, and the property ordered to be sold. In a suit to have it declared that the property belonged to the plaintiff,—*Held* it was a suit in which consequential relief was asked for, and that the *ad valorem* duty prescribed by schedule I of the Court Fees Act was payable on the plaint, and not that provided by schedule II, article 17. *Jalaluddin Mahomed* v. *Shohorullah, 15 B. L. R., Ap., 1: 22 W. R., 422,* followed. AHMED MIRZA SAHEB *v.* THOMAS . . . **I. L. R., 13 Calc., 162**

4. ——— *Suits brought to set aside or restore attachment.—Civil Procedure Code, 1859, s. 246.—Summary decision.—Limitation Act, 1871, art. 15, 1877, art. 13.—Interpretation of Acts.—Valuation of suits.*—Suits brought to set aside or to restore an attachment upon a house, in pursuance of the permission given in section 246 of the Civil Procedure Code, may be regarded either as "suits to obtain a declaratory decree or order where consequential relief is prayed" so as to fall within section 1, clause 4, article (*c*), of the Court Fees Act (VII of 7870), or as suits to obtain or set aside a summary decision or order, in which case the stamp duty payable would be that prescribed by article 17, clause 1, schedule II, of the Court Fees Act. The Court Fees Act being a fiscal enactment, it is the duty of

COURT FEES ACT (VII of 1870), sch. II, art. 17, cl. 1—*continued.*

the Courts to treat such suits as belonging to the latter class (it being the more favourable for the suitor), and to impose fees accordingly. Decisions under section 246 of Act VIII of 1859, as to the removal or retention of attachments, are "summary decisions or orders" within the meaning of article 17, clause 1, schedule II, of the Court Fees Act (VII of 1870). The words "summary decision or order" in this clause of the Court Fees Act mean decision or order not made in a regular suit or appeal. The construction which has been given to these words, or nearly similar words, in the Limitation Acts (*e.g.*, Act IX of 1871, schedule II, article 15, and Act XV of 1877, schedule II, article 13) affords no guide to their construction in the Court Fees Act. When Acts are in *pari materia* they may be treated as forming a Code, and may be read together; but when this is not so, the construction which has been put upon one cannot be relied upon as a guide to the construction of another. The valuation of suits, for the purpose of jurisdiction, is perfectly distinct from their valuation for the fiscal purpose of Court fees. Therefore Court Fees Acts, which are fiscal enactments, are not to be resorted to for construing enactments which fix the valuation of suits for the purpose of determining jurisdiction. *Motichand Jaichand* v. *Dadabhai Pestonjee, 11 Bom., 186*, explained. *Ravlaji Tamoji* v. *Dholapa Raghu, I. L. R., 4 Bom., 123*, dissented from by WESTROPP, *C. J.* DAYACHAND NEMCHAND *v.* HEMCHAND DHURAMCHAND . . . **I. L. R., 4 Bom., 515**

5. ——————— *Stamp.—Valuation of suit.—Summary decision.*—The plaintiff had attached certain immoveable property in execution of a decree against a third party. The attachment was removed on application by the defendant, under section 246 of Act VIII of 1859, whereupon the plaintiff sued for a declaration that the property in dispute belonged to his judgment-debtor, and was liable to be attached and sold under his decree. The plaint, which did not state any amount as the value of the claim, bore a R10 stamp. The suit was dismissed on the ground that the plaint ought to have been stamped according to the value of the plaintiff's claim. *Held* by the High Court, on appeal, that the plaint was properly stamped under schedule II, article 17, clause 1, of Act VII of 1870, as the suit was a suit to set aside a summary decision of a Civil Court not established by Letters Patent. SADASHIV YESHWANT *v.* ATMARAM SAKHARAM **[I. L. R., 4 Bom., 535**

6. ——————— *Suit for a declaration of right.—Suit to set aside an order under s. 246 of Act VIII of 1859 disallowing a claim to property under attachment.—Consequential relief.—Held*, that a suit for a declaration of the plaintiff's proprietary right to certain moveable property attached in the execution of a decree while in the possession of the plaintiff, and for the cancelment of the order of the Court executing the decree, made under section 246 of Act VIII of 1859, disallowing his claim to the property, could be brought on a stamp of R20, and need not be valued according to the value of the property under attachment. *Chunia* v. *Ram Dial, I. L. R., 1 All., 360*, followed. *Jalal-ud-din Mahomed* v. *Shohorullah, 15 B. L. R., Ap., 1*, dissented from. *Motichand Jaichand* v. *Dadabhai Pestanji, 11 Bom., 186*; and *Chakalingapeshana Naiker* v. *Achyar, I. L. R., 1 Mad., 40*, distinguished. GULZARI LAL *v.* JADAUN RAI **[I. L. R., 2 All., 63**

7. ——————— *Suit to set aside summary decision.—Suit to establish right.*—The plaintiffs alleged in their plaint as follows: Certain property having been attached in execution of a decree, their mother, the wife of the judgment-debtor, objected to the attachment on the ground that the property had previously come into her possession under a transfer by sale in lieu of her dower-debt. The plaintiff's mother died pending the determination of the objection, having devised her property to the plaintiffs. They succeeded to the same, and certain other property, which also had been transferred to their mother in lieu of her dower-debt, having been also attached in execution of the same decree, the plaintiffs objected to the attachment. The Court executing the decree passed orders disallowing both objections. Upon these allegations the plaintiffs claimed to set aside both orders. They paid, with reference to clause 1, article 17, schedule II of the Court Fees Act, 1870, a Court fee of R20 on their plaint, but the Court of first instance held that this was not sufficient, and that the Court fee should be calculated on the amount of the decree in execution of which the property had been attached. *Held* that, looking at the nature of the reliefs sought, clause i, article 17, schedule II of the Court Fees Act, 1870, was applicable, and that a R10 stamp in respect of each order sought to be set aside was payable. *Dayachand Nemchand* v. *Hemchand Dharamchand, I. L. R., 4 Bom., 515*; and *Gulzari Mal* v. *Jadaun Rai, I. L. R., 2 All., 63*, followed. FATIMA BEGAM *v.* SUKH RAM **[I. L. R., 6 All., 341**

8. ——————— **and s. 7 (viii).**—*Suit to obtain a declaratory decree.—Suit to set aside a summary order.—Attachment of property.—Suit to establish right.*—Certain immoveable property having been attached in execution of two Rent Court decrees, the wife of the judgment-debtor, under section 178 of the North-Western Provinces Rent Act (XII of 1881), objected to the attachment, on the ground that the property had previously been conveyed to her by her husband under a deed of gift. The objection was disallowed, and she thereupon brought a suit, with reference to the provisions of section 181 (*b*) of the Rent Act, (1) to establish her right to the property; (2) to set aside the order passed on her objection. *Held* that, looking at the nature of the reliefs sought, clauses (1) and (3), article 17, schedule II of the Court Fees Act, 1870, were applicable, and that the plaintiff should pay a ten-rupee stamp on each of her claims. *Fatima Begam* v. *Sukh Ram, I. L. R., 6 All., 341*, followed. MANBAJ KUARI *v.* RADHA PRASAD SINGH **[I. L. R., 6 All., 466**

COURT FEES ACT (VII of 1870), sch. II, art. 17, cl. 2.

See DECLARATORY DECREE, SUIT FOR—SUITS TO SET ASIDE ADOPTION.

[I. L. R., 1 Bom., 248

1. ——————— cl. 3.—*Suit for declaration of right to have doors closed.*—A right or interest in the subject-matter of a suit for the purpose of closing a new door alleged to have been opened with a design to assert (injuriously) rights over adjacent lands, may be shown without paying the stamp necessary in a suit directly for the land itself. CHUNDUN *v.* TALIB ALI . . 2 N. W., 41

2. ——————— *Suit for declaratory decree.*—In a suit for possession and wasilat, plaintiff obtained a decree declaring his right to possession upon the death of his father. Defendant appealed. *Held* that, as the decree had given consequential relief, *i.e.*, relief from the operation of conveyances and mortgages, which on the face of them affected plaintiff's interest, an appeal from the decree should bear an *ad valorem* stamp duty. MILLER *v.* AKHOREE RAM

[15 W. R., 412

3. ——————— *Suit for declaratory decree.—Stamp.—Valuation of suit.*—The plaintiff, claiming under a will of the deceased, applied for a certificate under Act XXVII of 1860, but the High Court on appeal refused the same. He now brought a suit alleging that he was in possession of the property of deceased, and asked for "confirmation of right and possession by enforcement of the will, in reversal of the summary order of the High Court." *Held* that clause 3, article 17, of schedule II of Act VII of 1870, did not apply. This was not a suit to obtain a declaratory decree, where no consequential relief was prayed. DINABANDHU CHOWDRY *v.* RAJMOHINI CHOWDRAIN . 8 B. L. R., Ap., 32

S. C. DINOBUNDHOO CHOWDHRY *v.* RAJMOHINI CHOWDHRAIN . . . 16 W. R., 213

4. ——————— *Valuation of suit for declaratory decree.— Consequential relief.— Court Fees Act, 1870, s. 7, cl. 4, and s. 17.*—A suit praying merely for a declaration that the plaintiff is entitled to require the defendants to account to him, and to permit him to inspect their books, is simply a suit for a declaratory decree without consequential relief, and falls within article 17, clause 3, of schedule II of Act VII of 1870. A suit praying for such a declaration as the above, and also for a positive order in the nature of a mandatory injunction for the production of the defendants' books and property in their hands, or a suit praying for such declaration as the above, and also for a positive decree for an account to be taken by the Court, and for the production of the books and property, would range under section 7, clause 4, article (*c*) of Act VII of 1870, as being a suit "to obtain a declaratory decree or order where consequential relief is prayed," and also within article (*d*) of the same section, as being a suit "to obtain an injunction;" and a suit of the third species described above would fall under article (*f*) of the same clause, as being a suit "for accounts." *Quære,*—Whether, in the case of a suit for a declaration of the right

COURT FEES ACT (VII of 1870), sch. II., art. 17, cl. 3—*continued.*

of the plaintiff to an account and to inspection of the defendants' books, and for a mandatory injunction for the production of those books, or of a suit for such declaration and for a positive decree for the taking of an account by the Court and the production of the defendants' books, the plaint would, by virtue of section 17 of Act VII of 1870, require separate stamps under articles (*d*) and (*f*) of clause 4, section 7, or be sufficiently covered by the stamp under article (*c*) of the same clause; and whether, assuming the declaration and the account each to require a stamp, the prayer for an injunction or order for the production of books is not merely ancillary to, and not a distinct subject from, the taking of an account. *Quære,*—Whether the provision in section 7, clause 4 of Act VII of 1870, that the amount of the fee payable in suits falling within that clause shall be computed "according to the amount at which the relief sought is valued in the plaint," is so inconsistent with that portion of section 31 of Act VIII of 1859 which permits the Court receiving the plaint to revise the valuation of the claim as to render that portion of section 31 of Act VIII of 1859 inoperative in suits within section 7, clause 4 of Act VII of 1870, notwithstanding the concluding passage in that clause. *Quære,*—Whether the concluding passage in clause 4, section 7, of Act VII of 1870 is too express to admit of a limitation of the power of the Judge, and leaves him the right to revise the valuation placed on suits under clause 4 by the plaintiff. But, assuming this to be so, it would, generally, not be advisable that the Judge should enhance the valuation on the reception of the plaint. The fee payable under section 7, clause 4 of Act VII of 1870 is according to the amount at which the relief sought is valued in the plaint, and not the value of the subject-matter of the plaint. MANOHAR GANESH *v.* BAWA RAMCHARAN DAS. I. L. R., 2 Bom., 219

5. ——————— *Stamp.—Declaratory decree.—Substantial relief.*—Where the plaintiffs sued for a declaration that a mutwalli had been guilty of misfeasance, and asked to have her removed from the mutwalliship and themselves appointed in her place, whereby they would have been entitled to a share in the profits of the wuqf,—*Held* that the fixed stamp fee of R10 required by clause 3, article 17, schedule II of Act VII of 1870, was not sufficient; but the plaint should bear a stamp of a value proportionate to the subject-matter of the suit. DELROOS BANOO BEGUM *v.* ASHGUR ALLY KHAN

[15 B. L. R., 167 : 23 W. R., 453

6. ——————— *Valuation of suit.—Mahomedan law.—Wuqf.—Endowment.—Removal of trustee.—Court Fees Act, Act VII of 1870, s. 7, cl. (3), and sub-clause (f).*—In a suit for the removal of the defendant from the management of certain trust funds on the ground of misconduct, the plaintiff stamped his plaint with a Court-fee stamp of R10, and valued the suit at R7,000 "for the purpose of jurisdiction." *Held* that the R7,000 must be taken, under the circumstances, to be the plaintiff's interest in the subject-matter of the suit, and that the Court-fee must be estimated upon that sum. *Delroos*

COURT FEES ACT (VII of 1870), sch. II, art. 17, cl. 3—*continued.*

Banoo Begum v. *Asgur Ali Khan, 15 B. L. R., 167,* followed. OMRAO MIRZA *v.* JONES
[I. L. R., 10 Calc., 599

7. ——— *Stamp.—Suit to set aside a deed or will.—Declaratory decree.—Consequential relief.*—In a suit for confirmation of possession by declaration of proprietary right, and also to set aside a forged and invalid will,—*Held* that the plaintiff sought consequential relief over and above the declaratory decree prayed for, and therefore the petition of appeal ought to be engrossed on a stamp of proportionate value to the subject-matter of the suit. JOY NARAIN GIREE *v.* GREESH CHUNDER MYTRE.
[15 B. L. R., 172: 22 W. R., 438

See THAKOOR DEEN TEWARRY *v.* ALI HOSSEIN KHAN.
[13 B. L. R., 427: 21 W. R., 34
L. R., 1 I. A., 192

8. ——— *Declaratory suit.*—Where a suit was brought against the holder of an impartible palaiyapat and others, to whom portions of the estate had been alienated, by the son of the palaiyakar, entitled to succeed to the estate on his father's demise, for a decree declaring that the alienations made by his father did not affect his rights,—*Held* that the Court fee leviable on the plaint was R10 under article 17 (3) of schedule II of the Court Fees Act, 1870, and not an *ad valorem* fee calculated upon the amount for which the alienations had been made. SANKARA NARAINA *v.* VIJAYA RAGHUNADHA MATTAYAN PANNIKONDAR . I. L. R., 7 Mad., 134

9. ——— *Suit for declaratory decree.—Consequential relief.*—A suit in which plaintiff seeks an account of his father's estate from the executor appointed under his father's will, and in which he claims damages to the extent of R35,000 in default of his obtaining the accounts, should be filed on the stamp required for a suit for the recovery of R35,000, and not on a stamp of R10, which under clause 3, section 17, schedule II of the Court Fees Act, 1870, is the stamp laid down for a declaratory suit in which no consequential relief is sought and which cannot be valued. RAM DOOLAL SINGH *v.* GOPAL KRISTO SINGH . . . . 16 W. R., 156

10. ——— *Suit for declaratory decree.—Consequential relief.*—Where plaintiff sued to establish her right as the heir of her deceased son, and to set aside a certificate under Act XXVII of 1860, granted jointly to her as well as to the defendant, with a view to being permitted to draw interest on Government promissory notes belonging to the estate of the deceased,—*Held* that, as consequential relief was to follow the declaratory decree sought, the stamp fee of R10 prescribed by article 3, section 17, schedule II, Court Fees Act, was not sufficient for the plaint. MOKHODA DASSEE *v.* NOBIN CHUNDER MITTER . . . . . 16 W. R., 259

11. ——— *Suit for declaratory decree*—The plaintiff recognised the validity of a mortgage for a term of twenty years of her deceased father's estate made in 1854 by her two brothers, nor did she

COURT FEES ACT (VII of 1870), sch. II, art. 17, cl. 3—*continued.*

dispute the sale in 1863 after the death of the brothers, of the estate to the mortgagees by *M.*, her mother, describing herself as sole owner, as a transfer of *M.'s* rights. She claimed to be declared to have a right to redeem from the mortgage of 1854, in due course of time, the share in the estate which devolved upon her by inheritance from her father and brothers, the sale deed of 1863 notwithstanding. The Court was of opinion that the suit was one for declaration of right only, and that the fee of R10, which was paid by her in respect of the memorandum of special appeal, was the fee properly payable. IMAMAN *v.* LALTA BAKSH . . . 7 N. W., 343

——— **sch. II, art. 17, cls. 3 & 4.**

See VALUATION OF SUIT—SUITS.
[I. L. R., 1 Bom., 538
I. L. R., 1 All., 360

——— **sch. II, art. 17, cl. 6.**

See VALUATION OF SUIT—SUITS.
[I. L. R., 4 Mad., 146, 314

See VALUATION OF SUIT—APPEALS.
[I. L. R., 8 Calc., 757
I. L. R., 8 Mad., 22

——— *Stamp duty on appeals arising out of suits under s. 77 of the Registration Act (III of 1877).*—The Court fees payable on all appeals to the High Court arising out of suits brought under section 77 of the Registration Act of 1877, is a fee of ten rupees, irrespective of the value of the suit. JANTOO *v.* RADHA CANTO DOSS.
[I. L. R., 8 Calc., 515

COURT OF WARDS.

See LIMITATION ACT, 1877, s. 10.
[I. L. R., 5 Mad., 91

See LUNATIC . 8 B. L. R., Ap., 50
[I. L. R., 1 All., 476

See MINOR—REPRESENTATION OF MINOR IN SUITS . . 21 W. R., 312

——— **Tenure created under—**

See BENGAL ACT IV OF 1870.
[15 B. L. R., 343

1. ——— **Position of Collector as manager of Court of Wards.**—In the management of estates under the Court of Wards the Collector acts, not in his ordinary capacity as an officer of the executive Government, but as a ministerial officer of the Court of Wards, and for misfeasance in that capacity he is made personally responsible by the regulation constituting that Court. SHEORAJ SINGH *v.* COLLECTOR OF MORADABAD . 2 N. W., 379

2. ——— **Right of suit.**—*Recovery of land belonging to minor.*—The Court of Wards has a perfect right to maintain a suit for the recovery of land belonging to a minor, which is in possession of a person not having a good title thereto. BOLAKEE SAHOO *v.* COURT OF WARDS . . 14 W. R., 34

COURT OF WARDS—*continued.*

3. ——— **Right of female to surrender estate.**—*Consent of Court of Wards.*—A female whose estate is under the management of the Court of Wards cannot, without the consent of the Court of Wards, give up her rights in favour of the next heir. GOVERNMENT *v.* MONOHUR DEO. KUSTOORA KOOMAREE *v.* MONOHUR DEO . **W. R., 1864, 39**

4. ——— **Appeal by ward of Court of Wards.**—*Order in execution of decree.*—A widow under the Court of Wards cannot, in the summary department, appeal from an order passed by the Judge in execution of a decree assented to by the Court of Wards. KUSTOORA KOOMAREE *v.* BINODERAM SEIN . . . . **4 W. R., Mis., 5**

5. ——— **Liability of Court of Wards for personal debts of committee.**—The obligation of the Collector on behalf of the Court of Wards properly to manage the estate of a lunatic does not include liability for his personal debts. REAZOODEEN *v.* COLLECTOR OF CUTTACK . . **10 W. R., 175**

6. ——— **Act of Court of Wards in paying Government revenue to save estate.**—*Admission.*—Where the Court of Wards, in order to save a minor's estate from sale, pays on his behalf not only his own share of the revenue due to Government, but also all that is not paid by the other shareholders, such payment does not constitute an admission on the part of the Court of Wards of the minor's liability for the excess revenue so paid. RAM RUNJUN CHUCKERBUTTY *v.* BANEE MADHUB MOOKERJEE **[21 W. R., 253**

7. ——— **Power of Court of Wards.**—*Beng. Reg. X of 1793, s. 10.—Remuneration to manager, Determination of.*—The Court of Wards has authority, under section 10, Regulation X of 1793, to determine the proper remuneration to be given to the manager of an estate under their charge, and the Civil Courts have no power to question the arrangements made by the Court of Wards. SHUBUT SOONDERY DEBIA *v.* COLLECTOR OF MYMENSINGH **[7 W. R., 221**

8. ——— **Minor under Court of Wards.**—*Beng. Reg. X of 1793, s. 33.—Power to adopt.—Beng. Reg. XXVI of 1793, s. 2.—Semble.*—The operation of section 33, Regulation X of 1793, which, read together with section 2, Regulation XXVI of 1793, prohibits a landholder under the age of eighteen from making an adoption without the consent of the Court of Wards, is confined to persons who are under the guardianship of the Court of Wards. JUMOONA DASSYA *v.* BAMASUNDARI DASSYA **[I. L. R., 1 Calc., 289 25 W. R., 235 L. R., 3 I. A., 72**

9. ——— **Ward under Court of Wards.**—*How far incapacitated from contracting.—Beng. Reg. X of 1793.—Court of Wards Act (Beng. Act IX of 1879).—Contract Act (IX of 1872), s. 11.*—On a reasonable construction of the whole of Regulation X of 1793, a ward of Court, duly constituted as such, is not thereby absolutely incapacitated from contracting, but the power of the ward to contract is taken

COURT OF WARDS.—Ward under Court of Wards—*continued.*

away so far as regards all property which, under the provisions of the law, comes under the charge and control of the Court of Wards. The view taken by the Courts of the Regulation and Acts concerned with the Courts of Wards in Bengal is, that although the possession of a revenue-paying property is a condition precedent to the jurisdiction of the Court of Wards attaching, yet when once that jurisdiction has attached, all the property of the ward comes under the control and management of the Court. *Mahomed Zahoor Ali Khan* v. *Rutta Koeg, 11 Moore's I. A., 478,* considered. DHUNPUT SINGH *v.* SHOOBHUDRA KUMARI **[I. L. R., 8 Calc., 620 : 11 C. L. R., 285**

10. ——— *Disqualification to contract.—Beng. Reg. LII of 1803.*—On a consideration of the provisions of Regulation LII of 1803 (the provisions of Regulation X of 1793 are similar), it was held that the mere fact that the Court of Wards has charge of the estates of a female did not necessarily disqualify her from contracting debts. That Regulation must be construed strictly, the provisions requiring the Collector to report to the Board a female as disqualified, and the subsequent procedure thereon should be strictly carried out, as not mere matters of form, but necessary preliminaries, before the female can be considered disqualified. From the absence of the observance of those provisions in the case of *R. A.*, and the conduct of the Government officials representing the Court of Wards, the custody of the Court of Wards of her estates was held to be of such a character as did not render her a disqualified female incapable of contracting debts. The case having been framed incorrectly, it was, under the circumstances, remanded for trial by the High Court under special directions. MAHOMED ZAHOOR ALI KHAN *v.* RUTTA KOOER **[9 W. R., P. C., 9 : 11 Moore's I. A., 478**

11. ——— *Beng. Reg. LII of 1803.—Incompetency of disqualified proprietor to contract.*—Under section 7 of Regulation LII of 1803, lakhiraj lands belonging to a disqualified proprietor may be committed by the Government (on its appearing that this will be for its interests and those of such proprietor) to the charge of the Court of Wards; and, thereupon, the whole estate and effects, real and personal, of such proprietor, become vested in that Court. An estate consisting of lakhiraj lands was duly placed under the management of the Court of Wards, the proprietress, a Mahomedan, being disqualified under the Regulation. This ward having then become a party to a mortgage of such lands to secure repayment of money advanced to her, it was held that she neither bound herself nor charged the estate. This case distinguished from *Mohummud Zahoor Ali Khan* v. *Rutta Koer, 11 Moore's I. A., 478 :* where the proprietress, no intention to treat her as disqualified having been shown, was adjudged capable of contracting, though the Court of Wards was in possession of her estate. On the facts of this case it was also *held* that, although the Court had given to this ward an authority, under certain limitations of which the plaintiff had notice, to borrow money for a special

COURT OF WARDS.—Ward under Court of Wards—*continued.*

purpose, there had not been such a holding out to the world of her competency as would have induced any reasonable person to suppose that she had power to make the contract on which this suit was brought. BALKRISHNA *v.* MASUMA BIBI

[I. L. R., 5 All., 142: L. R., 9 I. A., 182 13 C. L. R., 232

12. ——— Certificate of administration.—*Act XL of 1858.*—The Court of Wards is not prevented by Act XL of 1858 from taking an infant and his estate under its protection by reason of a certificate of administration to the estate having been granted by the Civil Court. The Court of Wards has a right to assume charge of the estate although originally it may have refrained from acting. MADHUSUDAN SING *v.* COLLECTOR OF MIDNAPORE . **B. L. R., Sup. Vol., 199: 3 W. R., 82**

13. ——— Act XL of 1858, s. 7.—"*Person.*"—The Court of Wards is not "a person" within the meaning of section 7, Act XL of 1858, and is not entitled to administer to an estate by virtue of a will or deed executed by a private person. ROWSHUN JEHUN *v.* COLLECTOR OF PURNEAH

[14 W. R., 295

14. ——— Act XL of 1858, s. 14.—*Guardianship of minor proprietors.*—Under section 14, Act XL of 1858, an estate ceases to be subject to the jurisdiction of the Court of Wards when any of the co-proprietors attain majority; but the Judge may, on the representation of the Collector, direct him to retain charge of the persons and shares of the still disqualified proprietors during the continuance of their disqualification, or until such time as it is otherwise ordered. SUFFEROONISSA BEEBEE *v.* GHOLAM HOSSEIN CHOWDHRY

[W. R., 1864, Mis., 2

15. ——— Release of property from superintendence of Collector.—*North-West Provinces Land Revenue Acts, XIX of 1873, ss. 194-195, and VIII of 1879, s. 20.—Disqualified proprietor.—M.*, a female proprietor, brought a suit to recover possession of certain lands, which were in the hands of the Collector, as manager of the Court of Wards, on the allegations that she had placed the property in the hands of the Court some years previously, because she was not at that time in a position to manage it herself, but that she was now capable of managing it, and desired to get it back. The suit was dismissed, and the plaintiff appealed on the ground, *inter alia*, that inasmuch as she was not a "disqualified proprietor" within the meaning of Act XIX of 1873 (North-West Provinces Land Revenue Act), the Court of Wards had no jurisdiction to take the property, and that its possession was merely the result of an arrangement to which she was a consenting party, and which she now desired to terminate. *Held* that, with reference to the provisions of Act XIX of 1873, and Act VIII of 1879 (North-West Provinces Land Revenue Acts), the suit as brought was not maintainable, inasmuch as there was no evidence that the plaintiff had obtained the previous sanction of the local Government to the release of the property from the superintendence of the Court of Wards, as required by section 20 of the latter Act. *Held*, also, that the plaintiff could not be allowed in appeal entirely to change the nature of the grounds upon which she alleged herself to be entitled to claim relief, and that hence she could not now raise the plea that the Court of Wards, in taking the property under its management, had acted without jurisdiction. The expression "Local Government" in sections 194 and 195 of Act XIX of 1873, and section 20 of Act VIII of 1879, means the Lieutenant-Governor of the North-Western Provinces. MASUMA BIBI *v.* COLLECTOR OF BALLIA

[I. L. R., 7 All., 687

16. ——— Beng. Act IV of 1870.—*Death of minor. — Right of suit. — Held*, with reference as well to section 79, Bengal Act IV of 1870, as to the justice and equity of the case, that the power of the Court of Wards to represent the estate or bring a suit on behalf of a minor does not cease with the death of the minor. SOOMUNGUL KOOER *v.* COURT OF WARDS . . . **17 W. R., 560**

17. ——— *Minor.—Irregular procedure.*—On 27th July 1871, a disqualified proprietor, *B.*, signed a duly attested document, declaring he had adopted a boy, by name *D.*, the next heir *R.* signing a declaration of his approval of the adoption. Before sanction of the Lieutenant-Governor could be obtained under Bengal Act IV of 1870, section 74, *B.* died, and the sanction was subsequently refused on the ground of *B.'s* death. On application made under Act XXVII of 1860, the Judge, on 28th March 1872, found the adoption good, and appointed one *P.* to be guardian of the minor *D.*, and directed the estate to be placed under the management of the Court of Wards. *M.*, a judgment-creditor of *R.'s*, failing to execute his decree against the estate of *B.*, brought a suit to have it declared that *R.*, as heir, had inherited all *B.'s* property, and that he, *M.*, was entitled to have that property attached and sold in satisfaction of his decree. The only defendants were *A. H.*, manager under the Court of Wards, and *R.* The Subordinate Judge gave plaintiff a decree, declaring that *D.* was not the legally adopted son of *B.* This was appealed from. *Held* that the Judge had no power to make any such order as that of the 28th March 1872, in regard to the Court of Wards. What he had power to do under Act XL of 1858, section 12, was to direct the Collector to take charge of the estate, and it would then have become the duty of the Collector to appoint a manager and a guardian in the same manner, &c., as if the minor's property and person were subject to the Court of Wards. *Held* that the minor's interests were not properly represented before the Subordinate Judge, whose decree therefore could not stand so as to affect the minor, and that the minor must be made a party strictly in the manner prescribed by Bengal Act IV of 1870, section 69. ABDOOL HYE (COURT OF WARDS) *v.* MITTERJEET SINGH . . **23 W. R., 348**

COVENANT.

See BUILDING LEASE.
[I. L. R., 6 Bom., 528

See CONTRACT—CONDITIONS PRECEDENT.
[3 Mad., 125

COVENANT, BREACH OF—SUIT FOR DAMAGES FOR—

See REGISTRATION ACT, 1877, s. 49.
[I. L. R., 2 Bom., 273

COVENANT FOR TITLE, DOCUMENT CONTAINING—

See REGISTRATION ACT, 1877, s. 49.
[I. L. R., 2 Bom., 273

COVENANT IN RESTRAINT OF TRADE.

See CASES UNDER CONTRACT ACT, s. 27.

COVENANT NOT TO ALIENATE.

See SALE IN EXECUTION OF DECREE—PURCHASER, RIGHTS OF—GENERALLY.
[1 B. L. R., A. C., 152

See CASES UNDER MORTGAGE—FORM OF MORTGAGE.

COVENANT TO RENEW.

——— *Settlement.—Amulnama.—A.*, a zemindar, entered into negotiations with Government for settlement of certain lands. Pending the settlement, *A.* sublet to *B.* and granted him an amulnama for one year, and covenanted therein that whatever term of settlement he might obtain from Government, he would grant to *B.* a pottah for the corresponding term. The negotiations with *A.* were broken off, and Government settled with *C.*, on condition that he should abide by the above amulnama. *Held* that *C.* was bound by the covenant to renew; the amulnama did not require to be registered. RADIKA PRASAD CHUNDER *v.* RAMSUNDER KUR
[1 B. L. R., A. C., 7

COVENANT RUNNING WITH LAND.

——— *Transfer of the land.—S.*, by an instrument in writing, duly registered, agreed, for valuable consideration, for himself, his heirs and successors, to pay his wife, *A.*, a certain sum monthly out of the income of certain land, and not to alienate such land without stipulating for the payment of such allowance out of its income. He subsequently gave *L.* a usufructuary mortgage of the land subject to the payment of the allowance. *L.* gave *R.* a submortgage of the land, agreeing orally with *R.* to continue the payment of the allowance himself. *Held*, in a suit by *A.* against *L.* and *R.* for the arrears of the allowance, that *A.* was not affected by an agreement between *L.* and *R.* as to the payment of the allowance, and *R.* being in possession of the land was bound to pay the allowance. ABADI BEGAM *v.* ASA RAM . . . I. L. R., 2 All., 162

COVERTURE, PLEA OF—

See APPELLATE COURT—OBJECTION TAKEN FOR FIRST TIME ON APPEAL—SPECIAL CASES . 1 N. W., Ed. 1873, 243

See HUSBAND AND WIFE.
[8 B. L. R., 372

CO-WIDOWS.

See HINDU LAW—INHERITANCE—SPECIAL HEIRS—FEMALES—WIDOW.
[I. L. R., 1 Mad., 290
1 Bom., 66
6 Mad., 268, 424
1 Ind. Jur., O. S., 59
I. L. R., 2 Mad., 194
I. L. R., 7 All., 114

See HINDU LAW—PARTITION—RIGHT TO PARTITION—WIDOW.
[I. L. R., 1 Mad., 290
I. L. R., 2 Mad., 194
3 Mad., 424

CREDITOR.

See DEBTOR AND CREDITOR.

CREDITOR, RIGHTS OF, AGAINST HINDU ESTATE.

See REPRESENTATIVE OF DECEASED PERSON . . I. L. R., 4 Calc., 342
[8 Bom., A. C., 37
I. L. R., 11 Calc., 45

CREDITOR, RIGHTS OF, ON ASSIGNMENT BY TRADER.

See VENDOR AND PURCHASER.
[B. L. R., Sup. Vol., 54

CREDITOR, SUIT BY—

See ADMINISTRATION.
[15 B. L. R., 296
I. L. R., 10 Calc., 713

CREDITOR OF DECEASED MAHOMEDAN.

See CASES UNDER MAHOMEDAN LAW—DEBTS.

CREDITORS, TRUST DEED FOR BENEFIT OF—

See BILL OF EXCHANGE.
[I. L. R., 3 Calc., 174

CREDITORS OF ALLEGED HEIRS.

See PROBATE—OPPOSITION TO AND REVOCATION OF GRANT.
[I. L. R., 2 Calc., 208
I. L. R., 6 Calc., 429, 460
I. L. R., 10 Calc., 19, 413

CREDITORS CLAIMING AGAINST BENAMIDAR.

See BENAMI TRANSACTION—ONUS OF PROOF . . . 5 B. L. R., 578
[14 W. R., P. C., 14: 13 Moore's I. A., 395

CRIMINAL BREACH OF CONTRACT.

See CASES UNDER ACT XIII OF 1859.

1. ——— *Contract of service to convey indigo to the vats.—Penal Code, s. 490.*—An agreement for personal service in conveying indigo from the field to the vats is not a contract the breach of which is punishable by section 490 of the Penal Code. RE NOWA TEWAREE . . . **6 W. R., Cr., 80**

2. ——— *Penal Code, s. 490.—Offences against travellers.—Quære,*—Whether the words "during a voyage or journey" in section 490 of the Penal Code do not limit the offences made under that section to offences against travellers. That section, however, does not apply to a contract to place the defendant's carts at the complainant's disposal for a specified time to convey a thing from where he pleases to where he pleases. SAGE *v.* NIRUNJUN CHATTERJEE . . . . **9 W. R., Cr., 12**

CRIMINAL BREACH OF TRUST.

See COMPOUNDING OFFENCE.
[I. L. R., 1 Mad., 191
6 C. L. R., 392

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION.
[I. L. R., 1 Mad., 55

See PARTNERSHIP PROPERTY.
[6 B. L. R., Ap., 133
13 B. L. R., 310, note: 15 W. R., Cr., 51
13 B. L. R., 307: 21 W. R., Cr., 58
13 B. L. R., 308, note: 21 W. R., Cr., 10

1. ——— *Act XIII of 1859.—Furnishing false accounts.*—Where there is no provision in the Penal Code, and any other law (such as the Breach of Trust Law, Act XIII of 1859) provides punishment for an offence, any person committing such offence may be tried under that law. WATSON AND COMPANY *v.* BYKANTNATH DASS . **14 W. R., Cr., 80**

2. ——— **Requisites for offence.**—To constitute the offence of criminal breach of trust there must be dishonest misappropriation by a person in whom confidence is placed as to the custody or management of the property in respect of which the breach of trust is charged. ISSER CHUNDER GHOSE *v.* PEARI MOHUN PALIT . **16 W. R., Cr., 39**

3. ——— **Pledging of articles already in possession of pledgee by way of pledge.**—A person who pledges what is pledged to him may be guilty of criminal breach of trust. There are two elements—(1) the disposal, in violation of any direction of law or contract, express or implied, prescribing the mode in which the trust ought to be discharged; (2) such disposing dishonestly. ANONYMOUS **[6 Mad., Ap., 28**

4. ——— **Pledgee of turban using it.**—*Dishonesty.*—The pledgee of a turban cannot be convicted of criminal breach of trust for wearing it; there being no dishonesty in the Act. Meaning of the word "dishonesty" in the Penal Code. ANONYMOUS . . . . . **3 Mad., Ap., 6**

CRIMINAL BREACH OF TRUST—*continued.*

5. ——— **Misappropriation of pay of thanna police.**—*Penal Code, ss. 405, 409.*—A constable who dishonestly misappropriates to his own use the pay of his thanna police entrusted to him is guilty of criminal breach of trust. QUEEN *v.* SUBDAR MEEAH . . . . . **3 W. R., Cr., 44**

6. ——— **Refusal to give up land mortgaged.**—*Denial of mortgage.—Penal Code, s. 305.*—A refusal to give up land alleged to have been mortgaged, the mortgage being denied, cannot be treated as a dishonest misappropriation of the documents of title amounting to a criminal breach of trust under section 405 of the Penal Code. REG. *v.* JAFFER NAIK . **2 Bom., 133: 2nd Ed., 127**

7. ——— **Fraud by mortgagor in respect of mortgaged property.**—If a mortgagor in possession who is entrusted with the dominion over the mortgaged property by the mortgagee (the mortgage being in the English form) wilfully defaults and causes the property to be sold for arrears of Government revenue, for the purpose of defrauding the mortgagee, and purchases it benami, he is liable to be punished for criminal misappropriation under section 405 of the Penal Code. RAM MANICK SHAH *v.* BRINDABUN CHUNDER POTDAR . **5 W. R., 230**

8. ——— **Cheating.**—*Penal Code, ss. 405, 417.*—Where silver was entrusted to the prisoner for the purpose of making ornaments and he introduced copper into the ornaments,—*Held,* the offence committed was not cheating but criminal breach of trust. REG. *v.* BABAJI BIN BHAU . **4 Bom., Cr., 16**

9. ——— **Intention to cause wrongful gain or loss.**—*Penal Code, ss. 405, 406.—Cattle Trespass Act (I of 1871), s. 19.*—The accused was sub-inspector of police at the thana of Dunyar. A pony was brought to the pound at the police station and confined there under Act I of 1871. The books kept at the station showed that the pony had been sold by auction under the Act and purchased by one Gopinath. After some time the pony had eventually been purchased by the accused from a vendor from Gopinath. The Magistrate found on the evidence that there had been no sale under Act I of 1871, and convicted the accused of criminal breach of trust and sentenced him under section 406 of the Penal Code. *Held,* the conviction was illegal. There must be an entrusting of the accused with the property, and that he dishonestly misappropriated it; there must be an intention on the part of the accused to cause wrongful gain or wrongful loss. QUEEN *v.* RAJ KRISHNA BISWAS . . . . . **8 B. L. R., Ap., 1**

S. C. IN MATTER OF RAM KISTO BISWAS
[16 W. R., Cr., 52

10. ——— **Failure to account.**—*Penal Code, ss. 406, 407, 408.*—The prisoner, a gomastah, took from his employers, between 14th April and 30th June, sums amounting to R600, for the purchase of wood. During that period he supplied wood to the value of R234, but the prosecutor alleged that most of that was to be set off against balance to the

CRIMINAL BREACH OF TRUST.—Failure to account—*continued.*

debit of the prisoner for the year before, and that the value of the firewood was, as a fact, only R34. The prisoner was charged with criminal breach of trust as a servant. The defence was that he had purchased wood and made advances on that account: but this defence was proved to be false. The Magistrate convicted him, but the Judge held it was merely a failure to account, and acquitted the prisoner. *Held*, the prisoner was guilty of criminal breach of trust. WATSON *v.* GOLAB KHAN

[1 B. L. R., S. N., 21: 10 W. R., Cr., 28

11. ——— Partner.—*Master and servant.*—The accused was convicted of criminal breach of trust in respect of the value of goods which had been entrusted to him to sell. It was urged before the High Court that the conviction could not be sustained, as the accused was a partner with the prosecutor. *Held* by JACKSON, *J.*, that the finding of the Magistrate and Sessions Judge on the evidence was to the effect that the prisoner was not a partner but a servant; that such finding could not be interfered with by the High Court as a Court of Revision, unless there was a mistake in law; that the finding was correct in law; that the defence of the prisoner could not be taken to mean to say that he was a partner, but merely that he claimed a small share in the profits, and that such claim did not make him a partner, an agent's remuneration being a share in the profits not constituting the agent a partner. *Held*, by KEMP and MITTER, *JJ.* (releasing the prisoner), that though the allowance of a portion of the profits or goods does not destroy the relation of master and servant, the accused in this case distinctly pleaded he was a partner, and not only that he was entitled to a share in the profits; that the lower Courts did not specifically decide that the accused was a servant; and that the prosecutor's remedy was a civil suit for an account. IN THE MATTER OF LALL CHAND ROY . **9 W. R., Cr., 37**

12. ——— Public servant.—*Penal Code, s. 409.*—A village shroff whose duty it was to assist in collecting the public revenue received grain from ryots and gave receipts as if for money received by virtue of a private arrangement. *Held* that he could not be convicted of criminal breach of trust by a public servant under section 409 of the Penal Code, as he was not authorised to receive the public revenue in kind, and the party who delivered the grain did not thereby discharge himself from liability for the revenue. ANONYMOUS

[4 Mad., Ap., 32

13. ——— *Penal Code,* *ss. 408, 409.—Sentence, Mitigation of.*—Where a Court Inspector improperly delegated to a constable the custody, &c., of Government moneys (taking from him private security to save himself from loss in case of defalcation), and the constable dishonestly converted the money to his own use, although he afterwards restored it, the case was held to fall under section 408, and not section 409, of the Penal Code, and the sentence reduced from ten years' transportation and a fine of R500 to one year's rigorous imprisonment without fine. QUEEN *v.* BANEE MADHUB GHOSE . . . **8 W. R., Cr., 1**

CRIMINAL BREACH OF TRUST.—Public servant—*continued.*

14. ——— *Penal Code,* *s. 409.*—To constitute an offence under section 409, it is not necessary that the property should be that of Government, but that it should have been entrusted to a public servant in that capacity. IN THE MATTER OF RAM SOONDER PODDAR

[2 C. L. R., 515

15. ——— *Penal Code,* *s. 409.—Naib Nazir.*—The Naib Nazir is a public servant within the meaning of section 409 of the Penal Code, and not the mere private servant of the Nazir. QUEEN *v.* MAHMOOD HOSSEIN

[2 N. W., 298

16. ——— *Penal Code,* *s. 409.—Absence of dishonest intention.*—Where the accused in his capacity of revenue patel received from the Government treasury small sums of money on account of certain temple-allowances, and did not at once pay over the same to the persons entitled to receive them, as he was bound to do, but it appeared that such persons were willing to trust him, and had actually passed receipts which the accused forwarded to the revenue authorities,—*Held* that the accused fulfilled the trust reposed in him by Government, and that his mere retention of the money for a time, in the absence of any evidence of dishonesty, did not amount to criminal breach of trust within the meaning of section 409 of the Penal Code (XLV of 1860). QUEEN-EMPRESS *v.* GANPAT TAPIDAS . **I. L. R., 10 Bom., 256**

17. ——— Master and servant.—*Servant entrusted with moneys for payment to tradesman of account settled with master for a specific sum.—Gratuity of tradesman to servant.—Right of master to benefit of gratuity.—Act XLV of 1860, ss. 405, 409.*—When a master entrusts his servant with money for the payment of an *open* account, *i.e.*, an account of which the items have never been checked or settled, and the tradesman makes the servant a present, and the transaction amounts to a taxation of the bill and a reduction of the price by the servant, the latter obtains the reduction for his master's benefit, the money in his hands always remains the master's property, and, if he appropriates it, he commits criminal breach of trust. But where the master himself has *settled* the account with the tradesman for a specific sum, and sends the servant with the money, and the servant, after making the payment, accepts a present from the tradesman, in that case the servant does not commit criminal breach of trust, inasmuch as the money is given to him by a person whom he believes to have a right to give it, though it may be that, according to the strict equitable doctrines of the Court of Chancery, he is bound to account to the master for the money. *Hay's case* [In re *Canadian Oil Works Corporation, L. R., 10 Ch. App., 593*] referred to. QUEEN-EMPRESS *v.* IMDAD KHAN

[I. L. R., 8 All., 120

CRIMINAL COURT, DISPOSAL OF PROPERTY BY—

See CASES UNDER STOLEN PROPERTY—DISPOSAL OF, BY THE COURT.

CRIMINAL FORCE, DISPOSSESSION BY—

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—DISPOSSESSION BY CRIMINAL FORCE . . 23 W. R., Cr., 54

CRIMINAL INTIMIDATION.

See RECOGNIZANCE TO KEEP PEACE—WHEN RECOGNIZANCE MAY BE TAKEN. [I. L. R., 2 All., 351

1. ——— **Threat of injury.**—*Penal Code, s. 503.*—Where the accused went to the complainant, the brother of an adult woman, and told him that he had come from the Sarkar and would get him six months' imprisonment if he (the complainant) did not let his sister go,—*Held* that these words did not constitute either criminal intimidation within the meaning of section 503 of the Penal Code (there having been no threat of an injury in the sense of the Code), or any other offence known to the law. REG. *v.* MOROBA BHASHKARJI [8 Bom., Cr., 101

2. ——— **Excommunication by Roman Catholic priest.**—*Penal Code, ss. 190, 503, 508.*—*Criminal proceedings stayed until complainant established the illegality of the priest's acts in a Civil Court.*—Where the exercise of ecclesiastical jurisdiction is plainly *ultra vires*, or otherwise unsanctioned by the ordinances of a religious society, or where such ordinances controvert the general law, and, in either case, consequences result which the criminal law was intended to restrain, the Criminal Courts are not at liberty to decline jurisdiction. A Roman Catholic complained to a Magistrate that he had been threatened with an illegal sentence of excommunication and had been excommunicated by the ecclesiastical authorities, with a view to prevent him from asserting his legal rights in defending a civil suit concerning the property of a church. *Held* that, under the circumstances, the proper course was for the Magistrate to postpone the trial till the complainant proved in a Civil Court the illegality of the action of the ecclesiastical authorities. IN RE DECRUZ . . . . I. L. R., 8 Mad., 140

CRIMINAL MISAPPROPRIATION.

See COMPOUNDING OFFENCE. [7 Mad., Ap., 34

See PARTNERSHIP PROPERTY. [13 B. L. R., 307; 308, note; 310, note

1. ——— **Immoveable property.**—*Penal Code, s. 404.*—*Held* that section 404 of the Penal Code (relating to the misappropriating or conversion of "property" left by a deceased person) does not apply to immoveable property. REG. *v.* GIRDHAR DHARAMDAS . . . . 6 Bom., Cr., 33

CRIMINAL MISAPPROPRIATION—*continued.*

2. ——— **Chowkidar obtaining money from person fraudulently.**—*Penal Code, ss. 383, 403, 417.*—A chowkidar who obtains money from any person, either by fraudulent inducement or dishonesty, or by putting that person in fear of injury, is punishable under section 417 of the Penal Code (Cheating), or sections 383 and 384 (Extortion), but not for criminal misappropriation of public money entrusted to him as a public servant. QUEEN *v.* RAMNARAIN . . . . 3 W. R., Cr., 32

3. ——— **Use of money paid by mistake, with knowledge of mistake.**—*Cheating.*—Where money is paid to a person by mistake, and such person, either at the time of the receipt of the money, or at any time subsequently before its refund, discovers the mistake and determines to appropriate the money, he is guilty of criminal misappropriation, but he is not guilty of cheating. QUEEN *v.* SHAMSOONDUR . . . . . 2 N. W., 475

4. ——— **Agent mixing his own money with those of his principal, and applying it to his own purposes.**—If it be the duty of the agent of a landholder to keep the collections he makes for his master separate from his own moneys, expending thereout moneys on his master's behalf, and handing over the balance to his master, and if he, in breach of this trust, converts the money to his own use, he is amenable to a criminal prosecution. And where a landowner permits the agent to mix the collections with his own moneys, if the agent applies the moneys so collected to his own use fraudulently and dishonestly, and falsifies the amount so as to conceal his fraud, there is evidence of a criminal misappropriation. QUEEN *v.* KABEEM BUX [3 N. W., 30

5. ——— **Conversion.**—*Penal Code, s. 403.*—To bring a prisoner within section 403 of the Penal Code, there must be actual conversion of the thing appropriated to the prisoner's own use. Where, therefore, the accused found a thing, and merely retained it in his possession, he was acquitted of criminal misappropriation under the section referred to. QUEEN *v.* ABDOOL . . 10 W. R., Cr., 23

6. ——— **Retaining by servant of money due as wages.**—A servant who retains in his hands money which he was authorised to collect, and which he did collect, from the debtor of his master, because money is due to him as wages, is guilty of criminal misappropriation. QUEEN *v.* BISSESUR ROY . . . 11 W. R., Cr., 51

7. ——— **Misappropriation of property of deceased person.**—*Penal Code, s. 404.*—*Held*, that it is not necessary for a conviction for dishonest misappropriation of property possessed by a deceased person at the time of his death, under section 404 of the Penal Code, that the accused should misappropriate it to his own use. QUEEN *v.* NOBIN CHUNDER SIRKAR . 12 W. R., Cr., 39

IN THE MATTER OF THE PETITION OF ENAYET HOSSEIN . . . . 11 W. R., Cr., 1

CRIMINAL MISAPPROPRIATION.—Misappropriation of property of deceased person—*continued.*

8. ——— *Penal Code, s. 404.*—*Held* by MARKBY, *J.*, that, under section 404, all the elements are required to constitute the offence which would be required to constitute the offence of criminal misappropriation in respect of a person who is alive. QUEEN *v.* NOBIN CHUNDER SIRKAR [12 W. R., Cr., 39

9. ——— **Charge, Form of.**—*Penal Code, s. 403.*—In a case in which the accused is charged with having dishonestly appropriated property under section 403 of the Penal Code, the charge should specify the person to whom the property belonged. Where the accused is interested in the property jointly with others, he is not necessarily guilty of a criminal act if he takes possession of it and disposes of it. QUEEN *v.* PARBUTTY CHURN CHUCKERBUTTY [14 W. R., Cr., 13

10. ——— **Trust arising from duty of public servant.**—*Penal Code, s. 409.*—Section 409 of the Penal Code does not limit the mode in which a trust arises, whether by specific order or by reason of its being part of the proper duty of a public functionary. Where, therefore, it was proved that the head clerk of an office entrusted the management of stamps, with the knowledge and sanction of his superiors, to one of his assistants, the latter was held to be guilty of criminal misappropriation by a public servant, within the meaning of section 409, when he made away with the stamps. QUEEN *v.* RAM DHUN DEY . . . 13 W. R., Cr., 77

11. ——— **Separate items of money.**—*Charge, Form of.*—The misappropriation of each separate item of money with which a person is entrusted is a separate offence, and the facts connected with it should form the subject of a separate enquiry. The duty of a committing officer in such a case is to select certain distinct items, to frame his charges upon them, and to adduce evidence specially upon those items. CHETTER *v.* QUEEN [15 W. R., Cr., 5

12. ——— **Refusal to pay for goods purchased.**—*Penal Code, s. 403.*—The prisoner, who took certain hides from the prosecutrix but refused to pay for them, was held not on that account guilty of dishonest misappropriation under section 403 of the Penal Code. QUEEN *v.* BOYSTUM MOOCHEE . . . . . 17 W. R., Cr., 11

13. ——— **Removal of property claimed by accused.**—*Penal Code, s. 403.*—A person having made a hole in the wall of his own house broke open a box and removed the contents to which he believed himself entitled, but as to which there was a dispute, making the removal appear to have been the act of thieves from the outside; and entrusting the property to another person,—*Held*, not guilty of criminal misappropriation. THEWA RAM *v.* EMPRESS . . . . . 10 C. L. R., 187

CRIMINAL PROCEEDINGS.

1. ——— **Dispute as to right to give girl in marriage.**—The practice of instituting criminal proceedings with a view to determining disputes arising in cases as to the right to give a girl in marriage condemned. IN THE MATTER OF EMPRESS *v.* ABDOOL KUREEM [I. L. R., 4 Calc., 10: 3 C. L. R., 81

2. ——— **Irregularity.**—*Waiver or consent by prisoner.*—*Recording statements of witnesses.*—The jailor of a district jail being accused by one of the jail clerks of falsifying his accounts and defrauding the Government, the matter was enquired into by the District Magistrate, and the jailor was, by the Magistrate's order, placed on trial before a Bench of Magistrates, consisting of the District Magistrate himself, *L.*, the Officiating Superintendent of the Jail, and three other Honorary Magistrates. The prisoner and his pleaders were alleged to have stated before the commencement of the trial on being questioned that they had no objection to the composition of the Bench, but after the charges had been framed, the prisoner's counsel objected to the Bench as formed. The District Magistrate directed the Government pleader to prosecute, and both the District Magistrate and *L.* gave evidence for the prosecution. After the case for the prosecution was closed, two formal charges were drawn up, namely, that the prisoner had debited Government with the price of more oil-seed than he actually purchased, and that he had received payment for certain oil at a higher rate than he credited to Government. The moneys, the receipt of which were the subject of the first charge, were obtained by the prisoner on the strength of certain vouchers which he had induced *L.* to sign as correct, and *L.* had sanctioned the sale at the rates credited to Government. Upon the prisoner's giving the names of the witnesses he intended to call in his defence, *L.* was deputed by his brother Magistrates to examine some of them who were connected with the jail, in order "to guard against deviation," and the depositions so taken were placed on the record, "to be used by either party, though not themselves, as evidence." The prisoner was convicted. On a motion to quash the conviction,—*Held* that the recording the statements of the prisoner's witnesses was irregular. Criminal proceedings are bad unless they are conducted in the manner prescribed by law, and if they are substantially bad, the defect will not be cured by any waiver or consent of the prisoner. QUEEN *v.* BHOLANATH SEN . I. L. R., 2 Calc., 23: 25 W. R., Cr., 57

3. ——— *Waiver.*—*Want of jurisdiction.*—No person can by waiver or consent enable a Magistrate or a Judge to try a case which he is disqualified to try by some circumstance not personal to the accused. IN THE MATTER OF THE PETITION OF QUIROS. EMPRESS *v.* ALLEN [I. L. R., 6 Calc., 83: 6 C. L. R., 463

4. ——— *Bias of Judge.*—*Magistrate's jurisdiction where complainant is his private servant.*—*Legality of conviction and sentence passed by such Magistrate in such a case.*—The mere circumstance that a trying Magistrate is the master

CRIMINAL PROCEEDINGS.—Irregularity—*continued.*

of the complainant does not deprive the Magistrate of his jurisdiction, though it is expedient that such a complaint should be referred to another Magistrate. IN RE THE PETITION OF BASAPA [I. L. R., 9 Bom., 172

5. ——— *Summary jurisdiction wrongly exercised.—Unlawful assembly armed with deadly weapons.—Splitting offence.—Right of appeal, Deprivation of.*—No Magistrate is entitled to split up an offence into its component parts for the purpose of giving himself summary jurisdiction. If a charge of an offence not triable summarily is laid and sworn to, the Magistrate must proceed with the case accordingly, unless he is at the outset in a position to show from the deposition of the complainant that the circumstances of aggravation are really mere exaggeration and not to be believed. Therefore, a Magistrate, when he has before him a person charged with having been armed with a deadly weapon while a member of an unlawful assembly, is not at liberty to disregard that part of the charge which charges the prisoner with having been armed with a deadly weapon, and so to give himself jurisdiction to try the case summarily, and then by inflicting a sentence of imprisonment not exceeding three months to deprive the prisoner of his right of appeal. EMPRESS *v.* ABDOOL KARIM. EMPRESS *v.* GOLAM MAHOMED . I. L. R., 4 Calc., 18: 3 C. L. R., 44

6. ——— *Accused affirmed and examined.—Appointment of Magistrate who convicted accused to be Crown Prosecutor.—Right of prisoners to converse privately with pleader.—Magistrates sitting on bench in Judge's Court during trial.*—Upon an enquiry which the High Court directed the Sessions Judge to make into an allegation that a confession was made under such circumstances as to be inadmissible in evidence, the prisoners were ordered to be, and were, solemnly affirmed and the prosecution neither objected to the form of the order nor to the affirmation of the prisoners, and moreover cross-examined them, but objected to their evidence being used upon the return of the enquiry,—It was held that the objection, though possibly good if taken in time, was too late, and that the evidence of the prisoners might be used, whether the order directing them to be affirmed was correct or otherwise. The appointment of the Magistrate, who, in the first instance, had tried and convicted the accused, to be Crown Prosecutor to conduct an enquiry subsequently directed in the same case, censured as being unprecedented and objectionable. A Public Prosecutor should be without a personal interest in the cases which he conducts. Prisoners should be allowed to have free converse with their vakeels out of the hearing of the police officers in charge of such prisoners. It is undesirable that Magistrates whose decisions are under appeal, or who have been engaged in promoting the prosecution, or police officers concerned in a case, should sit on the bench beside, or converse privately in Court with, the Judge who is engaged in trying the prisoners' appeal. If the Appellate Judge wishes to ascertain any facts relating to the case from the Magistrate who convicted the accused, he should examine the Magistrate upon oath or solemn affirmation, in the same manner as an ordinary witness. REG. *v.* KASHINATH DINKAR [8 Bom., Cr., 126

7. ——— *Magistrate actively employed in prosecution.—Judge on appeal.*—Where a Magistrate took an active part in the prosecution of the prisoners, and recorded the evidence of the material witnesses preliminary to deciding whether the case should go to trial or not, and by whom it should be tried, it was held that he was not a proper Court to hear the appeal from the conviction come to in the case. IN THE MATTER OF THE PETITION OF HET LALL ROY . 22 W. R., Cr., 75

8. ——— *Trial by Magistrate instituted by him as Collector.*—The District Magistrate should not himself try a case in which he instituted the prosecution as Collector. QUEEN *v.* NADI CHAND PODDAR . . 24 W. R., Cr., 1

9. ——— *Interest of Magistrate in convicting prisoner.—Penal Code, s. 188.—Beng. Act V of 1876, s. 256.—Disobedience of lawful order.—Disqualification of Judge.*—On the 29th of March 1883, the Municipal Commissioners of Commillah at a meeting issued an order under section 256 of the Bengal Municipal Act of 1876. The accused was tried and convicted before the District Magistrate under section 188 of the Penal Code, and fined R100 for having disobeyed that order. The Magistrate, who tried and convicted the accused, was present as Chairman of the Municipal Commissioners at the meeting of the 29th of March, when the order was passed, for disobedience of which the accused was tried and convicted. *Held* that the conviction was illegal, and must be set aside. *Sergeant* v. *Dale, L. R., 2, Q. B. D., 558,* cited and followed. KHARAK CHAND PAL *v.* TARACK CHUNDER GUPTA . . I. L. R., 10 Calc., 1030

10. ——— *Criminal Procedure Code, 1861, s. 439.*—Where a Deputy Magistrate did not draw up a charge in accordance with section 250 of the Code of Criminal Procedure, but gave the accused clearly to understand the nature of the charges made against them, the irregularity was held to fall within section 439 of that Code BHUGWAN *v.* DOYAL GOPE . 10 W. R., Cr., 7

11. ——— *Preliminary enquiry.—Perjury.*—It is necessary to a proper preliminary enquiry that the accused (or, under certain circumstances, his agent) should be present; that the witnesses whose evidence is to be the foundation of the commitment should be examined before him; and that he should have the opportunity of cross-examining them. It is essential, too, in a case of perjury, that he should know at what period he ceased to be a witness and his position was changed to that of the accused. QUEEN *v.* KALICHURN LAHOOREE [9 W. R., Cr., 54

12. ——— *Omission to comply with formalities before service of summons.*—The

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omission to comply with prescribed formalities before issuing the summons will not vitiate the proceedings after summons, so as to enable a complainant to reopen he case. EASTERN BENGAL RAILWAY COMPANY *v.* KALIDAS DUTT . **23 W. R., Cr., 63**

13. ——————— *Irregular commitment.—Want of jurisdiction.—Criminal Procedure Code, 1872, ss. 33, 63.*—Section 33 of Act X of 1872 contemplates the contingency of a case which has been enquired into at the proper place, as indicated by section 63 of that Act, being committed to the proper Court of Session by a particular Magistrate not duly empowered by law to make such commitment, and not of a case which has been enquired into in a district in which it was not committed, being committed to the proper Court of Session as endicated by that section, by a particular Magistrate duly empowered by law to make such a commitment. Consequently, where a Magistrate enquires into and commits for trial an offence which has not been committed in his district, and the Court of Session for that district accepts such commitment because the prisoner has not been prejudiced thereby, and tries him for such offence, the proceedings in such case are illegal *ab initio.* EMPRESS OF INDIA *v.* JAGAN NATH **[I. L. R., 3 All., 258**

14. ——————— *Criminal Procedure Code, 1872, ss. 491, 530.—Dispute likely to cause breach of the peace.—Decision on title by Civil Court.—Police report, Incorporation of, by reference.*—On the 20th of March 1879, *A.* applied to have certain lands, which he had lately purchased registered in his name. The order of the Deputy Collector, declaring that *A.* had proved possession and was entitled to registration, was not passed until the 24th December 1879. Prior to *A.'s* purchase, *B.* and *C.* had, on the 6th March 1879, obtained registration of the same property. The proceedings were sent to the Commissioner, who, on the 29th September 1880, declared *A.* to be entitled to the land; and in October the registration in the names of *B.* and *C.* was cancelled, and *A.'s* name was finally registered. In July 1880, proceedings under section 530 of the Criminal Procedure Code were commenced upon the petition of certain ryots, who alleged that other ryots, at the instigation of *A.*, were going to do acts which would lead to a breach of the peace. The Deputy Magistrate, the same person who, as Deputy Collector, had decided the land-registration case in favour of *A.*, proceeded under section 530 to consider the question as to who was in possession, and found that *B.* and *C.* were in possession. *Held* that the Deputy Magistrate could not, in these proceedings, set aside the order which he had made in the registration case, as that order could only be set aside in a regular suit. The proceedings recorded by the Deputy Magistrate did not set forth in express language that he was satisfied that a dispute likely to create a breach of the peace existed in respect of the land in question, between *A.* on the one side, and *B.* and *C.* on the other; nor did it set forth the grounds upon which he was so satisfied that such dispute existed. *Held* that the proceeding was therefore defective. In the proceedings the

CRIMINAL PROCEEDINGS—Irregularity—*continued.*

Magistrate referred to a police report, which, however, did not show that a breach of the peace was imminent. *Held* that, although this report might be taken to be incorporated by reference, yet that it was not sufficient to justify the order. *Per* FIELD, *J.*—Unless the parties are able to show that there is such a dispute as is likely to induce a breach of the peace, the Magistrate should hold his hand and not proceed further. When the rights of the parties have been determined by a competent Court, the dispute is at an end, and it is the duty of the Magistracy to maintain the rights of the successful party, and the proper course for the Magistrate to pursue, if the defeated party does any act that may probably occasion a breach of the peace, is to take action under section 491 of the Criminal Procedure Code, and require from such person security to keep the peace. IN RE GOBIND CHUNDER MOITRA **[I. L. R., 6 Calc., 835: 8 C. L. R., 217**

15 ——————— *Charges distinct and separate, simultaneously tried by jury.—Consent by pleaders to irregular procedure.*—Members of two opposing parties in a riot were, under two distinct committals, sent up for trial before the Sessions Judge and a jury. After the close of the case for the prosecution in one of these cases, the Sessions Judge, with the consent of the pleaders representing the accused, postponed the taking of the evidence for the defence, and proceeded to examine the witnesses for the prosecution in the counter-case before the same jury. The Court then took the evidence of the witnesses for the defence in the first, and in the counter-case, in the order named, and after hearing the address of the various pleaders for the defence and the reply of the Government Pleader, proceeded to sum up the facts in both cases to the jury, who returned a verdict in respect of all the accused. *Held,* that the procedure resorted to by the Judge was a practical violation of the salutary rule which necessitated the keeping of trials in such cases distinctly separate, and that its adoption having materially prejudiced the interests of the accused, the convictions should be set aside. *Queen* v. *Bazu, B. L. R., Sup. Vol., 750,* distinguished. *Held,* further, that the defect in the procedure could not be cured by the consent of the pleaders for the defence to the arrangement suggested by the Court. HOSSEIN BUKSH *v.* EMPRESS **[I. L. R., 6 Calc., 96: 6 C. L. R., 521**

16. ——————— *Aggregate sentence instead of separate sentences.—Material error or defect.*—Two prisoners having been convicted by an Assistant Judge of forgery and other offences, were sentenced each to an aggregate amount of punishment which the Court was competent to inflict, but without specifying the several penalties awarded for each offence. On a reference by the Sessions Judge, under section 434 of the Criminal Procedure Code,—*Held* that it was an irregularity on the part of the Assistant Sessions Judge not to pass a separate sentence under each independent head of the charge, but that it was not an error or defect in consequence of which

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the High Court could reverse or alter the sentence on revision. REG. *v.* VINAYAK TRIMBAK
[2 Bom., 414: 2nd Ed., 391

17. ——————— *Power of High Court.—Joint charge.—Parties in riot on opposite sides.*—A Magistrate should not send up joint charges to the Sessions Court against persons who take part in a riot on opposite sides, as they have not a common object. But where a person had been so jointly charged, and rightly convicted by the Sessions Court, —*Held* (MACPHERSON, *J.*, dissenting) that, as the prisoner had not been prejudiced by the mistake of the Magistrate, there was no sufficient ground for setting aside his conviction or ordering a new trial. QUEEN *v.* BAZU
[B. L. R., Sup. Vol., 750: 8 W. R., Cr., 47

18. ——————— *Joint trial of persons charged with distinct offences.*—Trial of fourteen persons together charged with distinct offences (committing public nuisances) under sections 290, 291 of the Penal Code,—*Held* an irregularity calculated to prejudice the accused. Convictions quashed. PULISANKI REDDI *v.* QUEEN . I. L. R., 5 Mad., 20

19. ——————— *Criminal Procedure Code, 1872, s. 537 (1872, s. 283, 1861-69, ss. 426, 439).—Irregularity prejudicing prisoner in his defence.*—An omission by a Magistrate to hold a preliminary enquiry on a charge under section 307 of the Penal Code of attempting to murder, was, on appeal by the prisoner to the High Court, held to be an irregularity which prejudiced the prisoner in her defence, and the proceedings were ordered to be quashed, and a new trial held. QUEEN *v.* ITWARYA
[14 B. L. R., 54: 22 W. R., Cr., 14

20. ——————— *Irregular appointment of jurors.*—Where the Magistrate had appointed as jurors persons who had been appointed by the opposite party, it was held to be an error affecting the merits of the case. SHATYANUNDO GHOSAL *v.* CAMPERDOWN PRESSING COMPANY
[21 W. R., Cr., 43

21. ——————— *Irregular selection of jurors.—Criminal Procedure Code, 1872, s. 240.—Per* FIELD, *J.*—Irregularities under section 240 of the Criminal Procedure Code in the selection of the jurors, and in the admission of the deposition of a medical witness, treated, it not being shown that the prisoners had been thereby prejudiced, as being objections which ought not to be entertained for the purpose of interfering with the verdict, regard being had to the provisions of section 283 of the Criminal Procedure Code and section 167 of the Evidence Act. IN THE MATTER OF THE PETITION OF JHUBBOO MAHTON. EMPRESS *v.* JHUBBOO MAHTON
[I. L. R., 8 Calc., 739: 12 C. L. R., 233

22. ——————— *Criminal Procedure Code, 1872, s. 283.—Penal Code, s. 181.—Irregular trial.—Legal Practitioners Act (XVIII of 1879).*—Where three persons were tried together and convicted, under section 181 of the Penal Code, of having made false statements on solemn affirmation, about the same matter, in the course of an enquiry into the conduct of a pleader under the provisions of the Legal Practitioners Act,—*Held* that the trial of the three prisoners together was a grave error of procedure vitiating the trial. KOTHE SUBHA CHETTI *v.* QUEEN . . . I. L. R., 6 Mad., 252

23. ——————— *Criminal Procedure Code, 1872, s. 283, and s. 144.—Omission to reduce complaint to writing.*—Acting in violation of section 144 of the Criminal Procedure Code, 1872, in not reducing the complaint to writing is not an irregularity for which an Appellate Court has power to reverse the judgment or sentence under section 283. ANONYMOUS . . . . 7 Mad., Ap., 25

24. ——————— *Criminal Procedure Code, 1872, s. 283.—Irregularity in trial before Magistrate.*—When a person summoned to answer a charge of criminal trespass appeared and filed a written statement, and the Magistrate proceeded accordingly without recording a proceeding under section 530 of the Criminal Procedure Code, it was held that the irregularity was covered by section 283 of the Code, the rule therein laid down being intended to extend to all proceedings before Magistrates. GOUR MOHUN MAJEE *v.* DOOLLUBH MAJEE . . . . . 22 W. R., Cr., 81

25. ——————— *Criminal Procedure Code, 1872, s. 283 and s. 278.—Error in omission to fix time for hearing.*—Where the Appellate Court did not fix a reasonable time for the appearance of the appellant or his counsel as required by section 278, Act X of 1872, the error was held to invalidate the proceedings. IN THE MATTER OF THE PETITION OF HUR PERSHAD . . 24 W. R., Cr., 60

26. ——————— *Criminal Procedure Code, 1872, s. 283.—Irregularity in trial.—Conviction on wrong charge under Act XXI of 1856, s. 44.*—The accused, who held a license for the sale of *imported* liquors, sold *country* spirit, and was charged and convicted by the Assistant Magistrate under section 44, Act XXI of 1856. The Assistant Magistrate on the same day found that the conviction should have been under section 48 of the Abkari Law, and recorded a note to that effect. *Held* that, as it was clear from the evidence recorded and from the answer of the accused, that he was not misled as to the charge against him, and consequently in no way prejudiced by the erroneous description of the offence contained in the conviction, the conviction should be altered so as to bring it under section 48, Act XXI of 1856. QUEEN *v.* DIGAMBUR SHAHA
[24 W. R., Cr., 3

27. ——————— *Irregularities in reception of evidence.*—The reception, as evidence against an accused person, of a confession which ought not to have been proved, and which is not in accordance with the law, and the grounding of a case against him upon such confession, must be held to be irregularities which seriously prejudice the prisoner. QUEEN *v.* CHUNDER BHUTTACHARJEE
[24 W. R., Cr., 42

CRIMINAL PROCEEDINGS.—Irregularity—*continued.*

28. ——————— *Criminal Procedure Code, 1872, s. 283.—Material error.*—Where the Court, without having first heard the evidence for the prosecution, examines the witnesses for the defence, he commits an irregularity; but if the prisoners are not materially prejudiced thereby, the conviction will not be set aside. IN THE MATTER OF TURIBULLAH . . . . . 4 C. L. R., 338

29. ——————— *Acquittal of accused without consulting assessors.—Error or defect in proceedings.—Criminal Procedure Code, ss. 283, 300.—Held,* where without asking the opinion of the assessors a Court of Session acquitted an accused person, after his defence had been heard, that such omission, although a serious irregularity, was not such an error or defect in the proceedings as was, with reference to the provisions of sections 283 and 300 of Act X of 1872, a ground for revisional interference. IN THE MATTER OF THE PETITION OF NARAIN DAS . . . I. L. R., 1 All., 610

30. ——————— *Criminal Procedure Code, 1882, s. 537 and s. 310.—Charge of previous conviction joined with theft in jury case.*—Where in a trial by jury the Sessions Judge called upon the accused to answer at the same time a charge of theft and also a charge of having been previously convicted, the High Court refused to interfere, it not appearing that a failure of justice had been caused by the irregularity. BEPIN BEHARY SHAHA *v.* EMPRESS . . . . . 13 C. L. R., 110

31. ——————— *Criminal Procedure Code, 1882, s. 537.—Omission to read over charge.*—An omission to read and explain the charge to the prisoner held not, under the circumstances, to prejudice the prisoner, and therefore to be immaterial. QUEEN-EMPRESS *v.* APPA SUBHANA MENDEE [I. L. R., 8 Bom., 200

32. ——————— *Criminal Procedure Code, 1882, s. 537 and s. 195.—Irregularity in criminal case.—Prosecution of witness for disobedience to summons without sanction.*—Where a witness was prosecuted for disobedience to a summons without sanction previously obtained under section 195 of the Criminal Procedure Code, the High Court refused to interfere, there being no evidence that the want of sanction had occasioned a failure of justice. KALLY MOHUN MOOKERJEE *v.* EMPRESS . . . . . 13 C. L. R., 117

33. ——————— *Criminal Procedure Code, 1882, s. 530 (1872, s. 34), s. 403.—Acquittal.—Re-trial.— Interference of the High Court.*—Where an offence is tried by a Court without jurisdiction, the proceedings are void under section 530 of the Code of Criminal Procedure, Act X of 1882, and the offender, if acquitted, is liable to be re-tried under section 403. It is, therefore, not necessary for the High Court to upset the acquittal before the re-trial can be had. QUEEN-EMPRESS *v.* HUSSEIN GAIBU . . I. L. R., 8 Bom., 307

34. ——————— *Criminal Procedure Code, 1872, s. 34.—Trying summarily case which ought not to have been so tried.*—A Magistrate having adopted the summary procedure prescribed by Chapter XVIII, Criminal Procedure Code, in the case of an offence which he had no power to try summarily, the High Court set aside the proceedings as being void under section 34, clause 4 of that Code. IN THE MATTER OF THE PETITION OF KHETTER MOHUN CHOWRUNGHEE . 22 W. R., Cr., 43

See QUEEN *v.* JODOONATH SHAHA [23 W. R., Cr., 33

See CHUNDER SEEKOR SOOKUL *v.* DHURM NATH TEWAREE . . 1 C. L. R., 434

35 ——————— *Trial with complaint.*—Where there was irregularity in the preliminary proceedings, there having been no complaint as provided by the Procedure Code, the Court set aside the proceedings though the amount of punishment would not be affected by the defect. QUEEN *v.* MAHIM CHANDRA CHUCKERBUTTY [5 B. L. R., A. Cr., 67

36. ——————— *Criminal Procedure Code, Act X of 1882, s. 531 and s. 177.—Commitment.—Trial in a wrong Sessions Division.—Jurisdiction.*—The order of a Magistrate committing a case to the Court of Session is an order of a Criminal Court within the meaning of section 531 of the Code of Criminal Procedure (X of 1882). If such an order, contrary to the requirements of section 177, directs the commitment to be made to a Court of Session which has no territorial jurisdiction, it is not to be set aside unless it appears that the error occasioned a failure of justice. QUEEN-EMPRESS *v.* THAKU [I. L. R., 8 Bom., 312

37. ——— **Right to institute prosecution.**—*Convicted person.*—There is no rule that a convicted person cannot institute criminal proceedings. QUEEN *v.* MADHUB CHUNDER GIRI [21 W. R., Cr., 13

38. ——— **Suit in Civil Court.**—Civil proceedings do not constitute a bar to a prosecution in a Criminal Court. MADHUB KYBURTHO *v.* KESHUB SINGH . . . 9 W. R., Cr., 22

39. ——— **Sunday.**—*Legality of proceedings.*—Criminal proceedings taken by a Magistrate are not necessarily illegal by reason of having been taken on a Sunday. IN THE MATTER OF THE PETITION OF SINCLAIR . . . 6 N. W., 177

CRIMINAL PROCEDURE CODE (Act X of 1882). (Act X of 1872: Acts XXV of 1861 and VIII of 1869.)

——— **s. 1.**

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION. [I. L. R., 10 Bom., 181

——— **s. 7.**

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—MURDER. [I. L. R., 10 Bom., 258, 263

CRIMINAL PROCEDURE CODE (Act X of 1882), s. 28.

See SESSIONS JUDGE, JURISDICTION OF— [I. L. R., 8 All., 665

——— **s. 29 (1872, s. 8, para. 1).**

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—REGISTRATION ACTS. [I. L. R., 7 Mad., 347

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—MADRAS ACT III OF 1865. [I. L. R., 2 Mad., 161

——— **s. 30 (1872, s. 36).**

See DEPUTY COMMISSIONER, JURISDICTION OF— . . . . 5 N. W., 219

——— **ss. 32 & 33.**

See SENTENCE—IMPRISONMENT—IMPRISONMENT IN DEFAULT OF FINE. [I. L. R., 6 All., 61

See SENTENCE—SOLITARY CONFINEMENT. [I. L. R., 6 All., 83

——— **s. 33 (1872, s. 309; 1861-69, s. 45).**

See SENTENCE—IMPRISONMENT. [I. L. R., 1 All., 461

See SENTENCE—IMPRISONMENT—IMPRISONMENT IN DEFAULT OF FINE. [5 Bom., Cr., 61
I. L. R., 1 Mad., 277

——— **s. 34 (1872, s. 36).**

See SENTENCE—IMPRISONMENT. [I. L. R., 6 Calc., 624

——— **s. 35 (1872, s. 314; 1861-69, s. 46).**

See CASES UNDER SENTENCE—CUMULATIVE SENTENCES.

See WHIPPING. [B. L. R., Sup., Vol., 951 : 9 W. R. Cr., 41
7 B. L. R., 165 : 15 W. R., Cr., 89

——— **s. 40 (1872, s. 56).**

See MAGISTRATE, JURISDICTION OF—TRANSFER OF MAGISTRATE DURING TRIAL . . I. L. R., 2 Calc., 117

1. ——— **s. 45 (1872, s. 90).**—*Omission to give information of offence.—Village accountant.—Village munsif's peon.—Disobedience by public servant of direction of law.*—Where a village accountant and a village munsif's peon had been convicted under section 217 of the Penal Code of having disobeyed the direction of law contained in section 90 of the Criminal Procedure Code,—*Held* that they were wrongfully convicted as not bearing the character which raises the obligation under the latter section. IN THE MATTER OF RAMANIK NAYAR [I. L. R., 1 Mad., 266

2. ——— *Omission to give information of offence.—Agent.—Khazanchi.—Dewan.—*

CRIMINAL PROCEDURE CODE (Act X of 1882), s. 45 (1872, s. 90)—*continued.*

Agent of owner of land.—Per MARKBY, *J.*—A khazanchi is not an "agent" within the meaning of section 90 of the Criminal Procedure Code. A dewan may be an "agent" if his master is absent, but the provisions of section 90 do not apply to a dewan who is acting only under the orders of his resident master. *Per* PRINSEP, *J.—Quære,*—Whether, according to section 90, an agent is only responsible for giving information of the occurrence of any sudden or unnatural death. EMPRESS *v.* ACHIRAJ LALL [I. L. R., 4 Calc., 603 : 3 C. L. R., 87

3. ——— *Omission to give information of offence.*—The provisions of section 90 of the Criminal Procedure Code should not be put in force against one who has omitted to give information to the police of an offence having been committed in cases where the police have actually obtained such information from other sources. EMPRESS *v.* SHASHI BHUSAN CHUCKRABUTTY. IN THE MATTER OF THE PETITION OF SHASHI BHUSAN CHUCKRABUTTY . . . I. L. R., 4 Calc., 623

4. ——— *Omission to give information of offence.—Order to assist the police.—Illegal order.*—A Magistrate directed a landholder to "find a clue" in a case of theft "within fifteen days and to assist the police." *Held* that such order was not authorised by sections 90 and 91 of Act X of 1872, and the conviction of the landholder for disobedience of such order was not maintainable. EMPRESS *v.* BAKSHUN RAM . . I. L. R., 3 All., 201

5. ——— *Omission to give information of offence.—Specification of offence.*—In a case in which the accused are charged with having omitted to give information which they were legally bound to give under section 90 of the Criminal Procedure Code, it should appear what the offence is as to the commission of which the accused wilfully omitted to give information, that the specified offence was in fact committed by some one, and that the accused knew of its having been committed. QUEEN *v.* AHMED ALI . 22 W. R., Cr., 42

6. ——— *Omission to give information of offence.—Residence.—Liability of resident agent.*—The duty imposed by Act X of 1872, section 90, upon village headman, &c., of giving information as to the occurrence of any sudden or unnatural death is intended to apply only when such occurrence takes place at or near the village of which he is headman, or in which he owns or occupies land, &c. Residence in a dwelling-house belonging to another is not occupation of land within the meaning of the section. The liability of the resident agent of an owner under the section arises when the owner is not resident and has no personal knowledge of the fact required to be reported; where the owner has such knowledge, the liability attaches to him. IN THE MATTER OF THE PETITION OF MUDHOOSOODUN CHUCKERBUTTY . . . 23 W. R., Cr., 60

——— **s. 54.**

See ARREST—CRIMINAL ARREST. [I. L. R., 10 Bom., 506

CRIMINAL PROCEDURE CODE (Act X of 1882), s. 56 (1872, s. 102; 1861-69, s. 140).

See ARREST—CRIMINAL ARREST. [11 W. R., Cr., 20

——— s. 57 (1872, s. 93; 1861-69, s. 108).

See ARREST—CRIMINAL ARREST. [9 Bom., 343

——— s. 61 (1872, s. 124; 1861-69, s. 152).

See DETENTION OF ACCUSED BY POLICE. [1 W. R., Cr., 5

See ESCAPE FROM CUSTODY. [I. L. R., 6 All., 129

See POLICE INQUIRY . 3 N. W., 275

Se WRONGFUL DETENTION. [19 W. R., Cr., 36

——— (1872, s. 124, para. 1; 1861-69, s. 152).

See DETENTION OF ACCUSED BY POLICE. [1 W. R., Cr., 5

——— s. 77, para. 1 (1872, s. 161; 1861-69, s. 77).

See WARRANT OF ARREST—CRIMINAL CASES . . . 5 B. L. R., 274

——— ss. 87, 88 (1872, ss. 171, 172; 1861-69, ss. 183, 184).

See CASES UNDER ABSCONDING OFFENDER.

See INFORMATION OF COMMISSION OF OFFENCE . I. L. R., 7 Mad., 436

——— s. 88 (1872, s. 172; 1861-69, s. 184).

See FORFEITURE OF PROPERTY. [8 W. R., Cr., 61

——— ss. 88, 89 (1872, ss. 172, 173; 1861-69, ss. 184, 185).

See ABSCONDING OFFENDER. [I. L. R., 6 All., 487

See REVIEW—CRIMINAL CASES. [9 B. L. R., 342

See RIGHT OF SUIT—SALE IN EXECUTION OF DECREE . . 8 W. R., 207

——— s. 90 (1872, s. 352; 1861-69, s. 188).

See WITNESS—CRIMINAL CASES—AVOIDING SERVICE . 6 B. L. R., Ap., 1

——— s. 92 (Presidency Magistrate's Act, 1877, s. 124).

See COMPLAINT—DISMISSAL OF COMPLAINT—EFFECT OF DISMISSAL. [I. L. R., 6 Calc., 523

CRIMINAL PROCEDURE CODE (Act X of 1882), ss. 96, 97 (1872, s. 368; 1861-69, s. 114).

See WARRANT . 8 W. R., Cr., 74

——— s. 101 (1872, s. 370; 1861-69, s. 115).

See WARRANT . 8 W. R., Cr., 74

——— s. 106, para. 1 (1872, s. 489).

See CASES UNDER RECOGNIZANCE TO KEEP PEACE—WHEN RECOGNIZANCE MAY BE TAKEN.

——— s. 107 (1872, s. 491; 1861-69, s. 282).

See MAGISTRATE, JURISDICTION OF—WITHDRAWAL OF CASES. [I. L. R., 8 Calc., 851

See CASES UNDER RECOGNIZANCE TO KEEP PEACE.

——— s. 110 (1872, ss. 505, 506).

See CASES UNDER SECURITY FOR GOOD BEHAVIOUR.

See SENTENCE—IMPRISONMENT. [I. L. R., 1 All., 666

——— ss. 110, 117.

See SECURITY FOR GOOD BEHAVIOUR. [I. L. R., 6 All., 132
I. L. R., 10 Bom., 174

——— s. 112 (1872, s. 492).

See CASES UNDER RECOGNIZANCE TO KEEP PEACE.

See SECURITY FOR GOOD BEHAVIOUR. [I. L. R., 12 Calc., 520
I. L. R., 6 All., 132

——— s. 122 (1872, s. 516).

See SECURITY FOR GOOD BEHAVIOUR. [22 W. R., Cr., 37

——— s. 123.

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODE. [I. L. R., 9 Calc., 878

——— paras. 1-3 (1872, s. 489).

See RECOGNIZANCE TO KEEP PEACE—WHEN RECOGNIZANCES MAY BE TAKEN. [7 N. W., 328
I. L. R., 2 All., 351

——— paras. 1 & 4 (1872, s. 499; 1861-69, s. 290).

See CASES UNDER RECOGNIZANCE TO KEEP PEACE.

——— paras. 2 & 3 (1872, s. 507; 1861-69, s. 298).

See CASES UNDER RECOGNIZANCE TO KEEP PEACE.

CRIMINAL PROCEDURE CODE (Act X of 1882), s. 127 (1872, s. 480).

See UNLAWFUL ASSEMBLY.
[I. L. R., 7 Bom., 42

——— s. 133 (1872, s. 521; 1861-69, s. 308).

See DAMAGES—SUIT FOR DAMAGES—TORTS . . 2 B. L. R., S. N., 15

See DECLARATORY DECREE, SUIT FOR—
[6 B L. R., 643

See CASES UNDER JURISDICTION OF CIVIL COURT—MAGISTRATE'S ORDERS, INTERFERENCE WITH.

See JURY—JURY UNDER NUISANCE SECTIONS OF CRIMINAL PROCEDURE CODE.
[I. L. R., 13 Calc., 275

See CASES UNDER NUISANCE—UNDER CRIMINAL PROCEDURE CODE.

——— ss. 135, 138, 139, 141 (1872, s. 523; 1861-69, s. 310).

See JURISDICTION OF CIVIL COURT—MAGISTRATE'S ORDERS, INTERFERENCE WITH— . I. L. R., 6 Calc., 291

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[21 W. R., Cr., 43, 54, 64
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——— ss. 136, 140 (1872, s. 525; 1861-69, s. 311).

See RIGHT OF SUIT—JUDICIAL OFFICERS, SUITS AGAINST— 8 Bom., A. C., 94

——— s. 144 (1872, s. 518; 1861-69, ss. 62, 63).

See FINE . . 7 W. R., Cr., 37

See JUDICIAL OFFICERS, LIABILITY OF—
[4 B. L. R., A. C., 37 : 13 W. R., 13
7 B. L. R., 449 : 16 W. R., 63

See JURISDICTION OF CIVIL COURT—PUBLIC WAYS, OBSTRUCTION OF—
[I. L. R., 3 Calc., 20

See CASES UNDER NUISANCE—UNDER CRIMINAL PROCEDURE CODE.

See NUISANCE—PUBLIC NUISANCE.
[I. L. R., 8 All., 99

See SUPERINTENDENCE OF HIGH COURT—CHARTER ACT, s. 15—CRIMINAL CASES.
[I. L. R., 2 Calc., 293
I. L. R., 8 Calc., 580
24 W. R., 30
22 W. R., Cr., 24, 78
21 W. R., Cr., 26
23 W. R., Cr., 34

CRIMINAL PROCEDURE CODE (Act X of 1882), s. 145 (1872, s. 530; 1861-69, s. 318).

See BENCH OF MAGISTRATES.
[I. L. R., 3 Calc., 754

See EJECTMENT, SUIT FOR—
[I. L. R., 4 Calc., 339

See LIMITATION ACT, 1877, ART. 47 (1859, s. 1, CL. 7) . . 8 W. R., 490
[3 N. W., 171

See POSSESSION—NATURE OF POSSESSION.
[I. L. R., 4 Calc., 378

See CASES UNDER POSSESSION, ORDER OF CRIMINAL COURT AS TO—

See WITNESS—CRIMINAL CASES—SUMMONING WITNESSES.
[9 B. L. R., Ap., 39, 45

——— s. 146 (1872, s. 531; 1861-69, s. 319).

See DAMAGES—REMOTENESS OF DAMAGES.
[I. L. R., 6 Mad., 426

See LIMITATION ACT (1877, ART. 47; 1871, ART. 46) . 7 N. W., 35

See CASES UNDER POSSESSION, ORDER OF CRIMINAL COURT AS TO—ATTACHMENT OF PROPERTY.

——— s. 147 (1872, s. 532; 1861-69, s. 320).

See ONUS PROBANDI—EASEMENT.
[I. L. R., 11 Calc., 52
2 C. L. R., 555
21 W. R., 140

See CASES UNDER POSSESSION, ORDER OF CRIMINAL COURT AS TO—DISPUTES AS TO RIGHT OF WAY, WATER, USER, &c.

——— s. 148, para. 1 (1872, s. 533).

See CASES UNDER POSSESSION, ORDER OF CRIMINAL COURT AS TO—LOCAL INQUIRY.

——— s. 155 (1872, s. 110, paras. 2 & 3; 1861-69, s. 133).

See POLICE INQUIRY.
[2 B. L. R., S. N., 6 : 10 W. R., Cr., 49

——— s. 156 (1872, s. 109; 1861-69, s. 133).

See POLICE INQUIRY.
[2 B. L. R., S. N., 6 : 10 W. R., Cr., 49

——— ss. 156, 157 (1872, s. 114; 1861-69, s. 135).

See PRIVATE DEFENCE, RIGHT OF—
[7 Bom., Cr., 50

——— s. 159 (1872, s. 115; 1861-69, s. 135).

See PRIVATE DEFENCE, RIGHT OF—
[7 Bom., Cr., 50

CRIMINAL PROCEDURE CODE (Act X of 1882), s. 160 (1872, s. 118).

See FALSE EVIDENCE—GENERALLY.
[I. L. R., 7 Calc., 121

See POLICE INQUIRY.
[I. L. R., 7 Mad., 274

——— s. 161 (1872, ss. 118, 119).

See FALSE EVIDENCE—GENERALLY.
[I. L. R., 8 Bom., 216
I. L. R., 7 Calc., 121

——— ss. 161, 162 (1872, s. 119).

See EVIDENCE—CRIMINAL CASES—STATEMENTS TO POLICE OFFICERS.
[11 Bom., 120
6 C. L. R., 47

——— s. 163.

See CONFESSION—CONFESSIONS UNDER THREAT OR PRESSURE.
[I. L. R., 10 Calc., 775

——— s. 164 (1872, s. 122).

See CONFESSION—CONFESSIONS TO MAGISTRATE . . I. L. R., 9 Mad., 224

1. ——— *Power of Magistrate.—Statement of person appearing as witness.*—Section 122 of the Code of Criminal Procedure (Act X of 1872) authorises a Magistrate to record the statement of a person who appears before him as a witness, as well as the confession of a person accused of an offence. EMPRESS *v.* MALKA
[I. L. R., 2 Bom., 643

2. ——— *Refusal to sign statement.—Penal Code, s. 180.*—Section 180 of the Penal Code does not apply to statements made under this section. EMPRESS *v.* SERIAPA
[I. L. R., 4 Bom., 15

——— s. 167 (1872, s. 124; 1861-69, s. 152).

See DETENTION OF ACCUSED BY POLICE.
[1 W. R., Cr., 5

See ESCAPE FROM CUSTODY.
[I. L. R., 6 All., 129

See POLICE INQUIRY . 3 N. W., 275

See WRONGFUL DETENTION.
[19 W. R., Cr., 36

——— ss. 168, 170 (1872, s. 123).

See MAGISTRATE, JURISDICTION OF—POWERS OF MAGISTRATES
[10 Bom., 70

——— ss. 169, 173, para. 2 (1872, s. 126; 1861-69, s. 154).

See EVIDENCE—CRIMINAL CASES—POLICE EVIDENCE, DIARIES, PAPERS, &c.
[8 W. R., Cr., 87

CRIMINAL PROCEDURE CODE (Act X of 1882)—*continued.*

——— s. 176 (1872, s. 135).—*Enquiry into cause of death.—Report by Magistrate.—Judicial proceeding.—Power of High Court under s. 296, Criminal Procedure Code.—Coroner's inquest.*—Where the Magistrate of a division held an enquiry, under section 135 of the Criminal Procedure Code, into the cause of the death of a person found dead under suspicious circumstances, and, without making a specific charge against any person, drew up a report embodying the result of his enquiry, and sent the report to the Magistrate of the district, and subsequently proceedings were taken against one of the witnesses, which ultimately resulted in an acquittal,—*Held* by the High Court, that there being nothing in the language of section 135 requiring the Magistrate holding such an enquiry either to make a report or to come to a finding, the report actually sent could not be considered as part of a judicial proceeding, and that therefore the High Court had no power to send for it under section 296 of the Criminal Procedure Code. No analogy exists between a Coroner's inquest and an enquiry into the cause of death under the Criminal Procedure Code. IN THE MATTER OF TROYLOKHONATH BISWAS
[I. L. R., 3 Calc., 742

——— s. 177 (1872, s. 63).

See s. 531 . I. L. R., 8 Bom., 312

——— s. 178 (1872, s. 63).

See CRIMINAL PROCEEDINGS.
[I. L. R., 3 All., 258

See TRANSFER OF CRIMINAL CASE—GENERAL CASES.
[I. L. R., 10 Calc., 643

——— s. 180 (1872, s. 66; 1861-69, ss. 31, 31A).

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—THEFT.
[I. L. R., 6 Calc., 307

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—RECEIVING STOLEN PROPERTY . . 4 Bom., Cr., 38

——— s. 182 (1872, s. 67).

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED DURING JOURNEY . . 13 B. L. R., Ap., 4
[25 W. R., Cr., 45

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—DACOITY.
[I. L. R., 1 Bom., 50

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—THEFT.
[I. L. R., 1 Mad., 171

CRIMINAL PROCEDURE CODE (Act X of 1882), s. 185 (1872, s 69).

See TRANSFER OF CRIMINAL CASE—GROUND FOR TRANSFER.
[22 W. R., Cr., 6

——— s. (186 1872, s. 157).

See WARRANT OF ARREST—CRIMINAL CASES . I. L. R., 1 Bom., 340

——— s. 191.

See COMPLAINT—INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES
[I. L. R., 13 Calc., 334

——— ss. 191, 198 (1872, s. 142; 1861-69, s. 68.)

See COMPLAINANT.
[I. L. R., 10 Bom., 340

See COMPLAINT—INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES.
[1 C. L. R., 523
5 B. L. R., 274: 13 W. R., Cr., 27
4 B. L. R., Ap., 1: 13 W. R., Cr., 1

See JUDICIAL OFFICERS, LIABILITY OF—
[3 Bom., A. C., 36

See SANCTION TO PROSECUTION—NON-COMPLIANCE WITH SANCTION.
[I. L. R., 4 Calc., 712

See WARRANT OF ARREST—CRIMINAL CASES . . 16 W. R., Cr., 50
[8 Bom., Cr., 113
4 B. L. R., Ap., 1

——— s. 192 (1872, s. 44; 1861-69, s. 273).

See MAGISTRATE, JURISDICTION OF—REFERENCE BY OTHER MAGISTRATES.
[2 N. W., 21, 401
6 Mad., Ap., 41
7 Mad., Ap., 2
1 N. W., Ed. 1873, 306
4 Mad., Ap., 40
3 N. W., 126

——— s. 193 (1872, s. 231; 1861-69, s. 359).

See SESSIONS JUDGE, JURISDICTION OF—
[13 W. R., Cr., 17
19 W. R., Cr., 43
I. L. R., 3 Mad., 351
I. L. R., 4 Calc., 570
I. L. R., 9 Bom., 352

——— s. 195 (1872, ss. 467, 468, 469, 470; 1861-69, ss. 168, 169, 170; Presidency Magistrate's Act, 1877, s. 41).

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODES . 6 N. W., 124

See APPEAL IN CRIMINAL CASES—ACTS—PRESIDENCY MAGISTRATE'S ACT.
[I. L. R., 2 Calc., 466

CRIMINAL PROCEDURE CODE (Act X of 1882), s. 195 (1872, ss. 467, 468, 469, 470; 1861-69, ss. 168, 169, 170; Presidency Magistrate's Act, 1877, s. 41)—*continued.*

See CRIMINAL PROCEEDINGS.
[13 C. L. R., 117

See FALSE EVIDENCE—GENERALLY
[W. R., 1864, Cr., 15

See CASES UNDER SANCTION TO PROSECUTION.

See STAMP ACT, 1862, s. 50.
[3 B. L. R., A. Cr., 6

See STAMP ACT, XXVI OF 1867.
[5 Bom., Cr., 104

See SUPERINTENDENCE OF HIGH COURT—ACT XXIII OF 1861, s. 35.
[6 N. W., 124

——— s. 197 (1872, s. 466; 1861-69, s. 167, Presidency Magistrate's Act, 1877, s. 39).

See HIGH COURT, JURISDICTION OF—BOMBAY—CRIMINAL.
[I. L. R., 9 Bom., 288

See SANCTION TO PROSECUTION—WHERE SANCTION IS NECESSARY.
[6 Mad. Ap., 22
I. L. R., 4 Bom., 357
I. L. R., 9 Mad., 439
I. L. R., 3 Calc., 758: 2 C. L. R., 520

See SANCTION TO PROSECUTION—POWER TO GRANT SANCTION . 7 Mad., 58
[7 Bom., Cr., 64

See SANCTION TO PROSECUTION—WANT OF SANCTION.
[I. L. R., 9 Bom., 288

See SANCTION TO PROSECUTION—NON-COMPLIANCE WITH SANCTION.
[8 Bom. Cr., 32

——— (1872, s. 466).—*Acts done by public servant.—Sanction to prosecution.—Mahalkari.*—Section 466 of the Code of Criminal Procedure extends to all acts ostensibly done by a public servant, *i.e.*, to acts which would have no special signification except as acts done by a public servant; therefore, a mahalkari charged with fabricating the proceedings of a case decided before himself, could not be tried on that charge except with the sanction specified in that section. Paragraph 1 of section 466, which mentions a sanction by Government or its deputy, is intended to apply, at least chiefly, to the cases of persons specially responsible to Government, such as accountants who have failed in their duty; and paragraph 2, which speaks of sanction by Government alone, to persons professing to exercise certain authority, and with that pretext doing an act which is impeached by a subject, on the ground of its being wholly unwarranted, or of an excess or impropriety of some kind. A mahalkari falls within the class of public servants contemplated in paragraph 1

CRIMINAL PROCEDURE CODE (Act X of 1882), s. 197 (1872, s. 466)—*continued.*

of section 466; a sanction for his prosecution by the District Magistrate is, therefore, sufficient. EMPRESS *v.* LAKSHMAN SAKHARAM [I. L. R., 2 Bom., 481

——— s. 199 (1872, s. 478).

See ADULTERY . 24 W. R., Cr., 18, [I. L. R., 5 All., 233

——— s. 200 (1872, ss. 44, 144; 1861-69, s. 273).

See COMPLAINT — DISMISSAL OF COMPLAINT. [2 B. L. R., S. N., 6: 10 W. R., Cr., 49 7 Mad., Ap., 31

See COMPLAINT—POWER TO REFER TO SUBORDINATE MAGISTRATE. [3 B. L. R., A. Cr., 67 8 B. L. R., 19 9 B. L. R., F. B., 146

See CRIMINAL PROCEEDINGS. [7 Mad., Ap., 25

——— s. 202 (1872, s. 146; 1861-69, s. 180).

See COMPLAINT—INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES. [21 W. R., Cr., 44 I. L. R., 13 Calc., 334

See COMPLAINT—POWER TO REFER TO SUBORDINATE MAGISTRATE. [I. L. R., 9 Mad., 282

See PLEADER—APPOINTMENT AND APPEARANCE OF . 8 Bom., A. C., 202

See POLICE INQUIRY. [2 B. L. R., S. N., 6: 10 W. R., Cr., 49

——— s. 203.

See COMPLAINT—INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES. [I. L. R., 13 Calc., 334

——— ss. 203, 204 (1872, s. 147).

See COMPLAINT—REVIVAL OF COMPLAINT. [I. L. R., 5 Bom., 405 7 Mad., Ap., 16

See COMPLAINT—DISMISSAL OF COMPLAINT —POWER OF AND PRELIMINARIES TO DISMISSAL . . 4 C. L. R., 534 [2 B. L. R., S. N., 6: 10 W. R., Cr., 49 10 B. L. R., Ap., 26

See COMPLAINT — DISMISSAL OF COMPLAINT—EFFECT OF DISMISSAL. [24 W. R., Cr., 75

——— s. 204 (1872, s. 148).

See POLICE ACT, 1861, s. 29. [25 W. R., Cr., 20

CRIMINAL PROCEDURE CODE (Act X of 1882), s. 206 (1872, s. 143).

See MAGISTRATE, JURISDICTION OF—POWERS OF MAGISTRATES. [I. L. R., 6 All., 477

See MAGISTRATE, JURISDICTION OF—COMMITMENT TO SESSIONS COURT. [I. L. R., 4 Bom., 240

——— s. 208, para. 1 (1872, s. 190; 1861-69, s. 193).

See COMPLAINT — DISMISSAL OF COMPLAINT—POWER OF AND PRELIMINARIES TO DISMISSAL. [16 W. R., Cr., 48

——— s. 208, para. 2 (1872, s. 357; 1861-69, s. 207).

See WITNESS—CRIMINAL CASES—SUMMONING WITNESSES. [6 B. L. R., Ap., 1

——— ss. 208, para. 2, 252, & 257 (1872, s. 362).

See DISCHARGE OF ACCUSED. [23 W. R., Cr., 9

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES—CROSS-EXAMINATION . . . 19 W. R., Cr., 53

See WITNESS—CRIMINAL CASES—SUMMONING WITNESSES . 23 W. R., Cr., 9 [I. L. R., 3 All., 392 I. L. R., 4 Mad., 329

——— s. 209 (1872, s. 195).

See DISCHARGE OF ACCUSED. [I. L. R., 5 All., 161

See MAGISTRATE, JURISDICTION OF—COMMITMENT TO SESSIONS COURT. [I. L. R., 5 All., 161

——— (Presidency Magistrate's Act, 1877, s. 87).

See MALICIOUS PROSECUTION. [I. L. R., 6 Bom., 376

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES. [I. L. R., 5 Calc., 121: 4 C. L. R., 305

——— ss. 210, 211 (1872, ss. 199, 200; 1861-69, s. 227).

See WITNESS—CRIMINAL CASES—SUMMONING WITNESSES. [6 B. L. R., Ap., 1

——— ss. 214, 215 (1872, s. 197).

See CASES UNDER COMMITMENT.

——— s. 215 (1872, s. 197).

See COMMITMENT . I. L. R., 6 All., 98

CRIMINAL PROCEDURE CODE (Act X of 1882), s. 216 (1872, s. 359; 1861-69, s. 228).

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—WITNESS . 6 Mad., Ap., 9

See WITNESS—CRIMINAL CASES—SUMMONING WITNESSES.
[6 B. L. R., Ap., 1
I. L. R., 3 Calc., 573
I. L. R., 4 All., 53
I. L. R., 8 All., 668

——— s. 221 (1872, s. 439).

See CHARGE—FORM OF CHARGE—GENERAL CASES . . 19 W. R., Cr., 41
[21 W. R., Cr., 40
22 W. R., Cr., 39
I. L. R., 4 Calc., 124

See CHARGE—EXPLANATION OF CHARGE TO ACCUSED . I. L. R., 11 Calc., 106

See PRISONER . I. L. R., 11 Calc., 106

——— s. 226 (1872, s. 446).

See CHARGE—ALTERATION OR AMENDMENT OF CHARGE . I. L. R., 8 Bom., 200
[7 C. L. R., 143
I. L. R., 8 All., 665

——— s. 227 (1872, s. 445).

See CHARGE—EXPLANATION OF CHARGE TO ACCUSED . 23 W. R., Cr., 59

See CHARGE—ALTERATION OR AMENDMENT OF CHARGE.
[I. L. R., 8 Bom., 200

——— ss. 228, 230 (1872, ss. 447, 450).

See CHARGE—ALTERATION OR AMENDMENT OF CHARGE . I. L. R., 8 Bom., 200

——— s. 233 (1872, s. 452).

See CHARGE—ALTERATION OR AMENDMENT OF CHARGE . I. L. R., 8 Bom., 200

See CASES UNDER JOINDER OF CHARGES.

See SENTENCE—CUMULATIVE SENTENCES.
[I. L. R., 2 All., 644
I. L. R., 3 All., 305

——— s. 234 (1872, s. 453).

See CASES UNDER JOINDER OF CHARGES.

See SENTENCE—CUMULATIVE SENTENCES.
[I. L. R., 2 All., 644
I. L. R., 3 All., 305

——— s. 235 (1872, s. 454).

See JOINDER OF CHARGES.
[I. L. R., 8. Calc., 481

CRIMINAL PROCEDURE CODE (Act X of 1882), s. 235 (1872, s. 454)—*continued.*

See SENTENCE—CUMULATIVE SENTENCES.
[I. L. R., 2 All., 101, 644
I. L. R., 6 All., 121
I. L. R., 7 All., 29, 414, 757
I. L. R., 11 Calc., 353
I. L. R., 12 Calc., 495
I. L. R., 10 Bom., 493

——— s. 236 (1872, s. 455).

See FALSE EVIDENCE—CONTRADICTORY STATEMENTS.
[13 B. L. R., 324, 325, note

See FALSE EVIDENCE—GENERALLY.
I. L. R., 5 All., 17

See SENTENCE—CUMULATIVE SENTENCES.
[I. L. R., 2 All., 644
I. L. R., 3 All., 305

——— *Alternative charges.*—Section 455 of Act X of 1872 applies to cases in which not the facts are doubtful, but the application of the law to the facts is doubtful. QUEEN *v.* JAMURHA
[7 N. W., 137

——— ss. 236, 237.

See CHARGE—ALTERATION OR AMENDMENT OF CHARGE.
[I. L. R., 8 All., 665

——— s. 237 (1872, s. 456).

See CHARGE—ALTERATION OR AMENDMENT OF CHARGE.
[I. L. R., 8 Bom., 200

——— s. 238 (1872, s. 457).

See CONVICTION . . 11 Bom., 240

See VERDICT OF JURY.
[I. L. R., 5 Calc., 871

——— s. 243 (1872, s. 208).

See COMPLAINT—DISMISSAL OF COMPLAINT—GROUND FOR DISMISSAL.
[22 W.R., Cr., 40

See COMPLAINT—DISMISSAL OF COMPLAINT—EFFECT OF DISMISSAL.
[23 W. R., Cr., 63

——— s. 244, para. 1 (1872, s. 207; 1861-69, s. 266).

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES.
[4 B. L. R., Ap., 77
7 B. L. R., 568, note

——— paras. 2 & 3 (1872, s. 361; 1861-69, s. 262).

See COMPLAINT—DISMISSAL OF COMPLAINT—GROUND FOR DISMISSAL.
[I. L. R., 5 Mad., 160

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES.
[4 B. L. R., Ap., 77
7 B. L. R., 568, note

CRIMINAL PROCEDURE CODE (Act X of 1882), s. 245 (1872, s. 211).

See COMPENSATION—CRIMINAL CASES—TO ACCUSED ON DISMISSAL OF COMPLAINT . . I. L. R., 6 Calc., 581
[I. L. R., 10 Bom., 199

——— s. 247 (1872, ss. 205, 212; 1861-69, s. 259).

See COMPLAINT—DISMISSAL OF COMPLAINT—GROUND OF DISMISSAL.
[4 Mad., Ap., 41
I. L. R., 5 Mad., 160
13 C. L. R., 303
I. L. R., 7 Mad., 356

See COMPLAINT—DISMISSAL OF COMPLAINT—EFFECT OF DISMISSAL.
[19 W. R., Cr., 52
23 W. R., Cr., 63
25 W. R., Cr., 63

See JOINDER OF CHARGES.
[I. L. R., 11 Calc., 91

——— s. 248 (1872, s. 210).

See COMPLAINANT.
[I. L. R., 2 Bom., 653

See COMPLAINT—WITHDRAWAL OF COMPLAINT AND OBLIGATION OF MAGISTRATE TO HEAR IT.
[4 B. L. R., F. B., 41
I. L. R., 5 Mad., 378

See COMPOUNDING OFFENCE.
[I. L. R., 10 Calc., 551

——— s. 250 (1872, s. 209; 1861-69, s. 270).

See CASES UNDER COMPENSATION—CRIMINAL CASES—TO ACCUSED ON DISMISSAL OF COMPLAINT.

See COMPLAINT—DISMISSAL OF COMPLAINT—POWER OF AND PRELIMINARIES TO DISMISSAL.
[2 B. L. R., S. N., 15

See COMPLAINT—WITHDRAWAL OF COMPLAINT AND OBLIGATION OF MAGISTRATE TO HEAR IT.
[4 B. L. R., F. B., 41

——— s. 253.

See JOINDER OF CHARGES.
[I. L. R., 11 Calc., 91

——— ss. 253, 259 (1872, s. 215; 1861-69, s. 250).

See ss. 436, 438 (1872, s. 296, PARA. 2).
[7 Mad., Ap., 28

See COMPLAINT—DISMISSAL OF COMPLAINT—POWER OF AND PRELIMINARIES TO DISMISSAL . . 8 Mad., Ap., 5
[I. L. R., 3 Calc., 389
I. L. R., 2 All., 447
I. L. R., 4 Mad., 329
23 W. R., Cr., 9

CRIMINAL PROCEDURE CODE (Act X of 1882), ss. 253, 259 (1872, s. 215; 1861-69, s. 250)—*continued.*

See COMPLAINT—REVIVAL OF COMPLAINT . . I. L. R., 1 Bom., 64

See CASES UNDER DISCHARGE OF ACCUSED . . I. L. R., 6 Mad., 25

See MAGISTRATE, JURISDICTION OF—POWERS OF MAGISTRATES.
[I. L. R., 10 Calc., 67

See REVISION—COMMITMENT.
[I. L. R., 1 Calc., 282
I. L. R., 2 Calc., 405
I. L. R., 2 Bom., 534

——— s. 253, Discharge under—

See s. 437 . I. L. R., 7 Mad., 454

——— s. 254 (1872, s. 216; 1861-69, s. 250).

See CASES UNDER DISCHARGE OF ACCUSED.

——— s. 255 (1872, s. 217).

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES—CROSS-EXAMINATION . . I. L. R., 7 Calc., 28

——— s. 256 (1872, s. 218).

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES—CROSS-EXAMINATION . . 6 N. W., 270, 284
[21 W. R., Cr., 29
I. L. R., 7 Calc., 28

——— s. 257.

See WITNESS—CRIMINAL CASES—SUMMONING WITNESSES.
[I. L. R., 10 Calc., 931

——— para. 2 (1872, s. 362).

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES—CROSS-EXAMINATION . . 19 W. R., Cr., 53

See WITNESS—CRIMINAL CASES—SUMMONING WITNESSES . 23 W. R., Cr., 9
[I. L. R., 3 All., 392
I. L. R., 4 Mad., 329

——— s. 258 (1872, s. 220; 1861-69, s. 255).

See COMPLAINT—DISMISSAL OF COMPLAINT—EFFECT OF DISMISSAL.
[5 C. L. R., 359

——— (1872, s. 220).—*Conviction or acquittal.—Magistrate, Powers of.*—Although the explanation to section 220 provides that, if a charge is drawn up the prisoner must be either convicted or acquitted, it does not require that the conviction or acquittal should be by the Magistrate who drew the charge. EMPRESS *v.* KUDRUTOOLLAH
[I. L. R., 3 Calc., 495: 2 C. L. R., 2

CRIMINAL PROCEDURE CODE (Act X of 1882), s. 259 (1872, s. 215, expl. 1).

See COMPOUNDING OFFENCE.
[I. L. R., 10 Calc., 551

——— s. 260 (1872, s. 222).

See BENCH OF MAGISTRATES.
[21 W. R., Cr., 12

See MAGISTRATE, JURISDICTION OF—TRANSFER OF MAGISTRATE DURING TRIAL . . I. L. R., 2 Calc., 117

See CASES UNDER SUMMARY TRIALS.

——— s. 262 (1872, s. 226).

See SENTENCE—IMPRISONMENT—IMPRISONMENT AND FINE I. L. R., 6 All., 61

See SENTENCE—SOLITARY CONFINEMENT.
[I. L. R., 6 All., 83

1. ——— s. 263 (1872, s. 227), cl. (h).—*Recording reasons for conviction.—Practice of High Court on revision.*—Under clause (*h*) of section 227 of the Criminal Procedure Code, although a Magistrate is not required to record any evidence, he should, in recording his reasons for the conviction, state them so that the High Court, on revision, may judge whether there were sufficient materials before him to support the conviction. Where they were not so stated, the High Court, on motion, set the conviction aside. IN THE MATTER OF THE PETITION OF PANJAB SINGH. EMPRESS *v.* PANJAB SINGH
[I. L. R., 6 Calc., 579

2. ——— *Reasons for finding of Magistrate in case of conviction to be recorded.—Criminal Procedure Code (Act X of 1872), s. 227, cl. (h).*—A Magistrate, in cases where no appeal lies, is bound to record a brief statement of his reasons for convicting an accused. IN THE MATTER OF THE PETITION OF RADOINATH SHAHA. EMPRESS *v.* RADOINATH SHAHA . . I. L. R., 8 Calc., 195

3. ——— *Summary trial.*—A summary trial under section 227, Criminal Procedure Code, being intended to apply only to short and simple cases, where little evidence is needed,—*Held* that the proceedings of a Magistrate thereunder, covering more than 130 pages and occupying seven days, were an abuse of the law. *Held* also, that a *bonâ fide* claim of title deprives a Magistrate of jurisdiction to deal with a criminal charge in a summary way. ISSUR CHUNDER MUNDLE *v.* ROHIM SHEIKH
[25 W. R., Cr., 65

4. ——— *Case in which appeal lies.*—Where a Magistrate of the first class passes a sentence of imprisonment and fine, his order is appealable. He cannot, therefore, in such a case, make up his record in the manner described by section 227 of the Code of Criminal Procedure IN THE MATTER OF SHER MAHOMED . . . 2 C. L. R., 511

5. ——— *Record of reasons for conviction.*—Although generally it is not necessary, in cases in which no appeal lies, for a Magistrate to record the reasons for passing his judgment, yet, under clause (*h*) of section 227 of the Code of Criminal Procedure, in case of conviction, he ought to enter, in the register to be kept under that section, a brief statement of the reasons for such conviction; but an omission to do so may, under some circumstances, be remedied at a subsequent time. IN THE MATTER OF DOWLAT SINGH . 6 C. L. R., 273

CRIMINAL PROCEDURE CODE (Act X of 1882), s. 263 (1872, s. 227), cl. (h)—*continued.*

——— s. 264 (1872, s. 228).

See REVISION—JUDGMENT, DEFECTS IN.
[I. L. R., 1 All., 680

——— *Record of evidence in appealable cases.*—Under Act X of 1872, section 228, Magistrates are not bound to record the substance of every separate deposition, but to state generally what is the substance of the witnesses' evidence. KRISTODHONE DUTT *v.* CHAIRMAN OF MUNICIPAL COMMISSIONERS OF SUBURBS OF CALCUTTA . . . . . 25 W. R., Cr., 6

——— s. 267 (Act X of 1875, s. 32).

See JURY—JURY UNDER HIGH COURT'S CRIMINAL PROCEDURE.
[I. L. R., 1 Bom., 232

——— s. 268 (1872, s. 232).

See INSANITY . 10 B. L. R., Ap., 10

——— s. 269 (1872, s. 233).

See JURY—JURY IN SESSIONS CASES.
[24 W. R., Cr., 18
4 C. L. R., 405

See VERDICT OF JURY.
[I. L. R., 9 Mad., 42

——— s. 270 (1872, s. 235; 1861-69, s. 360).

See COMPLAINANT . 5 Bom., Cr., 85

See COUNSEL . . 11 Bom., 102

——— s. 272 prov. (1872, s. 265).

See ASSESSORS . 22 W. R., Cr., 34

——— s. 273 (Act X of 1875, s. 14).—*Ordinary Original Criminal Jurisdiction.*—Applications under section 14 of Act X of 1875, Criminal Procedure Code, 1882, section 273, should be disposed of by the High Court in the exercise of its Ordinary Original Criminal Jurisdiction. IN THE MATTER OF THE PETITION OF CHAROO CHUNDER MULLICK. CHAROO CHUNDER MULLICK *v.* EMPRESS
[I. L. R., 9 Calc., 397

——— ss. 274, 276 (Act X of 1875, s. 33).

See JURY—JURY UNDER HIGH COURT'S CRIMINAL PROCEDURE.
[I. L. R., 1 Bom., 462

——— s. 278 (1872, s. 244; 1861-69, s. 344).

See JURY—JURY IN SESSIONS CASES.
[16 W. R., Cr., 66

CRIMINAL PROCEDURE CODE (Act X of 1882), s. 287 (1872, s. 248; 1861-69, s. 366).

See REVISION—EVIDENCE AND WITNESSES.
[3 B. L. R., A. Cr., 59

——— s. 288 (1872, s. 249).

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES.
[I. L. R., 7 All., 862

1. ——— *Deposition taken before Magistrate.—Evidence before Sessions Judge.—Discretion of Sessions Judge.*—The purpose of section 249 of the Code of Criminal Procedure, as amended by section 20 of Act XI of 1874, is to make depositions given before Magistrates in the preliminary inquiry evidence in the trial before the Court of Session, only when the Sessions Judge determines, in the exercise of his discretion, that they are to be used in this way. But the exercise of this discretion, considering it as a matter of fact or law, is open to review by the Appellate Court. REG. *v.* ARJUN MEGHA . . . . . 11 Bom., 281

2. ——— *Former deposition of witness.—Evidence Act, s. 80.*—The confession of a witness in the shape of a former deposition can be used as evidence against a prisoner only on the condition prescribed by section 249, Criminal Procedure Code, 1872,—that is, it must have been duly taken by the committing officer in the presence of the person against whom it is to be used. The certificate of the Magistrate appended to such confession in order to afford *primâ facie* evidence, under section 80 of the Evidence Act, of the circumstances mentioned in it relative to the taking of the statement, ought to give the fact necessary to render the deposition admissible under section 249. QUEEN *v.* NUSSURUDDIN . . . . . 21 W. R., Cr., 5

3. ——— *Depositions taken before Magistrate.*—A Court of Session is not at liberty, under Act X of 1872, section 249, to ground its judgment on the depositions taken by the Magistrate without taking the examinations of the witnesses afresh. QUEEN *v.* MAJOHUR ROY
[24 W. R., Cr., 11

4. ——— *Witnesses before committing Magistrate.*—On the trial of a prisoner for the murder of his wife and child, the witnesses for the prosecution gave evidence contradicting the evidence given by them before the committing Magistrate: and the Sessions Judge, purporting to act under section 249, Act X of 1872, discarded the evidence taken before himself, and grounded his judgment on the evidence given before the Magistrate, and on this evidence convicted the prisoner, and sentenced him to death. On appeal by the prisoner,—*Held* that section 249 did not warrant such a course of proceeding. That section merely authorises the Court to take a particular statement made by a witness before the Magistrate as the true statement, notwithstanding that it is denied, or a statement inconsistent with it was made by the witness before the Judge, only if the Judge should see that the original statement was worthy of belief, and does not mean that the Court should discard wholly the testimony of witnesses before it and have recourse to the testimony of the same persons given before another officer. QUEEN *v.* AMANULLA
[12 B. L. R., Ap., 15: 21 W. R., Cr., 49

CRIMINAL PROCEDURE CODE (Act X of 1882), s. 288 (1872, s. 249)—*continued.*

5. ——— *Depositions in former case.—Refusal to allow cross-examination of witnesses.—A., B.,* and *C.* having been charged with murder before a Magistrate, two vakeels presented their vakalutnamahs, and applied to be allowed to conduct the defence of the accused. The Magistrate refused permission, and, after recording the depositions of the witnesses, committed the accused to take their trial before the Sessions Court. In the Court of the Magistrate the only material evidence for the prosecution was that of three witnesses, who, on being examined in the Sessions Court, denied all knowledge of the facts to which they had deposed before the Magistrate. Two of them denied having made the statements recorded, while the third admitted the statements attributed to him, but asserted they were false and made under pressure. The Sessions Judge, disbelieving the statements made in his Court, thereupon, under section 249 of the Code of Criminal Procedure (as amended by section 20 of the Amending Act), used the previous depositions as evidence in the case, and mainly upon these convicted the accused of murder and sentenced them to transportation for life. Against this conviction and sentence the prisoners appealed to the High Court, on the ground that the previous depositions ought not to have been used as evidence in the case as the Magistrate had refused to allow their pleaders to appear and cross-examine the witnesses who made the depositions. The High Court affirmed the convictions and sentence. IN THE MATTER OF DHAM MUNDUL
[6 C. L. R., 53

——— ss. 289, 290 (1872, s. 251).

See COUNSEL . . 11 Bom., 102

——— ss. 289, 290 (1872, s. 251).—*Procedure.—Absence of witnesses for defence.*—If an accused has not his witnesses present, the Judge should, under section 251, Criminal Procedure Code, if he sees grounds for proceeding, first call upon him for his defence, and then postpone the case. QUEEN *v.* JUMIRUDDIN . . . 23 W. R., Cr., 58

——— ss. 289, 292 (1872, ss. 251, 252).

See RIGHT OF REPLY.
[I. L. R., 10. Calc., 140

——— s. 291 (1872, s. 363; 1861-69, s. 375).

See WITNESS—CRIMINAL CASES—SUMMONING WITNESSES.
[23 W. R., Cr., 56
I. L. R., 8 All., 668

See WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES—CROSS-EXAMINATION . . 6 B. L. R., Ap., 88

CRIMINAL PROCEDURE CODE (Act X of 1862), s. 292 (1872, s. 252).

See COUNSEL . . 11 Bom., 102

——— s. 297 (1872, s. 255, para. 1; 1861-69, s. 379).

See CHARGE TO JURY—SUMMING UP IN GENERAL CASES.
[10 B. L. R., Ap., 36

——— ss. 300-303, 306, 307 (1872, s. 263).

See RIGHT TO BEGIN.
[20 W. R., Cr., 33

——— ss. 303, 307.

See VERDICT OF JURY.
[I. L. R., 10 Calc., 140

——— s. 307.

See REFERENCE TO HIGH COURT—CRIMINAL CASES . I. L. R., 10 Bom., 497

See VERDICT OF JURY.
[I. L. R., 11 Calc., 85

——— s. 309, para. 1 (1872, s. 255, para. 1; 1861-69, s. 324).

See ASSESSORS . I. L. R., 9 Calc., 875
[22 W. R., Cr., 34
5 N. W., 110
7 B. L. R., 63

——— para. 2 (1872, s. 261; 1861-69, s. 324).

See ASSESSORS . . 5 N. W., 110

——— s. 310.

See CRIMINAL PROCEEDINGS.
[13 C. L. R., 110

——— *Trials before jury or assessors.—Record.—Previous convictions.*—In trials before a jury or assessors the record should invariably show that reference to a previous conviction was not made until the accused had been convicted of the subsequent offence. KRISTO BEHARY DASS *v.* EMPRESS . . . . 12 C. L. R., 555

See BEPIN BEHARY SHAW *v.* EMPRESS
[13 C. L. R., 110

——— s. 332 (1872, s. 414; 1861-69, s. 354).

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODES.
[8 W. R., Cr., 83

——— s. 337 (1872, s. 347; 1861-69, s. 209).

See EVIDENCE—CRIMINAL CASES—EXAMINATION AND STATEMENTS OF ACCUSED
[I. L. R., 1 Bom., 610
I. L. R., 2 All., 260
I. L. R., 10 Bom., 190

See PARDON . . 3 Bom., Cr., 59
[3 Mad., Ap., 2, 4

CRIMINAL PROCEDURE CODE (Act X of 1882), ss. 337, 338.

See PARDON . I. L. R., 10 Calc., 936

——— s. 338 (1872, s. 348).

See APPROVERS . I. L. R., 7 All., 160

See PARDON . 7 W. R., Cr., 114

——— s. 339 (1872, s. 349).

See CASES UNDER APPROVERS.

——— ss. 340, 341 (1872, s. 186).

See ADVOCATE . . 7 Mad., Ap., 41

See ATTORNEY . . 7 Mad., Ap., 41

See INSANITY . I. L. R., 5 Bom., 262

See PLEADER—APPOINTMENT AND APPEARANCE OF . 7 Mad., Ap., 37, 41

1. ——— *Deaf and dumb person.—Procedure.*—*G.* was convicted by the Joint Magistrate of house-breaking by night, with intent to commit theft, and the case referred under the provisions of section 186 of Act X of 1872 to the High Court for orders. It appeared that *G.*, whose understanding was of the most limited character, was caught at night in a house with some anklets in his possession. He was a lad of 15 or 16 years of age, and had been deaf and dumb from his birth. He sometimes lived with his father and sometimes by begging, and there was little doubt that hunger had driven him to break into the house. He had never been in arrest before. The Court recommended that he should be made over to his father. QUEEN *v.* GANGA . . . . . 7 N. W., 131

2. ——— *Deaf and dumb person.—Ability to understand charge.*—In the case of an accused person who was deaf and dumb, the Deputy Magistrate who tried and convicted him considered that he did not understand the proceedings, and accordingly referred the case to the Magistrate under section 186 of the Code of Criminal Procedure. The Magistrate considered that the accused did understand what he was charged with. *Held* that the finding of the Magistrate must prevail and section 186 did not apply. DOOBRI HULWAI *v.* ANONYMOUS
[19 W. R., Cr., 37

3. ——— *Deaf and dumb person, Trial of.*—The High Court under the circumstances of this case, which came before it under the last clause of section 186 of the Criminal Procedure Code, 1872, set aside the conviction of the prisoner, who was deaf and dumb, and directed that he be admonished and discharged. DWARKANATH HALDAR *v.* NODER CHAND KAMTE . 22 W. R., Cr., 35

4. ——— *Deaf and dumb person, Trial of.*—The High Court may, under section 186, Criminal Procedure Code, in the trial of a person who is deaf and dumb, and who cannot understand the proceedings against him, or plead to the charge, treat the proceedings as amounting to a sufficient trial and pass sentence upon the prisoner

CRIMINAL PROCEDURE CODE (Act X of 1882), ss. 340, 341 (1872, s. 186)— *continued.*

according to the facts which seem to be established in the course and as the result of those proceedings. In this case the Court had no doubt that the prisoner was guilty; but, before passing final orders, it gave the prisoner a further opportunity of being heard, and accordingly directed the Magistrate to give him notice. QUEEN *v.* BOWKA HARI [22 W. R., Cr., 35

He was subsequently convicted by the Magistrate, and this conviction was confirmed by the High Court. QUEEN *v.* BOWKA . 22 W. R., Cr., 72

——— **s. 342 (1872, ss. 193 & 250; 1861-69, s. 202).**

See EXAMINATION OF ACCUSED PERSON.
[16 W. R., Cr., 21
1 C. L. R., 436
I. L. R., 6 Calc., 96: 6 C. L. R., 521

——— *Examination of prisoner by Judge.—Nature of examination.*—It is improper on the part of a Judge, when examining a prisoner under section 342 of the Criminal Procedure Code, to cross-examine him. The only questions which are permissible are such as will enable the prisoner to explain any circumstances appearing in the evidence against him. HURRY CHURN CHUCKERBUTTY *v.* EMPRESS . . . I. L. R., 10 Calc., 140

——— **s. 343 (1872, s. 344).**

See CONFESSION—CONFESSIONS TO MAGISTRATE . . I. L. R., 2 All., 260

——— **s. 344, para. 1 (1872, s. 219; 1861-69, s. 253).**

See WITNESS—CRIMINAL CASES—SUMMONING WITNESSES.
[4 B. L. R., Ap., 78
7 B. L. R., 564

——— **(1872, s. 194; 1861-69, s. 224).**

See BAIL . I. L. R., 6 Mad., 63, 69

See WARRANT OF ARREST—CRIMINAL CASES . . . 5 Bom., Cr., 31

——— **(Presidency Magistrate's Act, 1877, s. 124).**

See COMPLAINT—DISMISSAL OF COMPLAINT—EFFECT OF DISMISSAL.
[I. L. R., 6 Calc., 523

——— **s. 345 (1872, s. 188).**

See COMPOUNDING OFFENCE.
[10 Bom., 68
I. L. R., 1 Mad., 191

——— **s. 347 (1872, s. 221; 1861-69, s. 256).**

See CHARGE—ALTERATION OR AMENDMENT OF CHARGE.
[1 N. W., Ed. 1873, 307

CRIMINAL PROCEDURE CODE (Act X of 1882), s. 347—*continued.*

——— **(1872, s. 221).**—*Stay of proceedings after charge is drawn up.—Committal for trial.—Magistrate, Powers of.*—Section 221 of the Criminal Procedure Code authorises a Magistrate, after a charge has been drawn up, to stop further proceedings and commit for trial. EMPRESS *v.* KUDRUTOOLAH . I. L. R., 3 Calc., 495: 2 C. L. R., 2

——— **ss. 347, 349 (1872, s. 46, paras. 1, 2, & 3; 1861-69, s. 277).**

See CASES UNDER MAGISTRATE, JURISDICTION OF—REFERENCE BY OTHER MAGISTRATES.

See MAGISTRATE, JURISDICTION OF—POWERS OF MAGISTRATES.
[I. L. R., 13 Calc., 305
I. L. R., 9 Mad., 377
I. L. R., 10 Bom., 196

——— **s. 349.**

See MAGISTRATE, JURISDICTION OF—POWERS OF MAGISTRATES.
[I. L. R., 9 Mad., 377
I. L. R., 10 Bom., 196
I. L. R., 13 Calc., 305

See PRISONER . . 7 Bom., Cr., 31

——— **s. 350 (1872, s. 328).**

See SESSIONS JUDGE, JURISDICTION OF—
[23 W. R., Cr., 59
I. L. R., 3 Mad., 112

1. ——— *Magistrate deciding case on evidence taken by his predecessor.—Case under s. 530, Criminal Procedure Code, 1872.*—In a case under section 530, Code of Criminal Procedure, the High Court set aside the proceedings of a Deputy Magistrate who, on succeeding his predecessor who had gone into the case, instead of recalling the witnesses *de novo* and examining them himself, decided the question of possession on the evidence which had been taken by his predecessor. GURU CHURN SEN *v.* KALI NATH DASS BISWAS . 23 W. R., Cr., 62

2. ——— *Evidence heard by one Magistrate and case decided by another.—Irregularity not prejudicing accused.*—In two cases, in one of which the evidence was taken entirely by one Deputy Magistrate, whilst the decision was passed by another, and in the other of which, although the Deputy Magistrate who decided the case heard part of the evidence, he decided it on the same grounds as the first case, the High Court declined to interfere, because the accused was not said to have been prejudiced by the decision in either case. THAKUR DAS MANJHI *v.* NAMDAR MUNDUL. UJAL MUNDUL *v.* NAMDAR MUNDUL . . 24 W. R., Cr., 12

3. ——— **and s. 491.**—*Evidence recorded partly by one Magistrate and partly by another.—Proceedings for recognizance to keep the peace.*—Notwithstanding the introduction into the section of the words "the accused person" and "conviction," the provisions of section 328 of the Criminal

CRIMINAL PROCEDURE CODE (Act X of 1882), s. 350 (1872, s. 328) and s. 491 —*continued.*

Procedure Code apply to an inquiry instituted under section 491, with a view to enforcing the giving of security against a breach of the peace; and in such a case, where the Magistrate by whom only part of the evidence has been taken is succeeded by another Magistrate while such inquiry is pending, the person called upon to show cause why he should not give security may insist, before the latter, upon the recall and re-examination of the witnesses whose evidence has been already taken by the former Magistrate. BARODA KANT ROY *v.* KARIMUDDI MOONSHEE [4 C. L. R., 452

——— **s. 351 (1872, s. 104; 1861-69, s. 206).**

——— *Preliminary investigation.*—A Magistrate is not justified by section 206 of the Code of Criminal Procedure in taking a person, without any previous notice or summons, from among the audience or attendant witnesses in open Court, and placing him in the dock to be immediately tried upon a charge which has already been commenced to be entertained against other prisoners, and on which evidence has already been given. That section applies to investigations preliminary to commitment for a subsequent trial, and not to cases where the trial is actually being proceeded with. QUEEN *v.* SUTHERLAND. QUEEN *v.* NARAIN SINGH . 14 W. R., Cr., 20

——— **s. 352 (1872, s. 187; 1861-69, s. 279).**

See COURT . . 1 Agra, Cr., 17

——— **s. 355.**

See EVIDENCE—CRIMINAL CASES—DEPOSITIONS . . W. R., 1864, Cr., 18

——— **s. 356 (1872, s. 334).**

See REVISION—CRIMINAL CASES—EVIDENCE AND WITNESSES. [20 W. R., Cr., 14

——— **ss. 357 & 362, para. 1 (1872, s. 335; 1861-69, s. 196).**

See PRACTICE—CRIMINAL CASES—EVIDENCE, MODE OF RECORDING. [5 Mad., Ap., 9

——— **ss. 359 & 362, para. 2, & s. 361 (1872, ss. 338-340; 1861-69, s. 198).**

See INTERPRETER . 16 W. R., Cr., 71

——— **s. 360 (1872, s. 339; 1861-69, s. 199).**

See COMMITMENT. [I. L. R., 13 Calc., 121

See EVIDENCE—CRIMINAL CASES—DEPOSITIONS . I. L. R., 13 Calc., 121

See WITNESS—CRIMINAL CASES—SWEARING OR AFFIRMATION OF WITNESSES. [13 W. R., Cr., 17

CRIMINAL PROCEDURE CODE (Act X of 1882), s. 360 (1872, s. 339; 1861-69, s. 199)—*continued.*

——— *Witnesses not understanding depositions when read over.—Ground for setting aside conviction.*—Section 339 of Act X of 1872, being for the protection of witnesses only, the fact that witnesses did not understand their depositions when read over, although they may not have required them at the time to be interpreted, affords no ground for an application by the accused to set aside a conviction. IN THE MATTER OF OKHOY KUMAR [7 C. L. R., 393

——— **s. 364 (1872, s. 346; 1861-69, s. 205).**

See s. 164 (1872, s. 122). [I. L. R., 2 Bom., 643
I. L. R., 4 Bom., 15

See CASES UNDER CONFESSION—CONFESSIONS TO MAGISTRATE.

See EVIDENCE—CRIMINAL CASES—EXAMINATION AND STATEMENTS OF ACCUSED.
[3 B. L. R., A. Cr., 59: 12 W. R., Cr., 44
2 Bom., 131: 2nd Ed., 125
2 Bom., 419, 421, 422: 2nd Ed., 395, 397, 398
12 C. L. R., 120
4 N. W., 16
14 W. R., Cr., 10
15 W. R., Cr., 63, 83

See EXAMINATION OF ACCUSED PERSON. [8 W. R., Cr., 55
1 B. L. R., S. N., 16
7 B. L. R., Ap., 62

——— **s. 367 (1872, s. 287, para. 2).**

See JUDGMENT—CRIMINAL CASES. [I. L. R., 11 Calc., 449
I. L. R., 13 Calc., 110.

——— **para. 5, proviso (1872, s. 464, para. 4).**

See JUDGMENT—CRIMINAL CASES. [23 W. R., Cr., 32

——— **ss. 367, 369 (1872, s. 464, para. 1).**—*Omission to order re-trial when annulling conviction.—Subsequent addition to judgment.*—When a Sessions Judge on appeal annuls the conviction of a Magistrate for want of jurisdiction, and omits to order a retrial at the time under section 284 of the Criminal Procedure Code, he is not precluded, by virtue of section 464, from passing such an order subsequently. IN THE MATTER OF THE PETITION OF RAMI REDDI . . I. L. R., 3 Mad., 48

——— *Alteration of illegal sentence.*—A Sessions Judge has no power, under section 464, Code of Criminal Procedure, to alter or set aside a conviction and sentence once made and signed by him The sentence was altered on reference to the High Court. QUEEN *v.* PORAN MAL [23 W. R., Cr., 49

CRIMINAL PROCEDURE CODE (Act X of 1882), s. 369.

See REVIEW—CRIMINAL CASES.
[I. L. R., 7 All., 672
I. L. R., 10 Bom., 176

——— **s. 370.**

See PRESIDENCY MAGISTRATE.
[I. L. R., 13 Calc., 272

See REVISION — CRIMINAL CASES — EVIDENCE AND WITNESSES.
[I. L. R., 13 Calc., 272

——— **s. 374 (1872, s. 287, para. 1).**—*Reference to High Court.*—The High Court as a Court of Reference can under section 287, Criminal Procedure Code, 1872, only deal with cases in which a sentence of death has been passed. QUEEN *v.* OMAN . . . . . 5 N. W., 130

1. ——— **s. 376 (1872, s. 288).**—*Culpable homicide not amounting to murder.—Reference to High Court for confirmation of sentence of death.—New trial, Order for.—Murder, Conviction on charge of.*—Under section 288 of the Code of Criminal Procedure, the High Court, to which a reference is made by a Court of Session for confirmation of a sentence of death on conviction of murder, cannot, in the absence of an appeal, alter the conviction to one of culpable homicide not amounting to murder, if it be of opinion that the evidence does not establish the former but the latter offence. It must order a new trial for that purpose. Where the prisoners were tried on two charges of murder and culpable homicide not amounting to murder, and the opinion of the assessors was taken on both charges, but the Sessions Judge, being of opinion that the evidence established the former charge, recorded a conviction and sentence for murder only, the High Court being of opinion, on a reference under section 287 of Act X of 1872, that the offence proved was culpable homicide not amounting to murder, did not order a new trial *ab initio*, but directed the Sessions Judge to complete the trial by recording a finding on the second charge of culpable homicide not amounting to murder. REG. *v.* BALAPA BIN DANDAPA . . . I. L. R., 1 Bom., 639

2. ——— **(1872, s. 288 and s. 287).**—*Conviction by verdict of jury.—Facts of case.*—Where a case is referred to the High Court under section 287, Act X of 1872, the Court is bound, under section 288 of the same Act, to go into the facts of the case, although the conviction was by the verdict of a jury. QUEEN *v.* JAFFIR ALI . 19 W. R., Cr., 57

——— **s. 380 (1872, s. 18).**—*Enhancement of sentence.*—When an Assistant Sessions Judge passes a sentence of more than three years' imprisonment, the Sessions Judge cannot enhance it. EMPRESS *v.* RAMA PREMA . I. L. R., 4 Bom., 239

——— **s. 384 (1872, s. 303).**

See WARRANT OF COMMITMENT.
[I. L. R., 6 Mad., 396

CRIMINAL PROCEDURE CODE (Act X of 1882), ss. 383, 387, 389 (1872, s. 307).

See ACT XXI OF 1856.
[8 B. L. R., Ap., 47
17 W. R., Cr., 7

See FINE . . 5 Bom., Cr., 63
[9 W. R., Cr., 50

——— **s. 391, para. 1 (1872, s. 310).**

See WHIPPING . . 7 Mad., Ap., 30
[20 W. R., Cr., 72

——— **ss. 396, 397 (1872, ss. 316, 317; 1861-69, ss. 47, 48).**

See SENTENCE—IMPRISONMENT.
[3 B. L. R., A. Cr., 50
S. C. 12 W. R., Cr., 47

——— **s. 403 (1872, s. 460).**

See AUTREFOIS ACQUIT, PLEA OF—
[7 N. W., 371
2 Ind. Jur., N. S., 67
13 W. R., Cr., 42
I. L. R., 10 Bom., 181

1. ——— **and s. 530.**—*Acquittal.—Re-trial.—Interference of the High Court.*—Where an offence is tried by a Court without jurisdiction, the proceedings are void under section 530 of the Code of Criminal Procedure, Act X of 1882, and the offender, if acquitted, is liable to be re-tried under section 403. It is, therefore, not necessary for the High Court to upset the acquittal before the re-trial can be had. QUEEN-EMPRESS *v.* HUSEIN GAIBU . . . I. L. R., 8 Bom., 307

2. ——— *Previous acquittal.*—Upon a charge of dacoity, the Magistrate having split up the charge, convicted the accused of rioting, using criminal force, and misappropriating the property of a deceased person. On appeal the Sessions Court reversed the conviction, holding that the offence, if any, was dacoity, but that, the facts alleged being incredible, there was no need to order a committal. The complainant thereupon lodged a fresh complaint of dacoity based on the same facts before another Magistrate. *Held* that the judgment of the Sessions Court was no bar to further proceedings. VIRANKUTTI *v.* CHIYAMU . I. L. R., 7 Mad., 557

3. ——— **and s. 437.**—*Different charges arising out of same transaction.—Acquittal.—Further inquiry.—Re-trial.*—*E.* being charged with theft and mischief, in respect of certain branches cut from a tree claimed by the complainant, was tried by a Subordinate Magistrate on the charge of mischief, and acquitted on the ground that, as against the complainant, *E.* had title to the tree. On the application of the complainant, the District Magistrate directed further inquiry into the case under section 437 of the Code of Criminal Procedure, and on a reference to the Court of Session the Sessions Judge held that, as no inquiry into the charge of theft had been held, the order was legal. *Held* that the District Magistrate had no power to pass such an order under section 437, and that a trial on

CRIMINAL PROCEDURE CODE (Act X of 1882), s. 403 (1871, s. 460) and s. 437 —*continued.*

the charge of theft was barred by virtue of section 403 of the Code of Criminal Procedure. QUEEN-EMPRESS *v.* ERRAMREDDI . I. L. R., 8 Mad., 296

——— s. 404 (1872, s. 282; 1861-69, s. 422).

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODES.
[6 B. L. R., 483

See REMAND—CRIMINAL CASES.
[3 B. L. R., A. Cr., 62
6 B. L. R., 698
9 B. L. R., Ap., 31

——— (1872, s. 286, illus. [d]).

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODES.
[22 W. R., Cr., 68

——— s. 406 (1872, s. 267).

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODES.
[22 W. R., Cr., 68

——— s. 407 (1872, s. 266; 1861-69, s. 412).

See APPEAL IN CRIMINAL CASES—PROCEDURE . . 3 Bom., Cr., 18

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODES.
[I. L. R., 9 Mad., 36

See DEPUTY COMMISSIONER, JURISDICTION OF— . . 16 W. R., Cr., 1

——— s. 408 (1872, s. 270; 1869, s. 445C).

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODES.
[I. L. R., 9 Calc., 513
5 B. L. R., 658
I. L. R., 2 All., 53
25 W. R., 18
14 W. R., Cr., 18

See REVISION—CRIMINAL CASES—MISCELLANEOUS CASES . I. L. R., 9 Calc., 513

——— ss. 410, 418 (1872, s. 271; 1861-69, s. 408).

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODES.
[2 Bom., 112: 2nd Ed., 106

——— ss. 411, 412 (Presidency Magistrate's Act, 1877, s. 167).

See APPEAL IN CRIMINAL CASES—ACTS—PRESIDENCY MAGISTRATE'S ACT.
[I. L. R., 5 Bom., 85

See SENTENCE—IMPRISONMENT—IMPRISONMENT IN DEFAULT.
[I. L. R., 2 Mad., 30

CRIMINAL PROCEDURE CODE (Act X of 1882), ss. 412, 413 (1872, s. 273; 1861-69, s. 411).

See CASES UNDER APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODES.

——— s. 417 (1872, s. 272).

See CASES UNDER APPEAL IN CRIMINAL CASES—ACQUITTALS, APPEALS FROM.

——— (Presidency Magistrate's Act, 1877, s. 168).

See SUPERINTENDENCE OF HIGH COURT—CHARTER ACT, s. 15—CRIMINAL CASES.
[I. L. R., 7 Calc., 447

——— s. 418.

See APPEAL IN CRIMINAL CASES—ACQUITTALS, APPEALS FROM.
[I. L. R., 10 Calc., 1029

——— s. 421 (1872, s. 278).

See APPEAL IN CRIMINAL CASES—PROCEDURE . . 7 Mad., Ap., 29
[24 W. R., Cr., 29, 60
10 C. L. R., 57
I. L. R., 6 Bom., 14
I. L. R., 5 Mad., 11

——— s. 421.

See APPEAL IN CRIMINAL CASES—PROCEDURE . . I. L. R., 5 All., 386

See REVISION—CRIMINAL CASES—JUDGMENT, DEFECTS IN.
[I. L. R., 8 All., 514

——— s. 422 (1872, s. 279).

See APPEAL IN CRIMINAL CASES—PROCEDURE . . . 10 C. L. R., 57

——— s. 423 (1872, s. 280; 1861-69, s. 419).

See APPEAL IN CRIMINAL CASES—ACQUITTALS, APPEALS FROM.
[I. L. R., 10 Calc., 1029

See APPEAL IN CRIMINAL CASES—PROCEDURE . . I. L. R., 1 All., 120
[I. L. R., 5 All., 386

See CASES UNDER SENTENCE—POWER OF HIGH COURT AS TO SENTENCES—ENHANCEMENT.

——— s. 423.

See COMMITMENT . I. L. R., 8 All., 14

——— (1872, s. 284; 1861-69, s. 427).

See ss. 436, 438 . 2 B. L. R., S. N., 2

See MAGISTRATE, JURISDICTION OF—REFERENCE BY OTHER MAGISTRATES.
[12 Bom., 234

CRIMINAL PROCEDURE CODE (Act X of 1882), s. 423—*continued.*

1. ——— (1872, s. 284).—*Annulling conviction.—Omission to make order for re-trial.—Criminal Procedure Code, 1872, s. 464.*—When a Sessions Judge in appeal annuls the conviction by a Magistrate for want of jurisdiction, and omits to order a re-trial at the time under section 284 of the Criminal Procedure Code, he is not precluded by section 464 from passing such an order subsequently. The order annulling the conviction in such a case does not amount to an order of acquittal. IN THE MATTER OF THE PETITION OF RAMI REDDI
[I. L. R., 3 Mad., 48

2. ——— s. 423 (a) and ss. 247, 404, 417. —*Acquittal.—Appeal.—Powers of District Magistrate.*—Section 423 (*a*) of the Code of Criminal Procedure applies only to a High Court. A second-class Magistrate having held that a *primâ facie* case had been established against the accused in a case of mischief, adjourned the trial to enable the accused to adduce evidence. On the day to which the trial was adjourned, the complainant not being present, the Magistrate acquitted the accused under section 247 of the Code of Criminal Procedure. The District Magistrate entertained an appeal from this order under section 423 (*a*) of the Code of Criminal Procedure, reversed it and directed a re-hearing, on the ground that the complainant and his vakeel had appeared before the Court shortly after the case had been dismissed by the second-class Magistrate. *Held* that the order of the District Magistrate was illegal. RANGASAMI AIYYANGAR *v.* NARASIMHULU NAYAK
[I. L. R., 7 Mad., 213

——— s. 424.

See JUDGMENT—CRIMINAL CASES.
[I. L. R., 11 Calc., 449

——— s. 426 (1872, s. 281; 1861-69, s. 421).

See SENTENCE—IMPRISONMENT.
[3 B. L. R., A. Cr., 50

——— s. 427 (Presidency Magistrate's Act, 1877, s. 168).

See SUPERINTENDENCE OF HIGH COURT.
[I. L. R., 7 Calc., 447

——— s. 428 (1872, s. 282; 1861-69, s. 422).

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODES.
[6 Bom. Cr., 64
6 B. L. R., 483

See CASES UNDER REMAND—CRIMINAL CASES.

1. ——— Observations as to the exercise by an Appellate Court of the powers conferred on it by section 282 of Act X of 1872 (Criminal Procedure Code). EMPRESS *v.* FATEH
[I. L. R., 5 All., 217

CRIMINAL PROCEDURE CODE (Act X of 1882) s. 428—*continued.*

2. ——— (1872, s. 282).—*Enquiry as to place where assault was committed.—Power of Appellate Court.*—A case of assault, tried by the Assistant Magistrate of Purneah, was appealed to the Sessions Judge of that district, who ordered an inquiry and found that the assault had been committed in Maldah, and thereupon released the accused, as the Magistrate of Purneah had no jurisdiction. *Held* that the Judge had no jurisdiction under section 70, Criminal Procedure Code, to make such an order, the accused not having been prejudiced in his defence, and further, that he ought not to have ordered the inquiry as to the place where the assault was committed, that question having no bearing on the guilt or innocence of the accused—section 282, Criminal Procedure Code. MOHAMED GOLAB *v.* MOHABEER SINGH
[23 W. R., Cr., 34

——— s. 430 (1872, s. 285; 1861-69, s. 428).

See SENTENCE—POWER OF HIGH COURT AS TO SENTENCES—MITIGATION.
[B. L. R., Sup. Vol., 484

——— s. 434 (Act X of 1875, s. 101).

See CONFESSION—CONFESSIONS TO POLICE OFFICERS . . I. L. R., 2 Bom., 61

——— s. 434.

See REFERENCE TO HIGH COURT—CRIMINAL CASES . I. L. R., 8 Bom., 200

See REVIEW—CRIMINAL CASES.
[I. L. R., 7 All., 672

See RIGHT TO BEGIN.
[I. L. R., 8 Bom., 200

——— s. 435, para. 1 (1872, ss. 294, 295, para. 1; 1861-69, s. 405).

See REVISION—CRIMINAL CASES—QUESTION OF FACT . I. L. R., 10 Calc., 1047

See SENTENCE—POWER OF HIGH COURT AS TO SENTENCES—MITIGATION.
[B. L. R., Sup. Vol., 484

1. ——— s. 435.—*"Inferior Criminal Court."*—The words "inferior Criminal Court" in section 435 of the Criminal Procedure Code mean, inferior so far as regards the particular matter in respect to which the superior Court is asked to exercise its revisional jurisdiction. IN THE MATTER OF THE PETITION OF NOBIN KRISTO MOOKERJEE. NOBIN KRISTO MOOKERJEE *v.* RUSSICK LALL LAHA
[I. L. R., 10 Calc., 268

2. ——— s. 435 and s. 437.—*District Magistrate.—Power to revise proceedings of Sub-Divisional Magistrate of the first class.—"Inferior," "Subordinate" Magistrates.—Reason of distinction.*—Under section 435 of the Code of Criminal Procedure, a District Magistrate has power to call for, and examine, the record of a proceeding before a Sub-Divisional Magistrate of the first class. *Nobin Kristo Mookerjee* v. *Russick Lall Laha, I. L. R., 10 Calc., 268,* dissented from. IN RE PADMANABHA
[I. L. R., 8 Mad., 18

CRIMINAL PROCEDURE CODE (Act X of 1882)—*continued.*

3. ——— s. 435.—*Further enquiry.—Inferior Criminal Court.—Magistrate of the District, Powers of.*—A Magistrate of a district is competent, under section 435 of the Criminal Procedure Code, to call for and deal with the record of any proceeding before any Magistrate of whatever class in his own district. OPENDRO NATH GHOSE *v.* DURHINI BEWA [I. L. R., 12 Calc., 473

4. ——— (1872, s. 295).—*Record of inferior Court.—Explanation of order passed.*—Where a Sessions Judge has, under section 295 of Act X of 1872, called for the record of an inferior Court, he is, before referring the case to the High Court for orders, bound to call upon the inferior Court for an explanation of the order passed, and should submit such explanation, together with the rest of the record, to the High Court. MAILAMDI FAKIR *v.* TARIPULLA PRAMANIK . . . I. L. R., 8 Calc., 644

5. ——— *Power of Joint Sessions Judge.*—A Joint Sessions Judge has no power to act in cases of an order of a Magistrate as to possession of land made without judicial inquiry, under section 295, which applies only to the Sessions Judge of the division. SHONIDOO NOSHYO *v.* RUNG LAL JHAH [25 W. R., Cr., 21

——— ss. 435, 436, 438 (1872, ss. 295, 296; 1861-69, s. 434).

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODES. [3 Bom., Cr., 1

See COUNSEL . . 9 B. L. R., 417

See PLEADER—APPOINTMENT AND APPEARANCE OF . 6 B. L. R., Ap., 46

See PRIVATE PROSECUTOR. [6 B. L. R., Ap., 46

See CASES UNDER REFERENCE TO HIGH COURT—CRIMINAL CASES.

See RIGHT TO BEGIN . 9 B. L. R., 417

——— s. 436.

See COMMITMENT I. L. R., 10 Bom., 319 [I. L. R., 8 All., 14

——— ss. 436, 438 (1872, s. 296; 1861-69, s. 435).

See s. 176 (1872, s. 135). [I. L. R., 3 Calc., 742

See DISCHARGE OF ACCUSED. [4 B. L. R., A. Cr., 1 9 B. L. R., 337, 339

See MAGISTRATE, JURISDICTION OF—COMMITMENT TO SESSIONS COURT. [9 Bom., 169 4 Mad., Ap., 61 5 B. L. R., Ap., 48

See CASES UNDER REFERENCE TO HIGH COURT—CRIMINAL CASES.

CRIMINAL PROCEDURE CODE (Act X of 1882), ss. 436, 438 (1872, s. 296; 1861-69, s. 435)—*continued.*

See SESSIONS JUDGE, JURISDICTION OF— [3 B. L. R., A. Cr., 65 W. R., 1864, Cr., 3 9 Bom., 170

1. ——— *Power of a Sessions Court to order committal of accused discharged by a Magistrate.*—An order by a Judge under section 296 of Act X of 1872, directing a Magistrate to commit an accused person, who has been discharged at a preliminary enquiry, to take his trial in a Court of Session, must specify the particular act constituting the offence charged. The Judge cannot direct a committal for offences with which the accused was in no way charged before the Magistrate. QUEEN *v.* TARUCKNATH MOOKERJEE [10 B. L. R., 285: 19 W. R., Cr., 30

2. ——— *Order of committal of persons discharged under s. 215.*—A complaint was preferred before the Assistant Magistrate against two persons of an offence under section 409 of the Penal Code. After enquiry they were discharged under section 215. *Held* that the Sessions Court had no power to subsequently direct their committal under section 296. ANONYMOUS . 7 Mad., Ap., 28

3. ——— *Criminal Procedure Code, s. 4.—Sessions case, Definition of.—Charges under Penal Code, ss. 380, 457.*—The appellant after his discharge by the Assistant Magistrate upon a charge under section 457 of the Penal Code was committed to the Sessions Court by order of the Sessions Judge under the Criminal Procedure Code, 1872, section 296, upon charges under sections 380 and 457 of the Penal Code. *Held* by the Full Bench (SPANKIE, *J.*, and OLDFIELD, *J.*, dissenting) that the commitment was illegal, and that "Sessions case," within the meaning of section 296 of the Code of Criminal Procedure, is a case exclusively triable by the Court of Session. EMPRESS OF INDIA *v.* KANCHAN SINGH [I. L. R., 1 All., 413

EMPRESS *v.* TARA CHAND BAGDI [7 C. L. R., 168

4. ——— *Jurisdiction of Magistrate.—Commitment to Sessions.—Criminal Procedure Code (Act XXV of 1861), ss. 427, 435.*—The Sessions Judge has no power to commit to the Sessions a case in which persons were convicted by the Deputy Magistrate of an offence under section 457 of the Penal Code: such a case being one triable by the Deputy Magistrate, sections 427 and 435 of Act XXV of 1861 do not apply. QUEEN *v.* HAKIM SIRDAR [2 B. L. R., S. N., 2: 10 W. R., Cr., 35

5. ——— *Revival of proceedings after discharge.—Jurisdiction of Magistrate.—Sessions case.—Fresh evidence.*—A Deputy Magistrate having dismissed a case instituted under section 380 of the Penal Code without taking certain evidence which in his opinion would have been of little value, the Magistrate of the district, on the application of the complainant, took such evidence, and committed the accused for trial before the Sessions Court.—

CRIMINAL PROCEDURE CODE (Act X of 1882), ss. 436, 438 (1872, s. 296; 1861-69, s. 435)—*continued.*

Held, on reference to the High Court, that as the words "Sessions case" in section 296 of the Criminal Procedure Code had reference only to a case triable exclusively by a Court of Session, the Magistrate's action could not be supported under that section, but that (as further evidence in addition to that taken by the Deputy Magistrate was forthcoming) it was sustainable on the principle laid down in *Empress* v. *Donnelly, I. L. R., 2 Calc., 405.* EMPRESS *v.* HARY DOYAL KARMOKAR . . I. L. R., 4 Calc., 16

S. C. ISHEN CHUNDER KURMOKAR *v.* HURRY DOYAL KURMOKAR . . 3 C. L. R., 263

6. ——————— *Revival of proceedings after discharge.—Jurisdiction of Magistrate.—Fresh evidence.—Procedure.*—A Magistrate has no power to remand a criminal case to a Subordinate Magistrate for retrial after the case has once been dismissed; the courses open to him are—(1) to accept a fresh complaint supported by fresh evidence, which was not before the Court when the case was dismissed; or (2) if there be no additional evidence to be procured, to report the case for the orders of the High Court under section 296 of Act X of 1872. IN THE MATTER OF THE PETITION OF DIJAHUR DUTT

[I. L. R., 4 Calc., 647

7. ——————— *Discharge of accused persons under s. 215.—Revival of proceedings at the instance of the Court of Session.—Commitment of accused persons.*—Certain persons were charged under section 417 of the Penal Code, and were discharged by the Magistrate inquiring into the offence, under section 215 of Act X of 1872. The Court of Session, considering that the accused persons had been improperly discharged, forwarded the record to the Magistrate of the District, suggesting to him to make the case over to a Subordinate Magistrate, with directions to inquire into any offence, other than the offence in respect of which the accused persons had been discharged, which the evidence on the record showed to have been committed. The Subordinate Magistrate to whom the case was made over made an inquiry, and committed the accused persons for trial before the Court of Session on charges under sections 363 and 420 of the Penal Code. It was contended that the Court of Session was not competent to "direct the accused persons to be committed," under section 296 of Act X of 1872, the case not being a "Sessions case," within the meaning of that section, and that the commitment was consequently illegal. *Held* that there was no "direction to commit" within the meaning of that section, that is to say, to send the accused persons at once to the Sessions Court, without further inquiry, and whether or not the inquiry was made in consequence of the suggestions of the Court of Session was immaterial, and that the inquiry upon the charges under sections 363 and 420 of the Penal Code was rightly held by the Subordinate Magistrate and the commitment could not be impeached. EMPRESS OF INDIA *v.* BHUP SINGH . . . I. L. R., 2 All, 570

8. ——————— *Discharge by Magistrate.—Order of commitment by Sessions Judge.—Omission to call on accused to show cause against such commitment.—Criminal Procedure Code (Act X of 1872), ss. 296, 283.*—A Sessions Court has no power, under section 296 of the Criminal Procedure Code, to direct the commitment of a person discharged by a Deputy Magistrate, without first giving such person an opportunity of showing cause against such commitment. But under section 296, as amended by Act XI of 1874, the Court has power to direct the subordinate Court to enquire into any offences for which it considers a commitment should be ordered. When, however, a trial under such a commitment made by order of a Sessions Judge has been duly held, and no actual failure of justice has been caused by the error of the Sessions Judge, section 283 of the Criminal Procedure Code would be a bar to the reversal of his judgment. EMPRESS *v.* KHAMIR

[I. L. R., 7 Calc., 662: 10 C. L. R., 8

9. ——————— *Commitment by Sessions Judge.—Offence of cheating.—Criminal Procedure Code, 1872, s. 4.*—An order of commitment by a Sessions Judge under section 296 of the Criminal Procedure Code is bad in form if it does not specify the offence for which the parties are to be committed for trial at the Sessions. A trial for the offence of cheating is not a Sessions case within the meaning of section 296, having regard to the first portion of the definition of Sessions case in section 4 of the Code, which must be read as if the word "only" followed the words "triable by a Court of Sessions." JOY KURN SINGH *v.* MAN PATUCK

[21 W. R., Cr., 41

10. ——————— *Summoning or giving notice to accused person.*—The Sessions Judge, under section 296, Criminal Procedure Code, 1872, made an order upon the Deputy Magistrate for the commitment of the accused who had previously been discharged by the Deputy Magistrate, but it was alleged that such order of the Sessions Judge was made without calling upon the petitioners to show cause in the matter,—*Held* that, although there is nothing in section 296 with regard to summoning or giving notice to the accused person, no person should be affected in his personal liberty without having opportunity given him to answer the charge for which he is arrested and put into prison. The Court accordingly was of opinion that if the accused had no opportunity given them of meeting the charge, the commitment was not a good commitment. IN THE MATTER OF THE PETITION OF BUNDHOO

[22 W. R., Cr., 67

NOWAB SINGH *v.* KOKIL SINGH

[24 W. R., Cr., 70

IN THE MATTER OF DWARKANATH BHATTACHARJEE . . . 1 C. L. R., 93

11. ——————— *Order of committal.—Illegal commitment.—Irregular procedure.*—Where an accused person had been discharged by a Sub-Magistrate, and the District Magistrate directed the committal of the accused to the Court of Session under

CRIMINAL PROCEDURE CODE (Act X of 1882), ss. 436, 438 (1872, s. 296; 1861-69, s. 435)—*continued.*

section 436 of the Code of Criminal Procedure, 1882, without calling upon him to show cause why he should not be committed,—*Held* that the order of committal and the commitment made thereunder were illegal. QUEEN *v.* KANJAMALAI PADAYACHI

[I. L. R., 6 Mad., 372

12. ——————— *Order by the District Magistrate under s. 436 for committal of a person discharged by First Class Magistrate under s. 209.—Validity of such commitment.—Ultra vires.*—Where a Magistrate of the first class discharged, under section 209 of the Criminal Procedure Code (Act X of 1882), a person charged with an offence exclusively triable by the Court of Session, and the District Magistrate directed him, under section 436, to commit the accused to the Court of Session, and a commitment was made, but the Sessions Judge referred the case, under section 215, for the orders of the High Court,—*Held* that the order of the District Magistrate under section 436 was not *ultra vires*, and that the commitment thereunder to the Court of Sessions was good, and could not be quashed under section 215. QUEEN-EMPRESS *v.* PIRYA GOPAL

[I. L. R., 9 Bom., 100

1. ——————— **s. 437.**—*"Inferior."—"Subordinate."—First Class Magistrate.—Magistrate of District.*—A Magistrate of the first class is, within the meaning of section 437 of the Criminal Procedure Code, "subordinate" to the Magistrate of the District, who is therefore competent to call for the record of the former, and to deal with it under section 437. QUEEN-EMPRESS *v.* LASKARI **I. L. R., 7 All., 853**

2. ——————— *"Inferior."—Subordinate Magistrate of first class.—Magistrate of District.*—The Court of a Magistrate of the first class is inferior and subordinate to that of the District Magistrate,—section 17 of the Criminal Procedure Code (Act X of 1882) expressly providing that all Magistrates of whatever class shall be subordinate to the District Magistrate. The District Magistrate is superior, in respect of executive as well as judicial functions, to all other Magistrates. The term "inferior" as used in the Code means statutably incompetent to hold or exercise equal powers, and carries with it the idea of subordination, which latter means "inferior in rank." *Nobin Kristo Mookerjee* v. *Russick Lall Laha, I. L. R., 10 Calc., 268; Queen-Empress* v. *Nawab Jan, I. L. R., 10 Calc., 551,* dissented from. QUEEN-EMPRESS *v.* PIRYA GOPAL

[I. L. R., 9 Bom., 100

3. ——————— *Different charges arising out of same transaction.—Acquittal.—Further inquiry.—Re-trial.*—*E.* being charged with theft and mischief, in respect of certain branches cut from a tree claimed by the complainant, was tried by a Subordinate Magistrate on the charge of mischief, and acquitted on the ground that, as against the complainant, *E.* had title to the tree. On the application of the complainant, the District Magistrate directed further inquiry into the case under section 437 of the Code of Criminal Procedure, and on a reference

CRIMINAL PROCEDURE CODE (Act X of 1882), s. 437—*continued.*

to the Court of Session, the Sessions Judge held that, as no inquiry into the charge of theft had been held, the order was legal,—*Held* that the District Magistrate had no power to pass such an order under section 437. QUEEN-EMPRESS *v.* ERRAMREDDI

[I. L. R., 8 Mad., 296

4. ——————— *Penal Code, ss. 497, 498.—Marriage insufficiently proved.—Discharge of accused.—Retrial ordered.—Wife ordered to be examined on retrial.*—In an enquiry into a case of alleged adultery and enticing away a married woman for illicit purposes, the complainant refused to examine his wife as to the marriage; the Deputy Magistrate declined to frame a charge, and discharged the accused. The Sessions Judge directed a retrial to be held by another Deputy Magistrate, and ordered that the evidence of the wife should be taken as to the marriage. *Held* that the Sessions Judge in ordering a retrial had not exercised a proper discretion, he having admitted that the prosecution had failed to prove the marriage, and it not being alleged that any evidence was tendered by the prosecution and not taken by the Deputy Magistrate. CHUNDER NATH GHOSE *v.* NUNDOLOLL CHATTERJEE

[I. L. R., 11 Calc., 81

5. ——————— *Further enquiry.—Proceedings against accused.—Notice.*—No order affecting an accused in a criminal matter should be made without giving him notice, so as to enable him to appear and show cause against it. A Sessions Judge has no power, under section 437 of the Criminal Procedure Code, to direct a particular Magistrate by name to make the further enquiry contemplated by that section. The further enquiry contemplated by section 437 of the Criminal Procedure Code is an enquiry upon further materials, not a rehearing of the matter upon the same evidence which was before the Magistrate who held the first enquiry. IN THE MATTER OF THE PETITION OF CHUNDI CHURN BHUTTACHARJEA. CHUNDI CHURN BHUTTACHARJEA *v.* HEM CHUNDER BANERJEA

[I. L. R., 10 Calc., 207

6. ——————— *Further enquiry.—Power of District Magistrate to direct.—"Inferior Criminal Court."—Notice to accused.*—The words "Inferior Criminal Court" in section 435 of the Criminal Procedure Code mean, inferior so far as regards the particular matter in respect to which the superior Court is asked to exercise its revisional jurisdiction. A criminal charge instituted before a Magistrate of the first class was finally disposed of by him by an order discharging the accused. Subsequently the Magistrate of the district, proceeding under section 437 of the Code of Criminal Procedure, directed a further enquiry to be made by a Subordinate Magistrate. This order was made without notice to the accused. *Held* that the Magistrate of the district had no jurisdiction to direct a further enquiry. *Semble,*—That, as a matter of strict law, the accused was not entitled to be heard by the District Magistrate before granting the order directing the enquiry. IN THE MATTER OF THE PETITION OF NOBIN

CRIMINAL PROCEDURE CODE (Act X of 1882), s. 437—*continued.*

KRISTO MOOKERJEE. NOBIN KRISTO MOOKERJEE v. RUSSICK LALL LAHA . I. L. R., 10 Calc., 268

7. ——————— *Further enquiry.*—A Deputy Magistrate having discharged a person accused of an offence, on the ground that the evidence was insufficient for conviction, the Magistrate of the district recorded an order stating that, in his opinion, the accused had been improperly discharged, and directing, under section 437, Criminal Procedure Code, that further inquiry should be made, and the accused called on to enter upon his defence. The accused was not called upon to show cause why a further inquiry should not be made, but a summons in the terms of section 68 of the Criminal Procedure Code was issued to him. On his appearance, he was tried by the Magistrate of the District, convicted, and sentenced. The witnesses for the prosecution were not recalled, but the Magistrate relied upon their evidence as recorded in the first trial, and also upon the statement of a witness for the defence which was not receivable in evidence. *Held* that the proceedings of the Magistrate of the District were irregular, *first*, because notice to show cause why action should not be taken against him in the terms of section 437 of the Code of Criminal Procedure was not served upon the accused person before proceedings, ostensibly under that section, were commenced; and, *secondly*, because the subsequent proceedings of the Magistrate were not such as are contemplated by the provisions of section 437, inasmuch as the conviction was practically based upon evidence which was not recorded in the course of a "further inquiry" before the Magistrate of the district, but upon evidence which was recorded by the Deputy Magistrate, and had been adjudicated upon by that officer; and such irregularities were fatal to the conviction. QUEEN-EMPRESS v. HASNU . . I. L. R., 6 All., 367

8. ——————— and s. 253.—*Discharge.—Order for further inquiry.—Trial for minor offence.*—A Magistrate having, under section 253 of the Code of Criminal Procedure, discharged a person accused of rioting, an order for further inquiry was made by the Court of Session under section 437,—*Held* that the offence of rioting not being proved, the Magistrate was competent to try the accused for the offence of assault. QUEEN-EMPRESS v. PAPADU [I. L. R., 7 Mad., 454

9. ——————— *Further enquiry.—Power of District Magistrate to direct.—"Subordinate Magistrate."—Compoundable offence.*—A criminal charge under section 448 of the Penal Code having been instituted, the accused was sent up by the police before a Deputy Magistrate of the first class. Previous to any evidence being taken the complainant intimated to the Magistrate that the case had been amicably settled and that he did not wish to proceed further in the matter, upon which the Magistrate recorded an order, "Compromised; defendant acquitted." Subsequently the Magistrate of the district, relying upon sections 248 and 259 and professing to act under section 437 of the Criminal Procedure Code, directed the Deputy Magistrate to send up the parties and proceed regularly with the case. *Held* further, that in addition to the Magistrate's order not being warranted by the fact, it was *ultra vires*, inasmuch as the Deputy Magistrate was a Magistrate of the first class and not "inferior" to the District Magistrate, and to give the District Magistrate jurisdiction to call for a record under section 435 from another Magistrate and to act under section 437, the latter must be inferior. *Nobin Kristo Mookerjee* v. *Russick Lall Laha, I. L. R., 10 Calc., 268*, followed. QUEEN-EMPRESS v. NOWAB JAN . . I. L. R., 10 Calc., 551

10. ——————— *Discharge of accused.—Further inquiry, Power to direct.*—An accused having been discharged after a full inquiry before a competent Court is entitled to the benefit of such discharge, unless some further evidence is disclosed. Consequently, an order made by a District Judge directing a further inquiry to be held under section 437 of the Criminal Procedure Code in a case where a Magistrate had discharged the accused under section 253 was not warranted by law, when there had been a full enquiry by a competent Court and when no further evidence was disclosed, such order being based merely upon the ground that, in the opinion of the District Judge, the evidence recorded was sufficient for the conviction of the accused. JEEBUNKISTO ROY v. SHIB CHUNDER DASS [I. L. R., 10 Calc., 1027

11. ——————— *Power of District Magistrate to direct further inquiry by Magistrate of the first class.—"Inferior Magistrate."*—Where a District Magistrate called for the record of a case in which a Magistrate of the first class had discharged certain accused persons, and directed another Magistrate of the first class to make further inquiry into the case,—*Held*, following *Nobin Kristo Mookerjee* v. *Russick Lal Laha, I. L. R., 10 Calc., 268*, and *Queen-Empress* v. *Nawab Jan, I. L. R., 10 Calc., 551*, that the District Magistrate's order was *ultra vires* and illegal. JHINGURI v. BACHU [I. L. R., 7 All., 134

12. ——————— *Further inquiry.—Retrial.—District Magistrate, Powers of.*—Where an accused person has been discharged by a Magistrate, further inquiry cannot be directed, under section 437 of the Code of Criminal Procedure, on the ground that the Magistrate has not rightly appreciated the credit due to the witnesses. Further inquiry should only be directed when other witnesses might have been examined, or when the witnesses have not been properly examined; and inasmuch as section 437 does not direct that the evidence already taken should be taken again, the further inquiry should ordinarily be made by the Magistrate who made the original inquiry. Where a District Magistrate, being of opinion that a Subordinate Magistrate had, without just cause, refused credit to the witnesses in a certain case and had improperly discharged an accused person, directed a further inquiry by another Magistrate, and the accused was on the same evidence retried and convicted:—*Held* that the conviction must be quashed. QUEEN-EMPRESS v. AMIR KHAN [I. L. R., 8 Mad., 336

CRIMINAL PROCEDURE CODE (Act X of 1882), s. 437—*continued.*

13. ——— *Power of Sessions Judge to order further inquiry.*—A Sessions Judge is not competent under section 437, Criminal Procedure Code, to direct the re-opening of the proceedings, merely because in his opinion the Subordinate Magistrate has not rightly appreciated the credit due to the witnesses. "Further inquiry," under that section, means the taking of additional evidence, not the re-hearing of the same evidence. DARSUN LALL *v.* JUMUK LALL . . I. L. R., 12 Calc., 522

14. ——— *Inquiry.—Further inquiry.—Fresh inquiry.—Jurisdiction.—Notice.—District Magistrate.—Subordinate Magistrate.*—When a complaint has been dismissed under section 203 of the Criminal Procedure Code (Act X of 1882), or an accused person discharged by a Subordinate Magistrate, the District Magistrate has power, under section 437 of the Code, to direct any Magistrate subordinate to him to make further inquiry into the complaint dismissed, or into the case of the accused person discharged, even though there be no additional evidence disclosed, or allegation that such exists. The term "further inquiry" in section 437 is not restricted to "inquiry upon further materials or further or additional evidence." Before directing further inquiry under section 437 it is not obligatory on the District Magistrate to give notice to the person discharged, or against whom the complaint was dismissed. When an order directing such inquiry is made, the Subordinate Magistrate to whom it is directed has jurisdiction, and is bound to carry it out. Such order remains in force until it is duly set aside or withdrawn. Difference between the powers of the District Magistrate under the former Criminal Procedure Code (Act X, 1872,) and the present one (Act X, 1882,) pointed out. *Empress* v. *Gowdapa, I. L. R., 2 Bom., 535,* explained. *Chundi Churn Bhuttacharjee* v. *Hem Chunder Banerjee, I. L. R., 10 Calc., 207,* commented on, and *Jeebunkristo Roy* v. *Shib Chunder Das, I. L. R., 10 Calc., 1027; Queen-Empress* v. *Hosein, I. L. R., 6 All., 367,* and *Queen-Empress* v. *Amir Khan, I. L. R., 8 Mad., 336,* commented on and doubted. QUEEN-EMPRESS *v.* DORABJI HORMASJI . . I. L. R., 10 Bom., 131

——— s. 439 (1872, s. 297; 1861-69, s. 426).

See CASES UNDER REVISION—CRIMINAL CASES.

See REVIEW—CRIMINAL CASES. [I. L. R., 10 Bom., 176

See CASES UNDER SENTENCE—POWER OF HIGH COURT AS TO SENTENCES.

——— s. 454 (1872, s. 84).—*Privilege of European British subject.—Waiver of privilege.*—The provisions of section 72 of the Code of Criminal Procedure relating to the kind of Court which shall have jurisdiction and shall not have jurisdiction to enquire into a complaint or try a charge against a European British subject, constitute a privilege, that is to say, they are not so much words taking away jurisdiction entirely, as words which confer on

CRIMINAL PROCEDURE CODE Act X of 1882), s. 454 (1872, s. 84)—*continued.*

the British subject a right to be tried by a certain class of Magistrates and by no others, which right the Code enables him to give up. Section 84 of the Criminal Procedure Code must be construed strictly with section 72, and before a European British subject can be considered to have waived the privilege conferred upon him by section 72, it must appear that his rights under that section have been distinctly made known to him, and that he must have been enabled to exercise his choice and judgment whether he would or would not claim those rights. The waiver of privilege spoken of in section 84 must be an absolute giving up of all the rights, with reference to Chapter VII of the Code of Criminal Procedure, which a European British subject has; and the words "dealt with as such before the Magistrate" mean everything contained in the chapter,—that is to say, the tribunal having cognizance of the case, the procedure, and also the punishment to which the accused would be liable. IN THE MATTER OF THE PETITION OF QUIROS. EMPRESS *v.* ALLEN [I. L. R., 6 Calc., 83: 6 C. L. R., 463

——— ss. 443-463 (1872, ss. 71-88).

See JURISDICTION OF CRIMINAL COURT—EUROPEAN BRITISH SUBJECTS. [14 B. L. R., 106

——— ss. 443, 444 (1872, s. 72).

See s. 454 . . I. L. R., 6 Calc., 83 [6 C. L. R., 463

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—MERCHANT SEAMEN'S ACT, 1859 . . 7 Mad., Ap., 32

——— s. 452 (Act X of 1875, s. 37).

See JURY—JURY UNDER HIGH COURT'S CRIMINAL PROCEDURE. [I. L. R., 1 Bom., 232

——— s. 464 (1872, s. 423).

See INSANITY . I. L. R., 5 Bom., 262

——— s. 465 (1872, s. 45).

See CHARGE TO JURY—SUMMING UP IN SPECIAL CASES—UNSOUNDNESS OF MIND. [19 W. R. Cr., 26

See INSANITY. [10 B. L. R., Ap., 10: 19 W. R., Cr., 15

——— s. 466 (1872, s. 426).

See INSANITY . I. L. R., 2 Calc., 356

——— s. 471 (1872, s. 430).

See DECLARATORY DECREE, SUIT FOR—ORDERS OF CRIMINAL COURT. [22 W. R., 329

——— s. 473 (1872, s. 432).

See DECLARATORY DECREE, SUIT FOR—ORDERS OF CRIMINAL COURT. [22 W. R., 329

See INSANITY . I. L. R., 2 Calc., 356

CRIMINAL PROCEDURE CODE (Act X of 1882), s. 476 (1872, s. 471; 1861-69, s. 171).

See s. 487, para. 1 (1871, s. 473).
[22 W. R., Cr., 49
I. L. R., 1 All., 625

See Contempt of Court—Procedure.
[4 N. W., 86
9 W. R., Cr., 3
5 B. L. R., 100: 13 W. R., Cr., 66
13 W. R., Cr., 45
15 W. R., Cr., 2, 88

See Remand—Criminal Cases.
[6 B. L. R., 698

See Sanction to Prosecution—Nature, Form, and Sufficiency of Sanction.
[I. L. R., 6 All., 98
I. L. R., 7 All., 871

See Sanction to Prosecution—Discretion in granting Sanction.
[I. L. R., 7 Mad., 189

See Sessions Judge, Jurisdiction of.
[I. L. R., 4 Calc., 570

1. ——————— *Act XXIII of 1861, s. 16.—Sending case for investigation by Magistrate.*—A Subordinate Judge, finding that a person had made a false verification of a plaint, sent his case for investigation to a Magistrate of the district, who refused to investigate it on the ground that the alleged offence was one triable exclusively by the Court of Session, to which the Subordinate Judge himself should, under section 173 of the Code of Criminal Procedure, have committed it.—*Held* that the Magistrate of the district was bound to proceed with the investigation of the case, according to section 16 of Act XXIII of 1861. Reg. *v.* Ambuta Nath . 7 Bom., Cr., 29

2. ——————— *Preliminary enquiry.—Procedure.*—Under section 471, Criminal Procedure Code, the Court must first make a preliminary enquiry to satisfy itself that a specific charge coming under the sections mentioned in it ought to be preferred against the accused; and after being so satisfied it must either commit the case or send the case to the Magistrate for enquiry whether a committal should be made or not. In the matter of the petition of Kali Prosunno Bagchee
[23 W. R., Cr., 39

3. ——————— *Power of High Court as Civil Court to interfere with order under s. 471.*—Where a Civil Court directs an enquiry to be made by the Magistrate of the district under section 471 of the Criminal Procedure Code in respect to the evidence given by the witnesses in a case before it, the High Court cannot as a Civil Court on appeal interfere. See *Queen v. Baijoo Lall, I. L. R., 1 Calc., 450.* Umbica Sunduri Chowdrain *v.* Ajitulla Mondul
[8 C. L. R., 148

4. ——————— *Act XXIII of 1861, s. 16.—Order sending case to Magistrate for enquiring into offence of giving false evidence.—Preliminary enquiry.— Vagueness of charge.*—Although section 16 of Act XXIII of 1861 gives Civil Courts powers similar to those conferred on Civil and Criminal Courts alike by section 471 of the Criminal Procedure Code, the whole law as to the procedure in cases within those sections is now embodied in section 471 of the Criminal Procedure Code. In a suit brought to recover possession of certain property, the Judge decided one of the issues raised in the plaintiff's favour, but on the important issue as to whether the plaintiff ever had possession, he found for the defendant. The plaintiff was not examined, but on the issue as to possession he called two witnesses. The Judge disbelieved their statements, and considering that the plaintiff had failed to prove his case, gave judgment for the defendant without requiring him to give evidence on that issue. In the concluding paragraph of his judgment, the Judge directed the depositions of the two witnesses above referred to, together with the English memoranda of their evidence, to be sent to the Magistrate, with a view to his enquiring whether or not they had voluntarily given false evidence in a judicial proceeding; and he further directed the Magistrate to enquire whether or not the plaintiff had abetted the offence of giving false evidence, on the ground that as the witnesses were the plaintiff's servants he must personally have influenced them, and also to enquire whether the plaint which the plaintiff had attested contained averments which he knew to be false. On a motion to quash this order, —*Held* that, under section 471 of the Criminal Procedure Code, the Judge had no power to send a case to a Magistrate except when, after having made such preliminary enquiry as may be necessary, he is of opinion that there is sufficient ground (*i.e.*, ground of a nature higher than mere surmise or suspicion) for directing judicial enquiry into the matter of a specific charge, and that the Judge is bound to indicate the particular statements or averments in respect of which he considers that there is ground for a charge into which the Magistrate ought to enquire, and that the order was bad because the Judge had made no preliminary enquiry and because it was too vague and general in its character. Queen *v.* Baijoo Lall. In the matter of the petition of Baijoo Lall . . . I. L. R., 1 Calc., 450

5. ——————— *Offence against public justice.—Contempt of Court.—Prosecution Procedure.*—The Court, Civil or Criminal, which is of opinion that there is sufficient ground for inquiring into a charge mentioned in sections 467, 468, 469, Act X of 1872, may not, except as is provided in section 472, try the accused person itself for the offence charged. Queen *v.* Kultaran Singh
[I. L. R., 1 All., 129

Anonymous . . . 7 Mad., Ap., 28

Nor can he try a person for the abetment of such an offence. Anonymous . 7 Mad., Ap., 28

6. ——————— The Court, Civil or Criminal, which is of opinion that there is sufficient ground for inquiring into a charge mentioned in sections 467, 468, 469 of Act X of 1872, is not precluded by the provisions of section 471 from trying the

CRIMINAL PROCEDURE CODE (Act X of 1882), s. 476 (1872, s. 471; 1861-69, s. 171)—*continued.*

accused person itself for the offence charged. QUEEN *v.* JAGAT MAL . . [I. L. R., 1 All., 166

7. ——————— Section 471, Act X of 1872, does not deprive the Court, which possesses the power of trying an offence mentioned in sections 467, 468, and 469, of the power of trying it when committed before itself. QUEEN *v.* GUR BAKSH I. L. R., 1 All., 193

8. ——————— *Institution of criminal prosecution pending appeal in Civil Court.*—If, in the course of a proceeding, either civil or criminal, a Judge or Magistrate finds clear ground for believing that either the parties to the proceeding or their witnesses have committed perjury or any other offence against public justice, he is justified in directing criminal proceedings against such person under section 471 of the Criminal Procedure Code without any further enquiry than that which he has already held in his own Court. As a matter of discretion and propriety, it is right for a Court, before committing a person on a charge of perjury upon his own uncontradicted statement, to await the hearing of the appeal, where an appeal is pending, in the case in which he is charged with such perjury. IN THE MATTER OF MUTTY LALL GHOSE [I. L. R., 6 Calc., 308

9. ——————— *Power to commit for offences.*—Section 471 deals with a more extended class of cases, *viz.*, all those mentioned in sections 467, 468, and 469, in which not merely a Civil Court but any Court, Civil or Criminal, and whether possessing or not possessing the power to commit to the Court of Session, is of opinion that there is sufficient ground for holding an inquiry; and it enacts the procedure to be followed by the Court which may elect to adopt one of two courses, that is to say, it may either commit a case to the Court of Session, if and where it has the power to do so, or if it has not that power or is not disposed to exercise it, it may send the case to a Magistrate having power to try or commit for trial the accused person for the offence charged. EMPRESS *v.* POPAT NATHU . I. L. R., 4 Bom., 287

10. ——————— *Offence under.*—Where a Court thinks that there is sufficient ground for inquiring into a charge mentioned in sections 467, 468, or 469 of Act X of 1872, it should proceed under section 471 of that Act. Attention of the Court of Session in this case directed to *Queen* v. *Baijoo Lall, I. L. R., 1 Calc., 450.* EMPRESS OF INDIA *v.* GOBARDHAN DAS . . I. L. R., 3 All., 62

11. ——————— *Preliminary inquiry.*—An order made under section 471 of Act X of 1872 sending a case for inquiry to a Magistrate is not necessarily bad because the Court did not make a preliminary inquiry before making such order. The law requires only such preliminary inquiry as "may be necessary." *Held*, therefore, where a Munsif, being of opinion that both the parties to a suit tried by him had given false evidence therein on certain points, sent the case for inquiry to the Magistrate under section 471 of Act X of 1872, with a proceeding embodying the facts of the case, and charging the parties respectively with giving false evidence on such points, and there was nothing to show that any inquiry that the Munsif could have made was necessary or would have put the Magistrate into a better position for dealing with the case than he was in, that the Munsif's proceedings were not bad because he did not hold a preliminary inquiry. EMPRESS *v.* JUALA PROSAD [I. L. R., 5 All., 62

CRIMINAL PROCEDURE CODE (Act X of 1882), s. 476 (1872, s. 471; 1861-69, s. 171)—*continued.*

——————— **s. 477 (1872, s. 472; 1861-69, s. 172).**

See DISTRICT JUDGE, JURISDICTION OF. [I. L. R., 6 All., 103

See FALSE EVIDENCE — CONTRADICTORY STATEMENTS . 4 B. L. R., A. Cr., 9

See SESSIONS JUDGE, JURISDICTION OF. [3 B. L. R., A. Cr., 35
I. L. R., 2 All., 398
I. L. R., 4 Calc., 570

——————— *Power of commitment by Sessions Judge.—False evidence.*—Under section 472, Criminal Procedure Code, 1872, before a Sessions Judge can commit a person to the Court of Session it is necessary that the offence should have been committed before the Sessions Court, and that it be one within the cognizance of, and triable exclusively by, that Court. The offence of intentionally giving false evidence (section 193, Penal Code) not being triable exclusively by the Sessions Court is not one in which the Sessions Judge can convict. QUEEN *v.* BUNDHOO BANERJEE . . . . 21 W. R., Cr., 37

1. ——————— **s. 478 (1872, s. 474).**—*Power of Civil Court to commit to Court of Session.*—The power of a Civil Court to commit a case to the Court of Session, after completing the preliminary inquiry, is given by section 474 of the Code of Criminal Procedure, and is restricted to the class of cases provided for in that section, *viz.*, where offences, exclusively triable by a Court of Session, are committed before the Civil Court. EMPRESS *v.* POPAT NATHU [I. L. R, 4 Bom., 287

2. ——————— *Power of Civil Court to order commitment.*—A Civil Court has no power to order the commitment of persons for offences under sections 471, 465, and 193 of the Penal Code without holding the preliminary enquiry required by section 474 of the Criminal Procedure Code. QUEEN *v.* RUNGATOONEE . . . . 22 W. R., Cr., 52

——————— **ss. 480, 481 (1872, s. 435; Act XXIII of 1861, s. 21).**

See s. 487, PARA. 1 (1872, s. 473). [10 Bom., 73

See CONTEMPT OF COURT—PENAL CODE, s. 228 . . . 10 Bom., 69

See CONTEMPT OF COURT—PROCEDURE. [1 N. W., 162: Ed. 1873, 241

CRIMINAL PROCEDURE CODE (Act X of 1882), ss. 480, 481, 482 (1872, ss. 435, 436; 1861-69, s. 163).

See CONTEMPT OF COURT—CONTEMPTS GENERALLY . . 6 Mad., Ap., 14

See SENTENCE — IMPRISONMENT — IMPRISONMENT IN DEFAULT OF FINE. [6 Mad., Ap., 16

——————— *Sub-Registrar.—Offence during judicial proceeding.—Penal Code, s. 228.—A.* was charged before an Assistant Magistrate by a Sub-Registrar with having committed an offence under section 228 of the Penal Code, and fined. *Held* that the Sub-Registrar should have tried the matter himself under sections 435 and 436 of the Criminal Procedure Code, and as the Magistrate acted without jurisdiction, the order must be quashed. IN THE MATTER OF THE PETITION OF SARDHARI LAL [13 B. L. R., Ap., 40: 22 W. R., Cr., 10

——— s. 487, para. 1 (1872, s. 473).

1. ——————— and s. 435.—*Giving false evidence in judicial proceeding.—Power of Magistrate.—Offence in contempt of Court.*—The offence of intentionally giving false evidence in a judicial proceeding cannot be tried by the Magistrate before whom the false evidence is given; this offence being an attempt to pervert the proceedings of a Court to an improper end, is a contempt of its authority (sections 435, 436, 471, 472, and 473 of the Code of Criminal Procedure). REG. *v.* NAVRANBEG DULABEG [10 Bom., 73

Contra, QUEEN *v.* RAMLOCHUN SINGH [18 W. R., Cr., 15

2. ——————— *Disobedience of order under s. 518, Criminal Procedure Code.—Penal Code, s. 188.*—A Second Class Magistrate, who issues an order under section 518 of the Criminal Procedure Code, has no jurisdiction to punish for its disobedience by reason of section 473 of the Criminal Procedure Code. REG. *v.* RANCHHOD DYAL . . 10 Bom., 424

3. ——————— *Offence committed in contempt of Court.—Sessions case.—Criminal Procedure Code, 1872, s. 4.—Sessions Judge and Assistant Sessions Judge.*—To make a case a "Sessions case" within the meaning of section 4 of the Code of Criminal Procedure, it is not necessary that it should be triable exclusively by the Court of Session. For the purposes of section 473 of the Code, an Assistant Sessions Judge is a different Court from the Sessions Judge. Accordingly, an offence, which is committed in contempt of the Sessions Judge's authority, is cognizable by an Assistant Sessions Judge. REG. *v.* GULABDAS KUBERDAS . . . 11 Bom., 98
REG. *v.* RAMAJIRAV JIVBAJIRAV . 12 Bom., 1

4. ——————— *Offence under Penal Code, s. 185.—Illegal bid for property offered for sale by public servant.*—The public servant concerned in an offence described in section 185 of the Penal Code is not competent himself to try the person committing such offence. QUEEN *v.* JAGANATH [7 N. W., 133

CRIMINAL PROCEDURE CODE (Act X of 1882), s. 487, para. 1 (1872, s. 473)—*continued.*

5. ——————— and s. 471.—*Jurisdiction of Magistrate.—Giving false evidence.*—A witness charged with having given false evidence in a criminal proceeding before a Magistrate of the first class was tried and convicted of that charge by that Magistrate, and the conviction was confirmed on appeal by the Sessions Judge. *Held* that the jurisdiction of the Magistrate was not barred by the operation of section 473, Act X of 1872, the giving of false evidence in the presence of a Court not being an offence committed in contempt of the authority of the Court within the meaning of that section. The Magistrate's jurisdiction in such a case was, however, held barred by section 471 of the Code, the Magistrate being bound, under that section, either to commit or send the case for enquiry to another Magistrate. IN THE MATTER OF THE PETITION OF SUFATOOLLAH [22 W. R., Cr., 49

6. ——————— *"Court."—Construction.*—The prohibition in section 473 of the Criminal Procedure Code (Act X of 1872) is a personal prohibition. ANONYMOUS CASE . . I. L. R., 1 Mad., 305

7. ——————— *Offence against public justice.—Contempt of Court.*—An offence against public justice is not an offence in contempt of Court within the meaning of section 473, Act X of 1872. QUEEN *v.* KALTARAN SINGH . I. L. R., 1 All., 129
QUEEN *v.* JAGATMAL . I. L. R., 1 All., 162

8. ——————— *Giving false evidence.*—Giving false evidence is "an offence committed in contempt of the authority" of a Court within the meaning of section 473 of Act X of 1872. *Reg.* v. *Navranbeg Dulabeg, 10 Bom., 73,* and *Anonymous Case, 7 Mad., Ap., 17,* followed. *Queen* v. *Kaltaran Singh, I. L. R., 1 All., 129,* and *Queen* v. *Jagatmal, I. L. R., 1 All., 162,* dissented from. Where the accused was, by a Magistrate, 1st class, committed for trial by the Sessions Court on a charge of having given false evidence in a judicial proceeding before the Sessions Judge, there being no Assistant Sessions Judge or joint Sessions Judge,—*Held* that the commitment could not be quashed, there being no error in law, and the case must, therefore, be transferred for trial to another Court of Session. In such a case as the above the better course would be for the Magistrate to try the case himself, and, if he is incompetent to pass a sufficient sentence, for the Sessions Judge to refer the case to the High Court for enhancement of sentence. REG. *v.* GAJI KOM RANU [I. L. R., 1 Bom., 311

9. ——————— *Nuisance, Injunction to discontinue.*—Section 473 of the Code of Criminal Procedure, which, except as therein provided, forbids a Court to try any person for an offence committed in contempt of its own authority, is not limited to offences falling under Chapter X of the Penal Code, but extends to all contempts of Court. REG. *v.* PARSAPA MAHADEVAPA . . . I. L. R., 1 Bom., 339

10. ——————— and s. 471.—*Offence against public justice.—Contempt of Court.—Penal*

CRIMINAL PROCEDURE CODE (Act X of 1882), s. 487, para. 1 (1872, s. 473) and s. 471—*continued.*

Code, s. 193.—Held (STUART, *C. J.*, dissenting) that an offence under section 193 of the Penal Code, being an offence in contempt of Court within the meaning of section 473 of Act X of 1872, cannot, under that section, be tried by the Magistrate before whom such offence is committed. *Queen* v. *Kaltaran Singh, I. L. R., 1 All., 129,* and *Queen* v. *Jagatmal, I. L. R., 1 All., 162,* overruled. *Per* STUART, *C. J.*—A Magistrate before whom such an offence is committed, if competent to try it himself, is not precluded from so doing by the provisions of section 471 of Act X of 1872. EMPRESS OF INDIA *v.* KASHMIRI LAL [I. L. R., 1 All., 625

11. ——— *Penal Code, s. 174.—Contempt of Court.*—Where a settlement officer, who was also a Magistrate, summoned, as a settlement officer, a person to attend his Court, and such person neglected to attend, and such officer, as a Magistrate, charged him with an offence under section 174 of the Penal Code, and tried and convicted him on his own charge,—*Held* that such conviction was, with reference to sections 471 and 473 of Act X of 1872, illegal. EMPRESS OF INDIA *v.* SUKHARI [I. L. R., 2 All., 405

12. ——— *False charge.—Contempt.—Prosecution.—Charge.—Act X of 1872 (Criminal Procedure Code), ss. 468, 473.—B.* charged certain persons before a police officer with theft. Such charge was brought by the police to the notice of the Magistrate having jurisdiction, who directed the police to investigate into the truth of such charge. Having ascertained that such charge was false, such Magistrate took proceedings against *B.* on a charge of making a false charge of an offence, an offence punishable under section 211 of the Penal Code, and convicted him of that offence. *Held* that, as such false charge was not preferred by *B.*, before such Magistrate, the offence of making it was not a contempt of such Magistrate's authority, and the provisions of sections 468 and 473 of Act X of 1872 were inapplicable, and such Magistrate was not precluded from trying *B.* himself, nor was his sanction or that of some superior Court necessary for *B.'s* trial by another officer. *Empress* v. *Kashmiri Lal, I. L. R., 1 All., 625,* distinguished. EMPRESS *v.* BALDEO . [I. L. R., 3 All., 322

13. ——— *Sanction to prosecute granted by District Judge.—Power of same person as Sessions Judge to try the offence.*—A District Judge who has, on hearing a civil appeal, sanctioned the prosecution of a party for forgery, is not debarred by section 473 of the Code of Criminal Procedure (Act X of 1872) from trying the offence in his capacity of a Sessions Judge. EMPRESS *v.* D'SILVA [I. L. R., 6 Bom., 479

14. ——— *Perjury.—Contradictory statements.—Power of trial by Sessions Court before which one of such statements was made.*—A prisoner who had made certain contradictory statements on oath before a Magistrate and a Court of Session, respectively, was convicted by the same Court of Session, on a charge, in the alternative, of giving false evidence, either before a Magistrate or before the Court of Session,—*Held* that the Court was precluded by section 473 of the Criminal Procedure Code from trying the charge. SUNDRIAH *v.* QUEEN [I. L. R., 3 Mad., 254

CRIMINAL PROCEDURE CODE (Act X of 1882), s. 487, para. 1 (1872, s. 473) and s. 471—*continued.*

——— **s. 488 (1872, s. 536; 1861-69, s. 316).**

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODES. [7 W. R., Cr., 10 : 2 Ind. Jur., N. S., 88

See MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION. [I. L. R., 9 Bom., 40

See MAHOMEDAN LAW—MAINTENANCE. [I. L. R., 8 Calc., 736

See CASES UNDER MAINTENANCE, ORDER OF CRIMINAL COURT FOR.

See SENTENCE—IMPRISONMENT—IMPRISONMENT IN DEFAULT OF FINE. [I. L. R., 8 Mad., 70

——— **s. 489 (1872, s. 537; 1861-69, s. 317).**

See CASES UNDER MAINTENANCE, ORDER OF CRIMINAL COURT FOR.

——— **s. 490 (1872, s. 538).**

See MAINTENANCE, ORDER OF CRIMINAL COURT AS TO. [I. L. R., 4 Mad., 230

——— **s. 493 (1872, s. 60).**

See COUNSEL . . 11 Bom., 102

——— **s. 494.**

See PUBLIC PROSECUTOR. [I. L. R., 8 All., 291

——— **s. 495 (1872, s. 59).**

See BOMBAY DISTRICT POLICE, s. 23. [I. L. R., 8 Bom., 534

See COUNSEL . . 11 Bom., 102 [I. L. R., 6 Calc., 59 : 6 C. L. R., 374

——— **s. 496 (1872, ss. 194, 204, para. 1; 1861-69, s. 224).**

See BAIL . I. L. R., 6 Mad., 63, 69

See RECOGNIZANCE TO APPEAR. [6 N. W., 366

See WARRANT OF ARREST—CRIMINAL CASES . . . 5 Bom., Cr., 31

——— **s. 497 (1872, s. 389; 1861-69, s. 212).**

See JUDICIAL OFFICERS, LIABILITY OF. [3 Bom., A. C., 36

CRIMINAL PROCEDURE CODE (Act X of 1882), s. 498 (1872, s. 390; 1861-69, s. 436).

See BAIL . . 1 B. L. R., A. Cr., 7
[23 W. R., Cr., 40
24 W. R., Cr., 8
I. L. R., 1 All., 151

——— s. 503 (1872, s. 330).

See COMMISSION—CRIMINAL CASES.
[I. L. R., 5 All., 92
I. L. R., 6 All., 224

——— ss. 503, 504, 505, 507 (Act X of 1875, s. 76).

See COMMISSION—CRIMINAL CASES.
[I. L. R., 6 Bom., 285

——— s. 509 (1872, s. 323).

See EVIDENCE—CRIMINAL CASES—MEDICAL EVIDENCE . I. L. R., 8 Calc., 739.

See WITNESS — CRIMINAL CASES — EXAMINATION OF WITNESSES — MEDICAL WITNESS . I. L. R., 9 Calc., 455

——— s. 510 (1872, s. 325; 1861-69, s. 370).

See EVIDENCE—CRIMINAL CASES—CHEMICAL EXAMINER . 6 B. L. R., Ap., 122
[I. L. R., 10 Calc., 1026

——— s. 512 (1872, s. 327).

See EVIDENCE—CRIMINAL CASES—DEPOSITIONS . I. L. R., 10 Calc., 1097
[I. L. R., 8 All., 672

See WITNESS — CRIMINAL CASES — EXAMINATION OF WITNESSES.
[21 W. R., Cr., 12, 61
22 W. R., Cr., 33
12 C. L. R., 120

——— s. 514, paras. 1, 2, 3, 4 (1872, ss. 396, 397; 1861-69, s. 219).

See CONTEMPT OF COURT—PENAL CODE, s. 174 . . 1 B. L. R., A. Cr., 1

See RECOGNIZANCE TO APPEAR.
[22 W. R., Cr., 74
I. L. R., 11 Calc., 77

——— ss. 514, 515, 516 (1872, s. 398; 1861-69, s. 221).

See WITNESS — CRIMINAL CASES—SUMMONING WITNESSES . 2 N. W., 113

——— s. 514 (182, s. 502).

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODES.
[I. L. R., 2 Mad., 169

See RECOGNIZANCE TO KEEP PEACE—FORFEITURE OF RECOGNIZANCES.
[I. L. R., 4 Calc., 865

CRIMINAL PROCEDURE CODE (Act X of 1882), s. 517.

See APPEAL IN CRIMINAL CASES—PROCEDURE . . I. L. R., 9 Mad., 448

——— (1872, s. 418; Act X of 1875, s. 115).

See OBSCENE PUBLICATION.
[I. L. R., 3 All., 837

See STOLEN PROPERTY—DISPOSAL OF, BY THE COURT . . 12 Bom., 217
[I. L. R., 2 All., 276
I. L. R., 8 Bom., 575
I. L. R., 10 Bom., 197

——— s. 520 (1872, s. 419).—*Government currency note, Theft of.—Court of appeal.*—A Government currency note was stolen from *A.*, and cashed by *B.* in good faith for *C.* On the conviction of *C.* for theft, the Magistrate ordered the note to be given to *B.* *A.* appealed to the Sessions Judge, who was of opinion that he was not competent to interfere as a Court of appeal under section 419 of the Criminal Procedure Code; but submitted the case for the orders of the High Court. *Held* that the case could be disposed of by the Judge under section 419 of the Criminal Procedure Code, and that the words "Court of appeal" in that section are not necessarily limited to a Court before which an appeal is pending. EMPRESS ON THE PROSECUTION OF MICHELL *v.* JOGGESSUR MOCHI . . I. L. R., 3 Calc., 379
S.C. IN THE MATTER OF MICHELL
[1 C. L. R., 339

——— s. 522 (1872, s. 534).

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—DISPOSSESSION BY CRIMINAL FORCE . 23 W. R., Cr., 54

——— s. 523 (1872, ss. 415, 416).

See STOLEN PROPERTY—DISPOSAL OF, BY THE COURT . I. L. R., 8 Bom., 338

——— ss. 523, 524 (1872, ss. 416, 417; 1861-69, ss. 131, 132).

See FORFEITURE OF PROPERTY.
[9 W. R. Cr., 13

See WITNESS — CRIMINAL CASES — SUMMONING WITNESSES . 18 W. R., Cr., 5

——— ss. 523, 524, 525 (1872, ss. 415-417).

See STOLEN PROPERTY—DISPOSAL OF, BY THE COURT . I. L. R., 1 Bom., 630

——— s. 524 (1872, s. 417; 1861-69, s. 132).

See STOLEN PROPERTY—DISPOSAL OF, BY THE COURT . . 19 W. R., Cr., 3

——— s. 526 (Act X of 1875, s. 147).

See CASES UNDER TRANSFER OF CRIMINAL CASE—GENERAL CASES.

CRIMINAL PROCEDURE CODE (Act X of 1882), s. 526, paras. 1 & 2 (1872, s. 64).

See APPEAL IN CRIMINAL CASES—ACTS—BURMA COURTS ACT.
[I. L. R., 4 Calc., 667

See HIGH COURT, JURISDICTION OF—BOMBAY—CRIMINAL.
[I. L. R., 9 Bom., 333

See TRANSFER OF CRIMINAL CASE—LETTERS PATENT, HIGH COURT, CL. 29.
[I. L. R., 6 Mad., 32

See TRANSFER OF CRIMINAL CASE—GENERAL CASES . I. L. R., 9 Bom., 333
[I. L. R., 1 Calc., 219

——— (Presidency Magistrate's Act, 1877, s. 181).

See TRANSFER OF CRIMINAL CASE—GENERAL CASES . I. L. R., 2 Calc., 290

——— s. 528, para. 1 (1872, s. 47).

See MAGISTRATE, JURISDICTION OF—WITHDRAWAL OF CASES.
[I. L. R., 3 All., 749
I. L. R., 8 Calc., 851

——— para. 2 (1872, s. 48).

See TRANSFER OF CRIMINAL CASE—GENERAL CASES . I. L. R., 8 Calc., 393

——— s. 530 (1872, s. 34).

See CRIMINAL PROCEEDINGS.
[22 W. R., Cr., 43
23 W. R., Cr., 33
1 C. L. R., 434
I. L. R., 8 Bom., 307

——— s. 531.

See CRIMINAL PROCEEDINGS.
[I. L. R., 8 Bom., 312

——— s. 532 (1872, s. 33).

See CRIMINAL PROCEEDINGS.
[I. L. R., 3 All., 258

See HIGH COURT, JURISDICTION OF—BOMBAY—CRIMINAL.
[I. L. R., 9 Bom., 288

——— s. 533.

See CONFESSION—CONFESSIONS TO MAGISTRATE . . I. L. R., 9 Mad., 224

——— s. 537 (1872, ss. 283, 300; 1861-69, ss. 426, 439).

See s. 436 (1872, s. 296).
[I. L. R., 7 Calc., 662

See CHARGE—ALTERATION OR AMENDMENT OF CHARGE . I. L. R., 8 All., 665

See COMPLAINT—POWER TO REFER TO SUBORDINATE MAGISTRATE.
[3 B. L. R., A. Cr., 67
5 B. L. R., 160
7 B. L. R., 513
9 B. L. R., 146, 147, note

CRIMINAL PROCEDURE CODE (Act X of 1882), s. 537 (1872, ss. 283, 300; 1861-69, ss. 426, 439)—*continued.*

See COMPLAINT—INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES.
[5 B. L. R., 660

See CASES UNDER CRIMINAL PROCEEDINGS.

See REVISION—CRIMINAL CASES—EVIDENCE AND WITNESSES.
[I. L. R., 1 All., 680
I. L. R., 13 Calc., 292

See SENTENCE—POWER OF HIGH COURT AS TO SENTENCES—REVERSAL.
[B. L. R., Sup. Vol., 459
5 B. L. R., 39

See SESSIONS JUDGE, JURISDICTION OF—
[19 W. R., Cr., 43

——— *"Court of competent jurisdiction."*—Meaning of the expression "a Court of competent jurisdiction" in section 537 of the Criminal Procedure Code, considered. QUEEN-EMPRESS *v.* KRISHNABHAT . . I. L. R., 10 Bom., 319

——— s. 540 (1872, s. 192).

See WITNESS—CRIMINAL CASES—SUMMONING WITNESSES.
[21 W. R., Cr., 61
I. L. R., 8 All., 668

——— ss. 545, 546 (1872, s. 308; 1861-69, s. 44).

See COMPENSATION—CRIMINAL CASES—FOR LOSS OR INJURY CAUSED BY OFFENCE.
[5 W. R., Cr., 76
3 Bom., Cr., 43
4 Mad., Ap., 28
7 Mad., Ap., 13
10 W. R., Cr., 39
22 W. R., 336
I. L. R., 6 Mad., 286

See FINE . 3 C. L. R., 404, 405, note

——— s. 548 (Presidency Magistrate's Act, 1877, s. 170).—*Prosecutor, Rights of.—"Person affected by an order."—Application for copy of order and depositions, Refusal of.—Specific Relief Act (I of 1877), ss. 7, 45.*—All prosecutors whose charges are dismissed by the Presidency Magistrate are affected by the order of discharge, and are, therefore, entitled, under section 170 of the Presidency Magistrate's Act, to obtain copies of the order made by, and of the deposition taken before, the Magistrate. IN THE MATTER OF THE EMPRESS ON THE PROSECUTION OF THE BANK OF BENGAL *v.* DINONATH ROY . I. L. R., 8 Calc., 166: 10 C. L. R., 190

——— s. 555.

See BENCH OF MAGISTRATES.
[I. L. R., 10 Calc., 194

——— s. 558 (1872, s. 539; 1861-69, s. 444).

See ARMS ACT, 1878.
[I. L. R., 8 Calc., 473

CRIMINAL PROCEDURE CODE (Act X of 1882), s. 558 (1872, s. 539; 1861-69, s. 444—*continued.*

See BENGAL ACT VI OF 1865.
[3 B. L. R., A. Cr., 39

See GENERAL CLAUSES CONSOLIDATION ACT, 1868, s. 6 . I. L. R., 6 Mad., 336

CRIMINAL TRESPASS.

See SENTENCE—CUMULATIVE SENTENCES.
[I. L. R., 2 All., 101

1. ——— **Penal Code, s. 441.**—*Intention to annoy.*—To bring an act of trespass within the meaning of the Penal Code, section 441, the entry upon the land must be with the intent to annoy, which means with the purpose of annoying the person in possession. IN THE MATTER OF THE PETITION OF SHIB NATH BANERJEE . 24 W. R., Cr., 58

2. ——— *Intention to annoy.—Being on land in assertion of title.*—Where the trespass (if any) was not committed with the intent to commit an offence, or intimidate, insult, or annoy the persons in possession, but in the *bonâ fide* assertion of a claim of title, this does not amount to criminal trespass. QUEEN ON THE PROSECUTION OF GOCUL CHAND *v.* SEITH ROSHUN LAL
[2 N. W., 82

3. ——— *Intention to annoy.—Causing loss or injury.*—*A.* built a hut on portion of certain disputed land to which he laid claim, and was, on the prosecution of another claimant to the land, convicted of criminal trespass under section 441 of the Penal Code. *Held* that the conviction was bad, as in erecting the hut, it was not the intention of the accused to annoy. Loss or injury would naturally cause annoyance, but not the kind of annoyance contemplated by section 441 of the Penal Code. SHUMBHU NATH SARKAR *v.* RAM KAMAL GUHA
[13 C. L. R., 212

4. ——— *Intention to annoy.—Enclosing and cultivating portion of burial-ground.*—Defendant was convicted of criminal trespass for having enclosed and commenced to cultivate a portion of a burial-ground. *Held* that the conviction was right. The person (corporate) in possession of the burial-ground is the portion of the public entitled to use the burial-ground, and the act of ploughing up the burial-ground was evidence of intent to annoy such person, the defendant not being one of the portion of the public entitled to its use. ANONYMOUS . . . . . 6 Mad., Ap., 25

5. ——— *Intention to annoy.—Taking portion of public foot-path as one's own land.*—Defendant was convicted of criminal trespass for including in his own land a portion of a public foot-path. *Held* that, as the public generally were entitled to the use of the foot-path, there was no illegal entry of the defendant on property in the possession of another with intent to annoy the person in possession, and consequently that the defendant was wrongly convicted. ANONYMOUS
[6 Mad., Ap., 26

CRIMINAL TRESPASS.—Penal Code, s. 441—*continued.*

6. ——— *Intention to annoy.—Person not in actual possession of house.*—For a legal conviction under section 441 of the Penal Code of criminal trespass, there must be an intention to intimidate, insult, or annoy a person in actual possession. To enter a house where the owner is only in constructive possession is not sufficient. ISWAR CHUNDER KARMAKAR *v.* SITAL DAS MITTER
[8 B. L. R., Ap., 62

S. C. ISHUR CHUNDER KARMAKAR *v.* SEETUL DOSS MITTER . . . . 17 W. R., Cr., 47

QUEEN *v.* KALINATH NAG CHOWDHRY
[9 W. R., Cr., 1

QUEEN *v.* CHOORAMONI SANT
[14 W. R., Cr., 25

7. ——— *Intention to annoy.—Forcible entry.*—A person who forcibly enters upon property in the possession of another, and erects a building thereon, or does any other act with intent to annoy the person so in possession, is guilty of criminal trespass within the meaning of section 441 of the Penal Code, without reference to the question in whom the title to the land may ultimately be found. QUEEN *v.* RAM DYAL MUNDLE
[7 W. R., Cr., 28

8. ——— *Land dispute.—Title to land, Failure to prove.*—*Held* by JACKSON, *J.* (setting aside the order of the Magistrate; MARKBY, *J.*, dissenting), that a Magistrate ought not to decline to go into a case of criminal trespass under section 441 of the Penal Code because the complainant did not make out his title to the land: the offence may be committed in respect of property in a person's possession, even though such possession may not have originated in right. QUEEN *v.* SURWAN SINGH
[11 W. R., Cr., 11

9. ——— *Entry into family dwelling-house.*—Entrance of a member of a Hindu joint family into the family dwelling-house is not criminal trespass. The entry of a stranger into a family dwelling-house, with the permission and license of one of the members, is not criminal trespass. IN THE MATTER OF THE PETITION OF PRANKRISHNA CHANDRA . . . . . 6 B. L. R., Ap., 80

PRANKRISTO CHUNDER *v.* BISSONATH CHUNDER
[15 W. R., Cr., 6

10. ——— *Entry into market with intention to avoid payment of market dues.*—Entry of a Local Fund market with intent to evade payment of market dues is not a criminal trespass. QUEEN *v.* VARTHAPPA
[I. L. R., 5 Mad., 382

11. ——— *Unlawful entry to Exhibition building.*—Where the accused secretly entered an Exhibition building without having purchased a ticket, and was there apprehended,—*Held* that such entry, when unaccompanied by any of the intents specified in section 441 of the Penal Code, did not amount to criminal trespass or any other criminal offence. REG. *v.* MEHERVANJI BEJANJI
[6 Bom., Cr., 6

CRIMINAL TRESPASS.—Penal Code, s. 441—*continued.*

12. ——————— *Entry in property and cutting trees.*—The entry by one man on another's property, accompanied by the cutting down of trees on that property, is criminal trespass. QUEEN *v.* JEENUT BEBEE . . . . 1 W. R., Cr., 46

13. ——————— *Entering on land after decree giving another possession.*—Accused was ejman of complainant's family. Complainant obtained a decree setting aside an alienation made by accused. In execution, complainant obtained possession from the alienee. The accused entered on this land. *Held*, that he had not committed the offence of criminal trespass. ANONYMOUS [6 Mad., Ap., 19

14. ——————— *Re-entry into, or remaining on, land from which person has been ejected by civil process.*—Certain immoveable property was the joint undivided property of *C.*, *G.*, and a certain other person. *R.* obtained a decree against *G.* for the possession of such property, and such property was delivered to hi min the execution of that decree in accordance with the provisions of section 264 of Act X of 1877. *C.*, in good faith, with the intention of asserting her right, and without any intention to intimidate, insult, or annoy *R.*, or to commit an offence, and *G.*, in like manner, with the intention of asserting the right of his co-owners, remained on such property. *Held* that, under such circumstances, they could not be convicted of criminal trespass. Re-entry into or remaining upon land from which a person has been ejected by civil process, or of which possession has been given to another for the purpose of asserting rights he may have solely or jointly with other persons, is not criminal trespass, unless the intent to commit an offence, or to intimidate, insult, or annoy, is conclusively proved. IN THE MATTER OF THE PETITION OF GOBIND PRASAD. I. L. R., 2 All., 465

15. ——————— *Entry on land in exercise of claim of right.—Mischief.*—If a person enters on land in the possession of another in the exercise of a *bonâ fide* claim of right, and without any intention to intimidate, insult, or annoy such other person, or to commit an offence, then, though he may have no right to the land, he cannot be convicted of criminal trespass. So also, if a person deals injuriously with property in the *bonâ fide* belief that it is his own, he cannot be convicted of mischief. The mere assertion, however, in such cases of a claim of right is not in itself a sufficient answer to charges of criminal trespass and mischief. It is the duty of the Criminal Court to determine what was the intention of the alleged offender, and if it arrives at the conclusion that he was not acting in the exercise of a *bonâ fide* claim of right, then it cannot refuse to convict the offender, assuming that the other facts are established which constitute the offence. EMPRESS OF INDIA *v.* BUDH SINGH . I. L. R., 2 All., 101

16. ——————— *Acting in exercise of right of distraint.—Rent Act (Beng. Act VIII of 1869), ss. 72, 74, 76.*—*A.*, the servant of *B.*, was convicted of criminal trespass in going upon the land of *C.*, one of *B.'s* tenants, and preventing him from cutting his crops. *B.* was convicted of abetment of criminal trespass. *A.* and *B.* pleaded that they were acting in the exercise of the legal right of distraint. It appeared that no written demand under section 72 of the Rent Act (Bengal Act VIII of 1869) for the amount of the arrears, together with an account exhibiting the grounds on which demand had been made, was served on *C.*, and that no written authority under section 76 had been given by *B.* to *A.* *Held*, that it lay upon *A.* and *B.* to show that they had conformed to the provisions of the law, or at least had acted with the *bonâ fide* intention of distraining the complainant's crops; and that the conviction was right. *Held*, also, that as, under section 74, standing crops and ungathered products may, notwithstanding distraint, be reaped and gathered by the cultivator, *A.* had no right, even if he was acting *bonâ fide*, to restrain *C.* from cutting his crops. JHUMUK NONIAH *v.* SHADASHIB ROY [I. L. R., 7 Calc., 26

17. ——————— *Following up wounded game.*—*A.*, who had been warned off the lands of *B.*, subsequently, having shot a deer near the boundary of *B.'s* land, and the deer having run on to *B.'s* land, followed it on to such land for the purpose of killing it. *Held* that his doing so was not a criminal trespass. IN THE MATTER OF THE PETITION OF CHUNDER NARAIN *v.* FARQUHARSON [I. L. R., 4 Calc., 837

18. ——————— *Plying boat for hire near public ferry.*—A person plying a boat for hire at a distance of three miles from a public ferry cannot be said, with reference to such ferry, to commit "criminal trespass" within the meaning of that term in section 441 of the Penal Code. MUTHRA *v.* JAWAHIR . . . I. L. R., 1 All., 527

19. ——————— *Continuing exercise of right of fishery after prohibition.*—An act does not amount to criminal trespass under section 441 of the Penal Code, unless it was committed with an intention of committing some offence, or of intimidating, insulting, or annoying some one. Where a party had been exercising a right of fishery for a considerable time, alleging a prescriptive right, the mere fact of continuing to do so after a notice of prohibition is not criminal trespass. IN THE MATTER OF THE PETITION OF SHISTIDHUR PARUI [9 B. L. R., Ap., 19

SRISTEEDHUR PAROEE *v.* INDROBHOOSUN CHUCKERBUTTY . . . . . 18 W. R., 25

20. ——————— *Infringement of exclusive right of fishery in public river.*—The unlawful infringement of a right of exclusive fishery in a part of a public river is not an offence which can be brought within the definition of criminal trespass in the Penal Code. EMPRESS *v.* CHARU NAYIAH [I. L. R., 2 Calc., 354

21. ——— Penal Code, s. 443.—*Disobedience of illegal order of Municipal Commissioners.*—The accused were convicted of criminal tres-

CRIMINAL TRESPASS.—Penal Code, s. 443—*continued.*

pass, under section 443 of the Penal Code, for driving their carts across an open green in violation of an order issued by the Municipal Commissioners. *Held* that there was nothing to show that the Municipal Commissioners had authority to issue such an order, and that the breach of it was not criminally punishable. ANONYMOUS . **5 Mad., Ap., 38**

22. ——— **Penal Code, s. 447.**—*Cultivating waste land in village.*—The defendant was convicted, under section 447 of the Penal Code, for cultivating village waste land which he had been ordered by the Subordinate Collector to refrain from cultivating. The High Court upheld the conviction. ANONYMOUS . . . . **5 Mad., Ap., 17**

CROPS, GROWING—

See LIMITATION ACT, 1877, ART. 48 (1871, ART. 48.) **[I. L. R., 4 Calc., 665**

See SALE FOR ARREARS OF RENT—UNDER-TENURES, SALE OF. **[I. L. R., 4 Calc., 814**

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—MOVEABLE PROPERTY. **[5 B. L. R., 194**

CROPS, RIGHT TO—

See LANDLORD AND TENANT—RIGHT TO CROPS . . **I. L. R., 4 Calc., 890**
[3 Agra, 188
I. L. R., 5 Calc., 135

CROPS, SEIZURE OF—

See WRONGFUL DISTRAINT. **[3 B. L. R., A. C., 261**
I. L. R., 4 Calc., 890

CROPS, SUIT FOR VALUE OF—

See BENGAL RENT ACT, 1869, S. 98. **[I. L. R., 1 Calc., 183**

See CIVIL PROCEDURE CODE, 1882, S. 244—QUESTIONS IN EXECUTION OF DECREE. **[I. L. R., 4 Calc., 625**

See LIMITATION ACT, 1877, ART. 109. **[I. L. R., 4 Calc., 625**

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—CONTRACT. **[1 B. L. R., S. N., 13**

CROSS-DECREE.

See EXECUTION OF DECREE—EXECUTION ON OR AFTER AGREEMENTS OR COMPROMISES . . **3 B. L. R., Ap., 62**

See CASES UNDER SET-OFF—CROSS-DECREES.

CROSS-EXAMINATION.

See CASES UNDER WITNESS—CIVIL CASES—EXAMINATION OF WITNESSES—CROSS-EXAMINATION.

CROSS-EXAMINATION—*continued.*

See CASES UNDER WITNESS—CRIMINAL CASES—EXAMINATION OF WITNESSES—CROSS-EXAMINATION.

CROWN DEBTS.

——— *Insolvent Act (11 and 12 Vict., c. 21), s. 62.—Judgment-debt in name of Secretary of State for India in Council.*—A judgment-debt due to the Secretary of State for India in Council, arising out of transactions at a public sale of opium held by the Secretary of State for India in Council, is a debt in respect of Crown property, and therefore a "debt due to our Sovereign lady the Queen" within the meaning of section 62 of the Insolvent Act. In determining whether or no a debt falls under the denomination of a Crown debt, the question is not in whose name the debt stands, but whether the debt, when recovered, falls into the coffers of the State. Principle in *Secretary of State for India in Council* v. *The Bombay Landing and Shipping Company, 5 Bom., O. C., 23,* followed. JUDAH *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL . **I. L. R., 12 Calc., 445**

CRUELTY.

See DIVORCE ACT, S. 14.

See RESTITUTION OF CONJUGAL RIGHTS. **[I. L. R., 1 Bom., 164**

CULPABLE HOMICIDE.

See CHARGE TO JURY—SUMMING UP IN SPECIAL CASES—CULPABLE HOMICIDE. **[6 B. L. R., Ap., 86, 87, note**

See CRIMINAL PROCEDURE CODE, 1882, S. 376 (1872, S. 288). **[I. L. R., 1 Bom., 639**

See CASES UNDER MURDER.

——— **Conviction for, on charge of murder.**

See APPEAL IN CRIMINAL CASES—ACQUITTALS, APPEALS FROM. **[I. L. R., 2 Calc., 273**

1. ——— **Provocation.**—*Beating.—Deliberation.*—A person who beats another brutally and continuously, so that death results, is guilty of murder, or culpable homicide not amounting to murder, according as there may or may not have been grave provocation. QUEEN *v.* TEPRA FAKEER **[5 W. R., Cr., 78**

2. ——— *Penal Code, s. 300.*—Culpable homicide, though committed under provocation, will amount to murder, unless it is proved not only that the act was done under the influence of some feeling which took away from the person doing it all control over his actions, but that that feeling had an adequate cause. QUEEN *v.* HARI GIRI **[1 B. L. R., A. Cr., 11: 10 W. R., Cr., 26**

3. ——— *Grave and sudden provocation.—Murder.*—Culpable homicide not amounting to murder is when a man kills another on being deprived of self-control by reason of grave

CULPABLE HOMICIDE.—Provocation— *continued.*

and sudden provocation. But when the act is done after the first excitement had passed away, and there was time to cool, it is murder. QUEEN *v.* YASIN SHEIKH

[4 B. L. R., A. Cr., 6: 12 W. R., Cr., 68

4. ——— *Penal Code, s. 300.*—The provocation contemplated by section 300 of the Penal Code should be of a character to deprive the offender of his self-control. In determining whether it was so, it is admissible to take into account the condition of mind in which the offender was at the time of the provocation. EMPRESS *v.* KHOGAYI

[I. L. R., 2 Mad., 122

5. ——— *Sudden provocation.—Penal Code, s. 300, excep. 1.*—To enable a person to plead the extenuating circumstances provided for in section 300, Penal Code, exception 1, the provocation and its effects must be sudden as well as grave, and the deprivation of the power of self-control must continue in order to benefit a man who kills another under circumstances of grave provocation. QUEEN *v.* BECHOO SAOUT . . 19 W. R., Cr., 35

6. ——— *Grave provocation.—Interval between provocation and attack.*—Where a man suddenly cut his wife's throat, it was held that, in order to establish that the act was not done under grave provocation so as to bring the case under exception 1 of section 300 of the Penal Code, it is not sufficient to state that the deceased ceased abusing the prisoner then, but it is necessary to show what interval elapsed between the time when the deceased ceased to speak and the instant when the prisoner attacked her. The offence in this case held to be culpable homicide. QUEEN *v.* NOKUL NUSHYO

[7 W. R., Cr., 27

7. ——— *Sudden fight.*—Where it appeared in the case of a person charged with murder, that while smarting from a severe blow from a stick in the midst of a sudden fight, and possibly apprehensive of future violence, finding a knife at hand, he took it up, and in the *mêlée* inflicted the wound which caused the death of the deceased,—*Held* that, under the circumstances, the accused was guilty, under the Penal Code, section 304, of culpable homicide not amounting to murder. QUEEN *v.* SOMIRUDDIN . . . . . 24 W. R., Cr., 48

8. ——— *Hasty and fatal blow.*—The prisoner having struck the deceased a hasty but fatal blow with a stick in his hand at the time for abusing his mother, was held guilty of culpable homicide not amounting to murder. QUEEN *v.* SULEEM . . . . . 1 W. R., Cr., 23

9. ——— *Grave provocation.*—The prisoners found the deceased lying in the same bed with their sister and ill-treated him, from the effects of which ill-treatment he died.—*Held* that the provocation was sufficiently grave to justify a conviction of culpable homicide not amounting to murder. QUEEN *v.* KASSEEMODDEEN

[4 W. R., Cr., 38

QUEEN *v.* MAITHYA GAZEE . 6 W. R., Cr., 42

CULPABLE HOMICIDE.—Provocation— *continued.*

10. ——— *Grave provocation.—Husband finding wife in adultery.*—Two prisoners confessed that having caught the deceased in the act of having sexual intercourse with the wife of one of them, they then and there killed him.—*Held*, that the grave provocation given reduced the crime from murder to culpable homicide not amounting to murder. QUEEN *v.* GOUR CHUND POLIE

[1 W. R., Cr., 17

11. ——— *Grave provocation.—Husband finding wife in adultery.*—Where a prisoner confessed that he did not suspect his wife's fidelity; that he left home on business; that on his return he saw what convinced him of his wife's infidelity; and that, maddened at the sight, he killed both her and her paramour,—*Held*, that he was guilty of culpable homicide not amounting to murder, and that the case was one in which he ought to be treated with lenity. QUEEN *v.* BOODHOO

[8 W. R., Cr., 38

12. ——— *Grave provocation.—Husband seeing wife seduced to adultery.*—The wife of the prisoner had been forcibly taken to the house of the deceased, a native physician, who alleged that her presence was necessary to the due performance of certain incantations. The prisoner, armed with a sword, and watching from the roof of the house, saw his wife being actually violated by the deceased. He jumped down from the roof, and struck deceased with his sword in several places, from the effects of which he died,—*Held* that the prisoner's conviction for murder could not be sustained. The offence committed was culpable homicide not amounting to murder. QUEEN *v.* RAMTAHAL KAHAR . . . 3 B. L. R., A. Cr., 33

13. ——— *Grave provocation.—Husband seeing wife in adultery.—Deliberation.*—On a certain evening, *M.*, a common workman, saw *N.* committing adultery with his (*M.'s*) wife, and on the following morning, while labouring under the excitement provoked by their misconduct, came upon them eating food together, while his wife had neglected to provide food for *M.* *M.* took up a bill-hook and killed *N.* on the spot,—*Held* that, if *M.* connected the subsequent conduct of *N.* and his wife with their misconduct of the preceding evening and regarded it as implying an open avowal of their criminal relations, which, under the circumstances, he might have done, the provocation was sufficiently grave and sudden to deprive him of self-control, and to reduce the offence from murder to culpable homicide not amounting to murder. BOYA MUNIGADU *v.* QUEEN . . . . . I. L. R., 3 Mad., 33

14. ——— **Right of private defence.**—*Penal Code, ss. 97, 99, and 104.*—When the accused, whose property had frequently been stolen, went out with a *latee* to watch his property, and with the *latee* struck a thief, who died from the effects of the blows, it was held (having regard to the nature of the injuries inflicted and to the subsequent conduct of the accused) that the case did not fall within the 4th exception to section 99, and that the prisoner was

CULPABLE HOMICIDE.—Right of private defence—*continued.*

not guilty of culpable homicide not amounting to murder, but was protected by sections 97 and 104 of the Penal Code, and had not exceeded the legal right of private defence of property. QUEEN *v.* MOKEE . . . . **12 W. R., Cr., 15**

15. ———— *Search by police for stolen property.—Apprehended violence.*—A head constable, making an investigation into a case of house-breaking and theft, searched the tents of certain gipsies for the stolen property, but discovered nothing. After he had completed the search, the gipsies gave him a certain sum of money, which he accepted, but at the same time, not deeming it sufficient, he demanded a further sum from them. They refused to give anything more on the ground that they were poor and had no more to give. Thereupon he unlawfully ordered one of them to be bound and taken away. On his subordinates' proceeding to execute such order, all the gipsies in the camp, men, women, and children, turned out, some four or five of the men being armed with sticks and stones, and advanced in a threatening manner towards the place where such gipsy was being bound and the head constable was standing. Before any actual violence was used by the crowd of advancing gipsies the head constable fired with a gun at such crowd, when it was about five paces from him, and killed one of the gipsies, and, having done so, ran away. Any apprehension that death or grievous hurt would be the consequence of the acts of such crowd would have ceased had he released the gipsy he had unlawfully arrested and withdrawn himself and his subordinates, or had he effected his escape. *Held* that such head constable had not a right of private defence against the acts of such gipsies, as those acts did not reasonably cause the apprehension that death or grevious hurt would be their consequence, and such head constable was guilty of culpable homicide amounting to murder. EMPRESS OF INDIA *v.* ABDUL HAKIM **[I. L. R., 3 All., 253**

16. ———— Killing outlaw while endeavouring to escape.—*Penal Code, s. 300, excep. 3.*—The prisoners, fearful of being punished if they allowed him to escape, and thinking that they were acting lawfully, in furtherance of a plan arranged for them by a police constable and the lumberdar of a village for the capture of an outlaw, for whose arrest a reward had been offered, and in pursuance thereof, killed him, while endeavouring to escape. *Held* that the offence committed came under the third exception in section 300 of the Penal Code, and was culpable homicide not amounting to murder. QUEEN *v.* AMAN . . . **5 N. W., 130**

17. ———— Unpremeditated assault.—*Penal Code, s. 300, excep. 4.*—An unpremeditated assault, ending in an affray in which death is caused, committed in the heat of passion upon a sudden quarrel, comes within exception 4 of section 300 of the Penal Code. It is immaterial which party offered the provocation or committed the first assault. QUEEN *v.* ZALIM RAI . . . **1 W. R., Cr., 33**

CULPABLE HOMICIDE—*continued.*

18. ———— Inflicting injury not sufficient to cause death.—*Want of intention to cause death.—Penal Code, ss. 299, 300.*—Where the prisoner knocked his wife down, put one knee on her chest, and struck her two or three violent blows on the face with the closed fist, producing extravasation of blood on the brain, and she died in consequence, either on the spot, or very shortly afterwards,—*Held,* that there being no intention to cause death, and the bodily injury not being sufficient in the ordinary course of nature to cause death, the offence committed by the prisoner was not murder, but culpable homicide not amounting to murder. REG. *v.* GOVINDA . . . . **I. L. R., 1 Bom., 342**

19. ———— Grievous hurt.—*Blow causing injury not intended.*—An accused struck a woman, carrying an infant in her arms, violently over head and shoulders. One of the blows fell on the child's head, causing death. *Held* that the accused was not guilty of culpable homicide not amounting to murder but had committed hurt on the infant under circumstances of sufficient aggravation to bring the offence within the definition of grievous hurt. EMPRESS *v.* SAHAE RAE **[I. L. R., 3 Calc., 623: 2 C. L. R., 304**

20. ———— *Death from violent attack.*—Where death has resulted from a violent attack, the Magistrate is bound to commit to the Court of Session, on a charge of culpable homicide not amounting to murder. Conviction of grievous hurt in such a case is contrary to law. IN THE MATTER OF GOPI NATH SHAHA . **1 C. L. R., 141**

21. ———— Consenting to act likely to cause death.—*Murder.—Penal Code, s. 300, excep. 5.*—Exception 5 to section 300 refers to cases where a man consents to submit to the doing of some particular act, either knowing that it will certainly cause death, or that death will be the likely result; but it does not refer to the running of a risk of death from something which a man intends to avert if he possibly can do so, even by causing the death of the person from whom the danger is to be anticipated. *Per* BROUGHTON, *J.*—Exception 5 to section 300 is not applicable to the case of a premeditated fight, but points to a case of a different character, such as *suttee.* EMPRESS *v.* ROHIMUDDIN **[I. L. R., 5 Calc., 31: 4 C. L. R., 285**

22. ———— Riot.—*Unlawful assembly.—Fight between two contending factions, each armed with deadly weapons.—Penal Code (Act XLV of 1860), s. 300, excep. 5.*—Where death results in a fight between two bodies of men deliberately fighting together, a greater proportion of the men composing both sides being armed with deadly weapons, and it being further apparent from the evidence that the man slain was an adult, and that no unfair advantage was taken by the one side or the other during the fight, the offence committed is culpable homicide, but does not amount to murder. SAMSHERE KHAN *v.* EMPRESS **[I. L. R., 6 Calc., 154: 8 C. L. R., 158**

CULPABLE HOMICIDE—*continued.*

23. ——— **Subjecting person of full age to emasculation.**—When a man of full age (*i.e.*, above 18 years) submits himself to emasculation, performed neither by a skilful hand, nor in the least dangerous way, and dies from the injury, the persons concerned in the act are guilty of culpable homicide not amounting to murder. QUEEN *v.* BABOOLUN HIJRAH . . **5 W. R., Cr., 7**

24. ——— **Knowledge of likelihood to cause death.**—*Premeditation.*—Where a person snatches up a log of heavy wood, and strikes another with it on a vital part, with so much force and vindictiveness as to cause that other person's death almost on the spot, the act must be held to have been done with the knowledge that it was likely to cause death; but if done without premeditation, in the heat of passion on a sudden quarrel, the offence committed is culpable homicide not amounting to murder. QUEEN *v.* RAJOO GHOSE . **7 W. R., Cr., 106**

25. ——— *Taking persons in old boat.—Negligence.—Penal Code, s. 299.*—Certain persons whom the accused, a ferryman, was rowing across a river were drowned by the sinking of the boat which was an old one with holes in it over which planks had been nailed,—*Held* that the prisoner could not be convicted of culpable homicide not amounting to murder, unless it could be shown that he acted with the knowledge that he was likely, by taking them in the boat, to cause death within the terms of section 299 of the Penal Code. QUEEN *v.* MAGENEE BEHARA . . . **11 W. R., Cr., 3**

26. ——— The knowledge that an act is likely to cause death does not constitute culpable homicide amounting to murder. It must be shown that the act was committed with the knowledge that it must in all probability cause death. QUEEN *v.* GIRDHAREE SING . . **6 N. W., 26**

27. ——— **Act likely to cause death.**—*Penal Code, ss. 304 and 304(a).—Assault on thief.*—The prisoners assaulted a thief so severely that he died. One hundred and forty-one marks of separate blows were found on the body of the deceased, and several of his ribs were broken. *Held* that section 304(*a*) of the Penal Code was not applicable to the circumstances of the case, and that, taking the offence out of the category of murder, it must still come under section 304. QUEEN *v.* MAN **[5 N. W., 235**

28. ——— *Causing death by branding a thief.—Dangerous act.*—Causing death by branding a thief without the knowledge that the act was so imminently dangerous that it would in all probability cause death, or such bodily injury as was likely to cause death, is punishable under section 304 of the Penal Code as culpable homicide not amounting to murder. QUEEN *v.* KHEDUN MISSER **[7 W. R., Cr., 54**

29. ——— *Penal Code, s. 304(a).—Administering milk to child in such quantity as to kill it.—Rash and negligent act.—Knowledge of consequences.*—Where there was medical evidence to show that milk had been administered to a child in such quantities as to kill it, but there was no evidence to show that the milk was administered by the orders of the mother, or that she knew the quantity that was being administered.—*Held* that there was not sufficient evidence to bring her within section 304(*a*) of the Penal Code. The Sessions Judge found that the mother could not have been ignorant of the fact that her child was being over-fed, or of the probable consequences of such over-feeding; such feeding was inconsistent with the terms of section 304(*a*) which provides for the causing of death by any rash or negligent act, not amounting to murder. What a man does with the knowledge that the consequences will be likely to cause death, cannot be reduced to a simply rash and negligent act. QUEEN *v.* PEMKOER . . . . . **5 N. W., 38**

CULPABLE HOMICIDE—**Knowledge of likelihood to cause death**—*continued.*

30. ——— *Intention to cause injury likely to result in death.—Causing death by rash act.—Culpable rashness.—Culpable negligence.*—Prisoner killed his mother by beating and kicking her. The Sessions Judge found that the death resulted from brutal beating and kicking, but acquitted of culpable homicide, because the violence was not such as the prisoner must have known to be likely to cause death. *Held* that this was no ground for acquitting of culpable homicide not amounting to murder: the question for the Judge was whether the act was done with the intention of causing bodily injury which was likely to cause death. The Sessions Judge convicted the prisoner on the charge of causing death by a rash act. *Held* that the section was wholly inapplicable. "Culpable rashness" and "culpable negligence" distinguished. QUEEN *v.* NIDAMARTI NAGABHUSHANAM . **7 Mad., 119**

31. ——— *Penal Code, ss. 299, 304, and 323.—Voluntarily causing hurt.—Spleen disease.*—Where a person hurt another, who was suffering from spleen disease, intentionally, but without the intention of causing death, or causing such bodily injury as was likely to cause death, or the knowledge that he was likely by his act to cause death, and by his act caused the death of such other person,—*Held* that he was not guilty of culpable homicide and properly convicted under section 323 of the Penal Code of voluntarily causing hurt. EMPRESS OF INDIA *v.* FOX . . **I. L. R., 2 All., 522**

32. ——— *Penal Code, ss. 304, 325.—Voluntarily causing hurt.—Causing death by negligence.—Spleen disease.*—*B.* voluntarily caused hurt to *N.*, who was suffering from spleen disease, knowing himself to be likely to cause grievous hurt, but without the intention of causing death, or causing such bodily injury as was likely to cause death, or the knowledge that he was likely by his act to cause death, and caused grievous hurt to *N.*, from which *N.* died. *Held* that *B.* ought not to be convicted under section 304(*a*) of the Penal Code of causing death by negligence, but under section 325 of that Code of voluntarily causing grievous hurt. EMPRESS OF INDIA *v.* O'BRIEN **[I. L. R., 2 All., 766**

CULPABLE HOMICIDE.—Knowledge of likelihood to cause death—*continued.*

33. ——————— *Penal Code, ss. 304(a), 323.—Causing death by a rash or negligent act.—Voluntarily causing hurt.*—A person, without the intention to cause death, or to cause such bodily injury as was likely to cause death, or the knowledge that he was likely by his act to cause death, or the intention to cause grievous hurt, or the knowledge that he was likely by his act to cause grievous hurt, but with the intention of causing hurt, caused the death of another person by throwing a piece of a brick at him, which struck him in the region of the spleen and ruptured it, the spleen being diseased. *Held* that the offence committed was not the offence of causing death by a rash or negligent act, but the offence of voluntarily causing hurt. EMPRESS OF INDIA *v.* RANDHIR SINGH . **I. L. R., 3 All., 597**

34. ——————— *Penal Code, ss. 299, 300, 302, 304(a), 325.—Causing death by rash or negligent act.—Grievous hurt.*—Where a person struck another a blow which caused death, without any intention of causing death, or of causing such bodily injury as was likely to cause death, or the knowledge that he was likely by such act to cause death, but with the intention of causing grievous hurt,—*Held* that the offence of which such person was guilty was not the offence of causing death by a rash act, but the offence of voluntarily causing grievous hurt. *Queen* v. *Nidarmarti Nagabhushanam, 7 Mad., 119; Queen* v. *Pemkoer, 5 N. W., 38; Queen* v. *Man, 5 N. W., 235; Empress* v. *Ketabdi Mundul, I. L. R., 4 Calc., 764; Empress* v. *Fox, I. L. R., 2 All., 522;* and *Empress* v. *O'Brien, I. L. R., 2 All., 766,* followed. The offences of murder, culpable homicide not amounting to murder, and causing death by a rash or negligent act, distinguished. EMPRESS OF INDIA *v.* IDU BEG **I. L. R., 3 All., 776**

35. ——————— *Penal Code, s. 304(a).—Doing act with rashness and negligence.*—Where an accused was charged with culpable homicide, and the evidence showed that the deceased had an enlarged spleen, and that his death was caused by rupture of the spleen occasioned by blows inflicted by the accused on the body of the deceased,—*Held* that it was not sufficient, in order to find the accused guilty of a rash act under section 304(*a*) of the Penal Code, that the jury should be satisfied only of the prevalence of the disease of enlargement of the spleen in the district, and infer therefrom criminal rashness in beating the deceased; but that they should also be satisfied that the accused was aware of the prevalence of such disease in the district, and also aware of the risk to life involved in striking a person afflicted with that disease. EMPRESS *v.* SAFATULLA . . . **I. L. R., 4 Calc., 815**

36. ——————— *Penal Code, s. 304(a).—Penal Code, ss. 336, 337, and 338.—Rashness.—Negligence.*—Section 304(*a*) of the Penal Code does not apply to a case in which there has been the voluntary commission of an offence against the person. If a man intentionally commits such an offence, and consequences beyond his immediate purpose result, it is for the Court to determine how far he can be held to have the knowledge that he was likely by such act to cause the actual result: and if such knowledge can be imputed, the result is not to be attributed to mere rashness; if it cannot be imputed, still the wilful offence does not take the character of rashness, because its consequences have been unfortunate. Acts, probably or possibly involving danger to others, but which in themselves are not offences, may be offences under sections 336, 337, 338, or 304(*a*) if done without due care to guard against the dangerous consequences. Acts which are offences in themselves must be judged with regard to the knowledge, or means of knowledge, of the offender and placed in their appropriate place in the class of offences of the same character. EMPRESS *v.* KETABDI MUNDUL **[I. L. R., 4 Calc., 764**

37. ——————— *Penal Code, s. 304(a).—Act done in course of dispute.*—In the course of a trivial dispute the accused gave the deceased a severe push on the back which caused him to fall to the road below, a distance of two and a half cubits. In falling the deceased sustained an injury from which tetanus resulted which caused his death on the fifth day after. *Held* that on these facts the accused was not guilty of the offence described in section 304(*a*) of the Penal Code, nor of culpable homicide not amounting to murder, because there was no likelihood of the result following, and *à fortiori,* no designed causing of it. REG. *v.* ACHARJYS . . . **I. L. R., 1 Mad., 224**

38. ——————— *Penal Code, s. 304(a).—Causing death by a rash or negligent act.*—*N.*, a servant of a railway company, charged with moving some trucks by coolies on an incline, discharged this duty negligently, and in consequence lost control of the trucks. Under his orders one of the coolies attempted to stop the trucks, and was killed in such attempt. *Held* that *A.* had caused the coolie's death by his negligence, within the meaning of section 304(*a*) of the Penal Code. *Reg.* v. *Longbottom, 3 Cox, C. C., 439; Reg.* v. *Swindall, 2 C. & K., 230; Reg.* v. *Williamson, 1 Cox, C. C., 97,* referred to. QUEEN-EMPRESS *v.* NAND KISHORE **[I. L. R., 6 All., 248**

39. ——— **Form of conviction.**—*Penal Code, s. 300.—Exceptions.*—When a Judge convicts on the charge of culpable homicide not amounting to murder, he should record under which of the exceptions in section 300 of the Penal Code the case falls. GOVERNMENT *v.* KALIKA MISSER . **1 Agra, Cr., 3**

CUMULATIVE SENTENCE.

See CASES UNDER SENTENCE—CUMULATIVE SENTENCES.

See WHIPPING.

[B. L. R., Sup. Vol., 951
7 B. L. R., 165
5 Bom., Cr., 83

CUSTODY OF CHILDREN.

See DIVORCE ACT, S. 41 . 6 B. L. R., 318

See CASES UNDER HINDU LAW—GUARDIAN.

See CASES UNDER MAHOMEDAN LAW—GUARDIAN.

See MAINTENANCE, ORDER OF CRIMINAL COURT FOR . I. L. R., 4 Calc., 374

See MALABAR LAW—CUSTODY OF CHILD. [7 Mad., 179

See CASES UNDER MINOR—CUSTODY OF MINOR.

1. ——— **Father's right to custody.**—*Legitimate children.—English law previous to stat. 2 & 3 Vict., c. 39.*—The father, if a proper person, cannot be deprived of his legal right to the custody of his legitimate children of whatever age. 2 and 3 Victoria, Cap. 39, which gives a discretionary power to a Judge in England, has not been extended to this country; therefore the law applicable to cases which occurred in England previous to the passing of that statute is applicable here. IN THE MATTER OF HOLMES . . . . . 1 Hyde, 99

2. ——— *Jurisdiction of High Court.—Improper guardian.*—The High Court, in its equitable jurisdiction, has authority to interfere with the legal right of a father to the custody of his child, if he be an improper person. IN RE CARRAU . . . . . 1 Hyde, 143

3. ——— *Hindu father convert to Christianity.*—A Hindu father is not deprived of his right to the custody of his children by reason of his conversion to Christianity. MUCHOO *v.* ARZOON SAHOO . . . . . 5 W. R., 235

4. ——— *Custody of mother.—Taking child from place to place.*—A mother cannot have a right to the custody of her legitimate children adversely to the father. Ordinarily the custody of the mother is the custody of the father, and any removal of the children from place to place by the mother ought to be taken to be consistent with the right of the father as guardian, and not as a taking out of his keeping. IN THE MATTER OF THE PETITION OF PRANKRISHNA SURMA. EMPRESS *v.* PRANKRISHNA SURMA . I. L. R., 8 Calc., 969 [11 C. L. R., 6

5. ——— *Order by Criminal Court.—Question for Civil Court.*—A father having applied to a Criminal Court for the custody of his child, who was eleven years old and had always lived with the mother, and the Court having caused the child to be delivered up to the father,—*Held* that the Court was in the wrong, the question being one that ought to be decided in the Civil Court. KOOLSUN BIBEE *v.* EDOO . . 25 W. R., Cr., 35

6. ——— *Order of Magistrate as to custody of illegitimate child.—Ground for stopping maintenance under order of Magistrate.*—There is nothing in the Criminal Procedure Code which would warrant a Magistrate in ordering a mother to surrender her illegitimate child to its father, although such child be of the age of maturity. A refusal by the mother to make over the custody of the child in such a case would be no ground for stopping an allowance previously ordered. LAL DAS *v.* NEKUNJO BHAISHIANI . I. L. R., 4 Calc., 374

CUSTODY OF CHILDREN.—Father's right to custody—*continued.*

7. ——— **Mother's right to custody.**—*Guardian.—Act IX of 1861.—Marriage of Mahomedan mother with Christian in Mahomedan form.*—A child, the offspring of a Christian marriage, was living after her father's death under the protection of her mother. A married man, a Christian, came to live with her mother, and, in order to legalize their intercourse, he and the mother became Mahomedans, and were married in Mahomedan form. About three years after, when the child had attained the age of fourteen, some of her relatives applied for an order, under Act IX of 1861, that the girl be removed from the guardianship of the mother and her second husband and placed under a Christian guardian. The girl deposed that she wished to remain with her mother and to become a Mahomedan. *Held*, by the High Court in granting the application and appointing a guardian in place of her mother, that a Judge, in the exercise of his jurisdiction under the Act, is justified in having respect to the religion professed by the father of a minor, and in passing such orders with regard to the custody of the person of such minor as he may hold to be in accordance with what would have been the minor's father's wishes had he been alive to express them. Where a mother under colour of a change of religion forms a connection or leads a life which, by persons professing her husband's faith, would be deemed immoral, she thereby ceases to be a proper person to be entrusted with the education of the children of her deceased husband. If the Court finds a case made out for its interference, it will not be deterred from the exercise of its powers because the persons setting it in motion may be actuated by motives other than the interests of the minor. Special leave having been given to appeal to the Privy Council, the order was upheld. SKINNER *v.* ORDE [10 B. L. R., 125
14 Moore's I. A., 309 : 17 W. R., 77
S. C. In High Court . . 2 N. W., 275

CUSTODY OF WIFE.

See MAHOMEDAN LAW—CUSTODY OF WIFE. [5 B. L. R., 557
13 B. L. R., 160

CUSTOM.

See FISHERY RIGHTS. [I. L. R., 2 Bom., 19

See GUARANTEE . I. L. R., 5 Calc., 421

See CASES UNDER HINDU LAW—CUSTOM.

See HINDU LAW—ENDOWMENT—SUCCESSION IN MANAGEMENT. [I. L. R., 2 Calc., 365

See HINDU LAW—MARRIAGE. [I. L. R., 3 Calc., 305

See HUNDI—NOTICE OF DISHONOUR. [9 B. L. R., Ap., 1

CUSTOM—*continued.*

See CASES UNDER MAHOMEDAN LAW—CUSTOM.

See MAHOMEDAN LAW—DOWER. [I. L. R., 1 All., 483, 506

See CASES UNDER MAHOMEDAN LAW—PRE-EMPTION—RIGHT OF PRE-EMPTION—GENERALLY. [B. L. R., Sup. Vol., 35 : 8 B. L. R., 455

See CASES UNDER MALABAR LAW—CUSTOM.

See MALABAR LAW—ENDOWMENT. [I. L. R., 1 Mad., 235

See RES JUDICATA—CAUSES OF ACTION. [I. L. R., 4 Calc., 190

——— **Evidence of**—

See EVIDENCE ACT, 1872, s. 32, CL. 7. [10 B. L. R., 263

See EVIDENCE ACT, 1872, s. 35. [I. L. R., 5 Calc., 744

1. ——— **Origin of custom.**—A custom to be valid must be ancient, must have been continued and acquiesced in, and must be reasonable and certain. LALA *v.* HIRA SINGH [I. L. R., 2 All., 49

2. ——— **Effect of custom.**—*Written Contract.*—Custom cannot affect the express terms of a written contract. INDUR CHUNDER DUGAR *v.* LACHMI BIBI . 7 B. L. R., 682 : 15 W. R., 501

3. ——— *Custom contrary to law of inheritance,*—Custom, when it is ancient, invariable, and established by clear and positive proof, overrides the usual law of inheritance. KUSTOORA KOOMAREE *v.* MONOHUR DEO. GOVERNMENT *v.* MONOHUR DEO . . . W. R., 1864, 39

4. ——— *Custom regulating succession, Proof of.*—If it is contended that the succession to property is regulated by any special family custom, that custom ought to be alleged and proved with distinctness and certainty. SERUMAH UMAH *v.* PALATHAN VITIL MARYA COOTHY UMAH [15 W. R., P. C., 47

5. ——— *Family custom.*—*Intermarriages.*—To establish a family custom at variance with the ordinary law of inheritance, it is necessary to show that the usage is ancient and has been invariable, and it should be established by clear and positive proof. NUGENDER NARAIN *v.* RUGHOONATH NARAIN DEY . . W. R., 1864, 20

6. ——— *Custom contrary to Hindu law.*—Where a custom according to which the Rajahs of Beerbhoom had granted a right to a share of property described as "Bhabak mehals" appeared to have been always recognized by the Courts, it was maintained, notwithstanding that it was in contravention of the ordinary Hindu law. NIL MADHUB GOSSAMEE *v.* CHUNDER MOOKHEE GOSSAMEE . . . . . 22 W. R., 397

CUSTOM.—Effect of custom—*continued.*

7. ——— *Custom contrary to Limitation Acts.*—No custom can be admitted to override the provisions of the Limitation Act. MOHANLAL JECHAND *v.* AMRATLAL BECHARDAS [I. L. R., 3 Bom., 174

8. ——— *Inheritance.*—*Converts from Hindu to Mahomedan religion.*—*Custom at variance with law.*—The general presumption, arising from the intimate connection between law and religion in the Mahomedan faith, is that the Mahomedan law governs converts from the Hindu religion to Mahomedanism. But a well-established custom in the case of such converts to follow their old Hindu law of inheritance would override that general presumption, and a usage establishing a special rule of inheritance as regards a special kind of property would be given the force of law, even though it be at variance with both Hindu and Mahomedan laws. MAHOMED SIDICK *v.* HAJI AHMED. HAJI ABDULA HAJI ABDSTATAR *v.* HAJI AHMED . I. L. R., 10 Bom., 1

9. ——— **Evidence of custom.**—*Mercantile usage.*—Proof of mercantile usage needs not either the antiquity, the uniformity, or the notoriety of custom which, in respect of all these, becomes a local law. The usage may be still in course of growth; it may require evidence for its support in each case; but in the result it is enough if it appear to be so well known and acquiesced in that it may be reasonably presumed to have been an ingredient tacitly imported by the parties into their contract. JUGGOMOHUN GHOSE *v.* MANICK CHUND [4 W. R., P. C., 8 7 Moore's I. A., 263

10. ——— *Family usage.*—*Custom repugnant to law.*—Evidence of the acts of a single family, repugnant or antagonistic to the general law, will not establish a valid custom or usage enforceable in a Court of Justice. *Tara Chand* v. *Reeb Ram, 3 Mad., 50,* followed. MADHAVRAV RAGHAVENDRA *v.* BALKRISHNA RAGHAVENDRA . . . . . 4 Bom., A. C., 113

11. ——— *Family custom.*—*Intermarriages.*—A family custom as to intermarriages, being matter of family history, may be proved by declarations made by members of the family. NUGGENDUR NARAIN *v.* RUGHOONATH NARAIN DEY . . . . . W. R., 1864, 20

12. ——— *Mahomedan law of succession.*—*Law in Malabar as to right to superintend mosques.*—In Malabar, when the right to superintend a mosque is in dispute, the Mahomedan law of succession must be applied, unless a custom to the contrary is proved. Proof that the management of most mosques in a certain district is in the hands of persons who would inherit under the Maramakkatayam law will not warrant a finding of the existence of such a custom in such district. KUNHI BIVI *v.* ABDUL AZIZ . . I. L. R., 6 Mad., 103

13. ——— *Land separated from estate by change in course of river.*—When a party claims land separated from his estate by a

CUSTOM.—Evidence of custom—*continued.*

change in the course of a river upon the ground of immemorial custom, he must prove such custom. The canoongo papers are not sufficient evidence to prove immemorial custom. The proceedings shewing that such custom obtains on the banks of one river, will be no evidence to prove that it obtains on the banks of another. RAI MANIK CHAND *v.* MADHORAM . . . 3 B. L. R., P. C., 5
[11 W. R., P. C., 42
13 Moore's I. A., 1

See also BISSESSURNATH *v.* MOHESSAR BUX SINGH . . . . 11 B. L. R., 265
[18 W. R., 160
L. R. I. A., Sup. Vol., 34

14. ——————— *Custom as to transferability of tenures.*—In an enquiry as to whether tenures of a certain class are transferable according to local custom, it is sufficient if there is credible evidence of the existence and antiquity of the custom, and none to the contrary; there is no necessity for the witnesses to fix any particular time from which such tenures became transferable. JOY KISHEN MOOKERJEE *v.* DOORGA NARAIN NAG
[11 W. R., 349

15. ——————— *Pre-emption.—Proceedings in former suits.*—The proceedings in two former suits where, under similar circumstances, though the exercise of the right was disputed on other grounds, the right of pre-emption was admitted to exist, may be received in evidence in support of the custom. MADHUB CHUNDER NATH BISWAS *v.* TOMEE BEWAH . . . . 7 W. R., 210

16. ——————— *"Haqq-i-chaharum."—Private sale.—Sale in execution of decree.*—Proof of a custom whereby the zemindar of a village is entitled to one-fourth of the purchase-money when a house in the village is sold privately is not proof of a similar custom in respect of sales in execution of decrees. KALIAN DAS *v.* BHAGIRATHI
[I. L. R., 6 All., 47

17. ——————— *Right to timber washed ashore.—Wreck.—Lords of manor.*—Where a plaintiffs ued for damages for value of timber carried away by Government after being washed on to his estate, and to have his right declared as against Government to all timber that in the future may be washed on to his estate,—*Held* that it was not necessary for plaintiff to produce documentary evidence in support of the right, or some decree or decision of competent authority establishing the custom. Lords of manors are allowed to establish rights to wrecks, &c., by long-continued and adverse assertion of, and enjoyment under, such claim; and the plaintiff was entitled to have the question tried by the evidence he had adduced. CHUTTUR LALL SINGH *v.* GOVERNMENT . . . . . 9 W. R., 97

18. ——————— *Local custom.—Bom. Reg. IV of 1827, s. 26.*—By section 26, Regulation IV of 1827 (Bombay), the usage of the district in which a suit may arise takes precedence over the law of the defendant in the determination of civil suits. By local custom in the Broach district, wuqf

CUSTOM.—Evidence of custom—*continued.*

land left as a religious endowment may be mortgaged, although such practice is contrary to Mahomedan law. ABAS ALI ZENUL ABADIN *v.* GHULAM MUHAMMAD . . . . . 1 Bom., 36

19. ——————— *Custom of inheritance to bhagdari tenures in the Broach district.*—The custom in the Broach District of male first cousins succeeding to property held on the bhagdari tenure in preference to daughters or sisters, upheld in a case in which the bhagdars were Mahomedans. BAI KHEDU *v.* DASU LALL
[5 Bom., A. C., 123

20. ——————— *Bhagdari tenures in Broach.—Inheritance.—Special custom.—Priority of nearest male relative to daughter or sister.*—The plaintiff, as heir of her father (a deceased Hindu bhagdar), sued the sons of sisters of her father's paternal uncle for possession of certain bhagdari lands situate in a village in the Broach collectorate. The defendants pleaded that they were entitled to the property under a special custom regulating the succession to bhagdari lands in the collectorate of Broach, under which custom, on the death of a bhagdar, whether Hindu or Mahomedan, without male issue, his nearest male relations (after the death of his widow), whether sprung through male or female relatives of the deceased bhagdar, succeed to his bhagdari lands to the exclusion of his daughter or sister. *Held* that the custom alleged was sufficiently proved, and that the defendants were entitled to retain possession of the bhagdar lands in question. *Per curiam.*—The custom alleged being, if not universal, at least general, in the Broach collectorate, it should, in the case of any particular village, at any rate on evidence being given of its continuance in other similar adjacent villages, if not in the particular village itself (though it would always be more satisfactory if this could be done)—be held still to survive, unless and until the opposite party proved the adoption of some other custom, or of the ordinary rules of inheritance, in the particular village, or, failing such proof, the general prevalence of such rules or such opposing custom in other similar adjacent villages. *Quære,*—Whether males sprung of male relatives of a deceased bhagdar have priority over males sprung of female relatives of the same. *Quære,*—Whether a daughter or sister of a deceased bhagdar is wholly excluded, by the custom, from the line of inheritance, or would, on failure of male relations, succeed to the bhagdari lands. PRANJIVAN DAYARAM *v.* BAI REVA
[I. L. R., 5 Bom., 482

21. ——————— *Wajib-ul-urz.—Evidence of village custom.*—A wajib-ul-urz is not a mere contract, it is a record-of-rights made by a public servant; and therefore, without attestation or execution by the proprietors of the mouzah, it is entitled to weight as evidence of village custom. JABEER DUT *v.* ENAIT ALI . . 2 N. W., 395

22. ——————— *Cess, Levy of.—Wajib-ul-urz.—Held* that the mention of the cess in a wajib-ul-urz is not conclusive proof of the custom or usage which gives the right to levy the cess against persons not parties to it. RAM CHUND *v.* ZAHOOR ALI KHAN . 1 Agra, 134, 135

CUSTOM.—Evidence of custom—*continued.*

23. ——————— The wajib-ul-urz binds co-parceners who have verified and attested it, and is so far evidence of custom between co-parceners, but is not a conclusive evidence of custom between co-parceners and their tenants who were no parties to it. PUCHOO *v.* MAHOMED TALA ASSUDOOLAH [2 Agra, 217

24. ——————— *Record of cess by settlement officer.*—The fact that a cess leviable in accordance with village custom has been recorded by a settlement officer is important evidence of the custom, but not conclusive proof of it. *Held*, on the evidence in this case, that the village custom set up was not established. LALA *v.* HIRA SINGH [I. L. R., 2 All., 49

25. ——————— *Manorial dues and cesses.*—The plaintiffs, zemindars, sued for a declaration of their ancient rights, as against all the tenants of a certain village, to appropriate all trees of spontaneous growth and the fruits of other trees planted by the tenants: also to receive as manorial tribute a certain number of ploughs annually and a certain offering of poppy-seed and other farm-produce on the occasion of the marriage of persons of the lower caste of tenants, with a further right to levy a certain proportion of the produce of the sugar-cane manufactories and fields in the village. The lower Courts having decreed the suit on vague and general parol evidence as to the existence of the said customs,—*Held* (*a*) that, where a custom regarding several cesses is alleged, the existence of the custom regarding each cess should be tried as a separate issue; (*b*) that parol evidence as to the existence of such customs should be tested by ascertaining the grounds of the witness' opinion; (*c*) that the best proof of custom is instances in which it has been acted on and documentary evidence that it has been enforced; (*d*) that a custom to be good must be definite. LACHMAN RAI *v.* AKBAR KHAN . I. L. R., 1 All., 440

26. ——————— *Pre-emption.—Wajib-ul-urz.—Onus probandi.*—A wajib-ul-urz, prepared and attested according to law, is *primâ facie* evidence of the existence of any custom of pre-emption which it records, such evidence being open to be rebutted by any one disputing such custom. ISRI SINGH *v.* GANGA . . I. L. R., 2 All., 876

But such a custom is not established by one instance. TOTA RAM *v.* MOHAN LAL . . 2 Agra, 120

27. ——————— *Pre-emption.—Wajib-ul-urz.*—An unsigned wajib-ul-urz is not binding on the co-sharers, and cannot originate a right of pre-emption if no prior usage existed. To prove usage it is not necessary that documentary evidence should be adduced. JOYKISHORE SINGH *v.* THAKOOR DASS . . . . 3 Agra, 75

28. ——————— *Pre-emption.—Wajib-ul-urz.—Held* that occasional instances, in which a claim to pre-emption on the ground of vicinage may have been admitted, or for special reason the vendors submitted to the claim, are not sufficient to prove the custom of pre-emption in a mahullah; but repeated instances of the assertion of pre-emption as a right and of its recognition or enforcement, ranging over a long period of time and in various places, should be shown. SHEO CHURN KANDOO *v.* GOODUR BURNWAR . . . 3 Agra, 138

CUSTOM.—Evidence of custom—*continued.*

29. ——————— *Suit by landholder for declaration of right to take land from occupancy-tenant for cultivation of indigo.—Wajib-ul-urz, Construction of.*—The zemindars of a village sued an occupancy-tenant for a declaration of their right to maintain a custom which was thus recorded in the wajib-ul-urz:—"When necessary, one or two bighas out of the tenants' lands are taken with their consent (*ba khushi*) for sowing indigo." Upon the basis of this entry, they claimed to be entitled to take a portion of the occupancy-holding at a certain period of the year, for the purpose of cultivating indigo. *Held*, by the Full Bench, that the word "*khushi*" used in the wajib-ul-urz indicated that the land was only to be taken with the occupancy-tenant's consent, and the document created no right of the nature alleged, namely, to take the land despite the tenant. SHEOBARAN *v.* BHAIRO PRASAD [I. L. R., 7 All., 880

30. ——————— *Pre-emption.—Wajib-ul-urz.—Evidence of contract and custom.—Act XIX of 1873, s. 91.—Beng. Reg. VII of 1822, s. 9, cl. (i).*—The wajib-ul-urz of a village is a document of a public character, prepared with all publicity, and must be considered as *primâ facie* evidence of the existence of any custom which it records. Its record of the existence of a custom of pre-emption is sufficiently strong evidence to cast on those denying the custom the burden of proof; and in the same manner, when it records a contract of pre-emption between the shareholders, there is a presumption that it is binding on the shareholders. Looking to the public character of the document, and the way it is prepared, and that all shareholders, whether signing it or not, must be presumed to have assented to its terms, the inferences to be deduced from it cannot be disregarded except when they are rebutted by evidence of an opposite character. A suit to enforce the right of pre-emption, which was based on contract and custom as evidenced by the wajib-ul-urz of a village, was dismissed by the lower Courts on the ground that any contract which might be founded on the wajib-ul-urz was not binding on the vendor-defendant, as that document did not bear his signature, and the lower Appellate Court attached no weight to the wajib-ul-urz as proof of the custom of pre-emption, because it was drawn up when Regulation VII of 1822 was in force, and at that time there was no legal presumption of its accuracy. The claim was dismissed on the ground that the plaintiff's evidence did not prove the existence of a custom of pre-emption in the village. *Held* that the lower appellate Court had erred in dealing with the evidence, and that although this particular wajib-ul-urz was made before Act XIX of 1873 came into force, yet the weight which would attach to its entries, both as proof of the contract as well of custom, was very strong *Isri Singh* v. *Ganga, I. L. R., 2 All., 876*, referred to. MUHAMMAD HASAN *v.* MUNNA LAL [I. L. R., 8 All., 434

Custom.—Evidence of custom—*continued.*

31. ——————— *Wajib-ul-urz.—Mahomedan law.*—It having been alleged that an estate, by custom, descended to a single heir in the male line, the High Court, concurring with the Court of first instance, found that this custom had not been proved to prevail in the family. On an appeal contesting this finding, it was argued, among other objections, that the High Court had not given sufficient effect to an entry in the wajib-ul-urz of a zamindari village, the principal one comprised in the family estate now in dispute; the last owner of that estate who held all the shares in the village having caused an entry to be made to the effect that his eldest son should be his sole heir, the others of the family being maintained. *Held* that, though termed an entry in a wajib-ul-urz, the document was not entitled to the name, but was rather in the nature of a testamentary attempt to make a disposition contrary to the Mahomedan law of descent. MOHAMMAD ISMAIL KHAN *v.* FIDAYAT-UN-NISSA [I. L. R., 8 All., 516

32. ——————— *Dhardhura.—Alluvial land.—Quære,*—What is the extent of the applicability of the custom of dhardhura in regard to alluvial land overriding the provisions of Regulation XI of 1825. NASEER-OOD-DEEN AHMED *v.* OOMEEDEH . . . . . 3 Agra, 1

33. ——————— *Dhardhura, Applicability of custom.—Accretion.*—The custom of dhardhura applies to lands thrown up or formed by fluvial action either in one year or in the course of a number of years. Whether it is equally applicable to chuckee formations or tracts of land severed by a sudden change in the course of a river, and yet preserving their identity of site and surface after the severance, must be determined by proof of the extent of the custom. KATIYANEE *v.* MAHOMED SHURFOOD-DEEN . . . . . 3 Agra, 189

34. ——————— *Dhardhura.*—The custom of dhardhura is, when applied to lands gained otherwise than by gradual accretion, opposed to equity; and such a custom must be proved, not by the vague assertions of witnesses, but by a sufficient enumeration of instances. ISREE SINGH *v.* SHURFOODEEN . . 1 N. W., 142: Ed. 1873, 224

35. ——————— *Dhardhura.—Beng. Reg. XI of 1825, ss. 2, 4 (ii).*—The question whether the custom of dhardhura applies to lands gained by gradual accretion only, or also to lands which have been separated from a mouzah by a sudden change of stream, must be determined in each case on the evidence; for although the Court would be disposed to scrutinize with care evidence in regard to a custom which would have the effect of passing from one owner to another lands long held and enjoyed, and of which the character is in no way altered by river action, yet it cannot be said that such a custom can in no case be established and given effect to. *Katiyanee* v. *Mahomed Shurfoodeen, 3 Agra, 189; Isree Singh* v. *Shurfoodeen, 1 N. W., 142;* and *Rajendur Pertab Sahee* v. *Laljee Sahoo, 20 W. R., 427,* referred to. SIBT ALI *v.* MUNIR-UD-DIN [I. L. R., 6 All., 479

CUSTOM—*continued.*

36. ——————— **Validity of custom.**—*Power of some of mirasidars to bind co-owners of village lands.*—A custom that some only of the mirasidars of a village should bind the co-owners of the village lands is valid. ANANDAYYAN *v.* DEVARAJAYYAN [2 Mad., 17

37. ——————— *Usage of mangrole.—Policy of insurance.—Evidence of average loss.—Certificate of mahajans.*—An alleged usage that the mahajans' certificate is deemed to be conclusive evidence against the under-writer without production of manifest and account sales, and that upon proof of the certificate alone and of the policy the owner is entitled to recover his average loss, cannot be upheld, such not being a reasonable usage. RANSORDAS BHAGILAL *v.* KESBISING MOHANLAL. 1 Bom., 229

38. ——————— *Unreasonable custom.—Broker varying contract.*—A custom which allows a broker to deviate from his instructions is unreasonable and the Courts of law will not enforce it. ARLAPA NAIK NARSI KESHAVJI AND COMPANY [8 Bom., A. C., 19

CUTCHI MEMONS—

See HINDU LAW—INHERITANCE:—SPECIAL LAWS—CUTCHI MEMONS. [I. L. R., 9 Bom., 115
I. L. R., 10 Bom., 1

See MAHOMEDAN LAW—CUTCHI MEMONS. [I. L. R., 6 Bom., 452
I. L. R., 9 Bom., 115, 158

See PROBATE—POWERS OF HIGH COURT TO GRANT, &c. . I. L. R., 6 Bom., 452

See WILL—VALIDITY OF WILL. [I. L. R., 10 Bom., 1

CUTTACK, TENURES IN—

See BENGAL RENT ACT, 1869, ss. 16 & 17. [8 B. L. R., 280

CYPRES PERFORMANCE.

See CHARITABLE BEQUEST. [I. L. R., 1 Calc., 303
I. L. R., 11 Calc., 591

DACOITY.

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—DACOITY. [I. L. R., 1 Bom., 50

1. ——————— **Definition of.**—*Plunder.*—The definition of dacoity in the Penal Code is so wide as to extend to what would have been treated as cases of plunder under the old law. QUEEN *v.* KHOYBAT ALLY BEG . . . . . 3 W. R., Cr., 60

2. ——————— *Elements of offence.*—In a case of dacoity, the Judge should direct

DACOITY.—Definition of—*continued.*

the jury to convict only if they find that all the prisoners had the intention of causing wrongful loss to the prosecutor or wrongful gain to themselves. QUEEN *v.* BONOMALLY GHOSE . W. R., 1864, Cr., 8

3. ——— **House-breaking by night.**—Five men armed were discovered committing an act of house-breaking by night. One of the party was engaged in cutting a hole through the wall while the others stood on guard. When the alarm was given the neighbours ran up, and one of the robbers cut down one of the villagers. *Held*, that the crime of which they were guilty was house-breaking by night and not dacoity. QUEEN *v.* REWAT RAJWAR [W. R., 1864, Cr., 39

4. ——— **Participators in dacoity.**—*Persons found in possession of property.*—When persons are found within six hours of the commission of a dacoity with portions of the plundered property in their possession, the presumption of law is that they are participators in the dacoity, and not merely receivers. QUEEN *v.* CASSY MUL [3 W. R., Cr., 10

QUEEN *v.* MOTEE JOLAHA . 5 W. R., Cr., 66

5. ——— **Taking away produce in good faith under color of right.**—Where the offence that was alleged to have been committed consisted of acts done under a claim of right in good faith entertained by the accused, however erroneously, a criminal charge cannot be sustained. Where, pending a dispute between the accused and another person concerning the melwaram of a village, she removed, or caused her servants to remove, the produce, a charge of dacoity could not be sustained. EX PARTE KARAKAR NACHIAR . . . . 3 Mad., 254

6. ——— **Robbery with violence.**—*Penal Code, s. 395.—Causing fear of hurt.*—When a body of men attack and plunder a house, the mere fact of the proprietor's family having been able to make their escape a few minutes before the robbers forced an entrance, does not take that offence out of the purview of section 395 of the Penal Code. It is sufficient, for the application of the section, that the robbers cause or attempt to cause the fear of instant hurt or of instant wrongful restraint. QUEEN *v.* KISSOREE PATER . . . 7 W. R., Cr., 35

7. ——— **Assembly for purpose of committing dacoity.**—*Admission.*—Case of an unlawful assembly, the members of which were held guilty of an offence under section 402 of the Penal Code, on their own admission that they not only knew that the assembly was an assembly for the purpose of committing dacoity, but also that all the persons (including themselves) constituting the assembly lived on the proceeds of dacoity, and had no other means of living. QUEEN *v.* KENDRA KAMAR [7 W. R., Cr., 97

8. ——— **Gang of dacoits.**—*Penal Code, s. 400.*—It is necessary, in order to establish a charge under section 400, Penal Code, that the prosecution should make out that there existed at the time specified a gang of persons associated together for the purpose

DACOITY.—Gang of dacoits—*continued.*

of habitually committing dacoity, and that the accused was one of the gang. QUEEN *v.* MOOKTARAM SIRDAR . . . . . 23 W. R., Cr., 18

DAMAGE OCCASIONED BY OVERFLOW OF TANKS.

See ZEMINDAR, DUTY OF— [14 B. L. R., 209

DAMAGE DONE BY ESCAPE OF WATER, LIABILITY FOR—

See EMBANKMENTS. [I. L. R., 3 Calc., 776

DAMAGES.

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See INJUNCTION—OBSTRUCTION TO RIGHTS OF PROPERTY—LIGHT AND AIR. [I. L. R., 2 Bom., 133

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See RAILWAY COMPANY . 14 B. L. R., 1

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——— for breach of covenant.

See REGISTRATION ACT, 1877, s. 49.
[I. L. R., 2 Bom., 273

1. SUITS FOR DAMAGES.

(*a*) BREACH OF CONTRACT.

1. **——— Breach of contract to put lessee in possession.**—A suit will lie for damages sustained by a lessee by his lessor's breach of contract to put him in possession of a portion of the property of which he granted the lease. FIREENGEE SINGH *v.* AHMED HOSSEIN . . 7 W. R., 22

2. ——— *Liability to repay consideration-money.—Cause of action.*—Defendants for a consideration granted to plaintiffs a lease of certain churs, which were an accretion to a zemindary, and had been in possession of Government, but were at the time under temporary settlement with the defendants. Subsequently defendants sold their zemindary to a third party, reserving to themselves the chur. Ultimately it was ordered by the Commissioner of Revenue that the churs should be settled, not with defendants but with the purchasers (the third party), as appertaining to the zemindary. Defendants having thus become unable to give plaintiffs possession, were sued for a refund of the premium or consideration-money. *Held*, that it was the duty of the defendants to take steps to call in question the decision of the Commissioner, and that their manager's admission of their liability to repay the premium with interest put an end to any claim for damages for the original breach of contract, and constituted a fresh cause of action from which limitation ran. BROJO NATH PAUL CHOWDHRY *v.* BIMOLA SOONDUREE DOSSIA . . . 15 W. R., 298

DAMAGES—*continued.*

1. SUITS FOR DAMAGES—*continued.*

(*a*) BREACH OF CONTRACT—*continued.*

3. **——— Suit by partner of lessee for illegal ejectment where he was not a party to the contract of lease.**—Where a person becomes surety for the due performance by the lessee of the obligations contained in a lease for a term of years, and afterwards became a partner with the lessee, and the lessor ejected the lessee before the expiration of the lease,—*Held*, that a suit would lie by the surety for damages arising from the illegal ejectment, although the surety was not a party to the original contract with the lessor. BURRODA KANT ROY *v.* RAM TUNNOO BOSE . . 7 W. R., P. C., 51
S. C. BURDAKANTH ROY *v.* ALUK MUNJOOREE DASSIAH . . . 4 Moore's I. A., 321

4. **——— Tenant's right to compensation for eviction.**—*Acquisition of land.*—Government took for public purposes a quantity of land, which included four cottahs leased by *M.* to plaintiff as the site of an iron foundry. Proceedings with a view to compensation were duly laid, pursuant to Act VI of 1857, and the arbitrators awarded a sum for the whole land and premises, of which sum they gave plaintiff a small part, and the rest to *M.* Plaintiff, who did not appear before the arbitrators, brought a suit to reimburse himself for loss sustained by having been turned out of his holding, and deprived of the machinery, &c., of his foundry. *Held*, that *M.* as lessor was not answerable for plaintiff's eviction, or for damages on any other ground. MINTO *v.* KALEE CHURN DOSS . . . . 8 W. R., 327

5. **——— Neglect of tenants to pay road cess or public works cess.**—*Beng. Act X of 1871, s. 25.—Beng. Act VIII of 1869, s. 44.*—Tenants are liable in damages for neglect to pay road and public works cesses. SARODA PROSAD GANGOOLY *v.* PROSUNNO COOMAR SANDIAL
[I. L. R., 8 Calc., 290: 10 C. L. R., 223

6. **——— Breach of contract in completing purchase.**—*Earnest-money, Right to recover.*—*D.* contracted to sell to *P.* a piece of land for R4,500, of which he received R700 as earnest-money A contract was drawn up, by which *D.* agreed to execute and register a bill of sale, and deposit a part (R1,800) of the price, and *P.* was to execute a bond for R2,000, to bear interest conditioned for the payment of that sum by a fixed date, the transaction to be completed within a specified period. *D.* was ready and willing to perform his part of the contract by the time named, but finding that *P.* would not complete the purchase, but demanded back the earnest-money, he sold the property to a third party for R3,800. *P.* then sued to recover the earnest-money and damages. *Held*, that *P.* was bound to show that the circumstances were such as to give him an equitable right to have back the earnest-money, and that had it not been deposited *D.* could have justly sued for damages to the extent of the loss incurred by the second sale, and therefore *P.* was not entitled to recover the R700. RAJCOOMAR ROY CHOWDHRY *v.* DEBENDRONARAIN ROY . . 15 W. R., 41

DAMAGES—*continued.*

1. SUITS FOR DAMAGES—*continued.*

(*a*) BREACH OF CONTRACT—*continued.*

7. ——— Breach of covenants for title.— *Voluntary settlement.— Consideration.*— Though, under the English law, damages may be recovered for breach of covenants for title contained in a voluntary settlement of such a character as to be ineffectual without the assistance of a Court of Equity, and which assistance a Court of Equity would refuse to a volunteer, yet this depending on the principle of English law, that a document sealed and delivered imports consideration, which principle does not hold as between Hindus, it is open to a defendant to show that the plaintiff is suing on a contract for which there was no consideration other than natural love and affection, which cannot be made the ground of a suit for damages. RAJU BALU *v.* KRISHNARAV RAMCHANDRA . . **I. L. R., 2 Bom., 273**

8. ——— Refusal to deliver up child under order of Court.—*Civil Procedure Code, 1859, s. 192.*—Section 192, Act VIII of 1859, only applied to suits for damages for breach of contract, and did not authorise damages for refusal of a mother to comply with an order of Court to deliver up her daughter. RAJ BEGUM *v.* REZA HOSSEIN **[2 W. R., 76**

9. ——— Omission to sue on bond pledged as security.—*Held,* that a suit will not lie for damages against the holder of a bond pledged as security for his omission to sue on that bond within the period of limitation. MAKUND LALL *v.* RAGHOPUT DOSS . . . **2 Agra, 83**

10. ——— Breach of contract not to sell to stranger.—*Co-sharers.—Specific penalty.*—When one of two co-sharers in a property violates a secret engagement between them by selling to a stranger, the other cannot claim a specific penalty, but has his remedy in an action for damages. TOSODOOK HOSSEIN *v.* MEAJAN . **W. R., 1864, 337**

11. ——— Sale of estate on default of some co-sharers in payment of revenue.—*Suit by co-sharer for damages by sale at inadequate price.*—A suit will not lie between joint owners of an undivided estate for damages sustained by the plaintiff, by the sale of the estate at an inadequate price, in consequence of the default of the defendants in paying their share of the Government revenue. ODOIT ROY *v.* RADHA PANDEY **[7 W. R., 72**

12. ——— *Joint undivided proprietor.— Co-sharer.*—No suit for damages as between joint owners on undivided estates will lie, in consequence of the sale of the whole estate through the default of one or more of such owners in paying their shares of the Government revenue. LALLAH RAMESSHUR SINGH *v.* LALLAH BISSEN DOYAL **[I. L. R., 1 Calc., 406: 25 W. R., 150**

13. ——— False representation.—*Breach of contract.—Husband signing bond for wife without authority.—Cause of action.*—Where a husband writes and signs a bond in the name of his wife, there is a tacit or implied contract by him that he had authority to do so. If he had not authority, his conduct amounts to misrepresentation, and the obligee may sue for damages for breach of contract or for false representation. ANONYMOUS **[18 W. R., 249**

14. ——— Non-attendance at feast after accepting invitation.—*Suit for price of unconsumed food.*—Persons accepting an invitation to an entertainment at their neighbour's house, and afterwards failing to attend, cannot be held liable to a suit for damages for the price of the food unconsumed on account of their absence. KALAI HALDAR *v.* KYAMUDDI . . . **23 W. R., 417**

15. ——— Suit after criminal prosecution.—*Cheating.—Return of money by Criminal Court as compensation.*—Defendant having contracted to sell two boats to plaintiff for R64 received the consideration-money, but did not deliver the boats to the plaintiff, who prosecuted him for cheating in the Criminal Court. The Magistrate convicted him of the cheating, and ordered the money which had been obtained by it to be returned to plaintiff. Plaintiff then sued in the Small Cause Court for the value of the boats and for damages for non-delivery of the boats. *Held* that the suit would not lie. PROHLAD TEWAR MANJEE *v.* DEB NARAIN GHOSE **[18 W. R., 247**

(*b*) TORTS.

16. ——— Damage by wrongful act.—*Malice.—Injury to legal right.*—In the case of damage occasioned by a wrongful act,—*i.e.,* an act which the law esteems an injury,—the same remedy by action lies against the doer, whether the act was his own, spontaneous and unauthorised, or whether it was done by the order of Government. Malice is not a necessary ingredient to the maintenance of the action. It is essential to an action in tort that the act complained of should, under the circumstances, be legally wrongful as regards the party complaining,—that is, it must prejudicially affect him in some legal right: merely that it will, however directly, do him harm in his interests, is not enough. ROGERS *v.* RAJENDRO DUTT **[2 W. R., P. C., 51: 8 Moore's I. A., 103**

17. ——— *Abetment of tort.*—*Damages for wrongful taking of moveable property.*—In actions of wrong, those who abet the tortious acts are equally liable with those who commit the wrong. Regard being had to the constitution of the Courts of this country, which are Courts of justice, equity, and good conscience, a decree-holder should be reimbursed damages for the time during which he is kept out of possession by the wrongful act of another party, whether his claim for subsequent damages be made in the execution of the first decree or in a regular suit. Where a decree is for

DAMAGES—*continued.*

1. SUITS FOR DAMAGES—*continued.*

(*b*) TORTS—*continued.*

Damage by wrongful act—*continued.*

the delivery of moveable property and states the amount to be paid as an alternative if delivery cannot be had, the goods must be delivered if capable of delivery, but if not capable of delivery, then assessed damages should be paid. KISHEE NATH KOOER *v.* DEB KRISTO RAMANOOJ DASS . **16 W. R., 240**

18. ——————— *Suit for damages after decree declaring act wrongful.*—A suit will not lie for damages apart from the cause of action out of which the damages arise. MAHOMED ABOO *v.* LALLA BISSESSUR DYAL . **21 W. R., 154**

19. ——— **Suit brought without reasonable or probable cause.**—*Taking up suit after its institution.*—In the case of a suit brought without any reasonable or probable cause, where a third party came into the suit and carried it on from the very first,—that is to say, while an application to sue *in formâ pauperis* was pending,—the intervenor's conduct was held to amount to causing the suit to be instituted as well as to carrying it on, and he was held liable to damages for its institution. GOLAB CHAND NOWLUCKHA *v.* JEEBUN COOMAREE BIBEE **[24 W. R., 437**

20. ——— **Order made by Magistrate without jurisdiction on bona fide application.**—*Liability for damages.*—No man, acting with good faith, and believing that he has a ground for doing so, should be held liable because, upon his application, a Magistrate makes an order which, it afterwards turns out, ought not to have been made. Where certain inhabitants of a village which was flooded applied to the Magistrate to open a bund and let out the water, and the Magistrate without jurisdiction made an order that the bund should be cut, and the bund was cut by police officers,—*Held* that the applicants were not liable for damages. PUREEAG SINGH *v.* JOGESSUR SUHAYE . **8 W. R., 111**

21. ——— **Order of Magistrate as to nuisance.**—*Injury caused by order.—Criminal Procedure Code (Act XXV of 1861), s. 308.*—Where a Magistrate has made an order under section 308 of Act XXV of 1861, the party aggrieved thereby cannot sue the parties who instituted the proceedings before the Magistrate for damages, unless he can show that, in taking such proceedings, they were actuated by malicious motives against him, or intended wrongfully to injure him. CHINTAMONI BAPOOLEE *v.* DIGAMBER MITTER **[2 B. L. R., S. N., 15**

S. C. CHINTAMONEE BAPOOLEE *v.* DIGAMBER MITTER . . . **10 W. R., 409**

HARAPRASAD ROY CHOWDHRY *v.* DIGAMBER MITTER . . . **2 B. L. R., S. N., 15**

22. ——— **Damages caused by civil action.**—*Costs.—Malicious suit.*—No action is maintainable for damages occasioned by a civil action, even though brought maliciously and without

DAMAGES—*continued.*

1 SUITS FOR DAMAGES—*continued*

(*b*) TORTS—*continued.*

Damages caused by civil action—*continued.*

reasonable and probable cause; nor will an action lie to recover costs awarded by a Civil Court SHIVSHANKAR *v.* GOVINDLAL PARBHUDAS **[I. L. R., 1 Bom., 467**

23. ——— **Wrongful distraint of cattle.**—*Cattle Trespass Act, III of 1857, s. 14.—Suit where remedy under Act is barred.*—Where a person whose cattle have been illegally distrained fails to take advantage of the remedy provided by section 14, Act III of 1857, he is not thereby prohibited from bringing an action for damages in a Civil Court NOMAZ MOLLAH *v.* LALL MOHUN TAGADGEER **[15 W. R., 279**

24. ——— **Secretion of estate papers by one of joint owners.**—A joint owner who secretes the estate paper, and thereby deprives his joint owners of the means of collecting the rents and other debts due to them, is liable to be sued for damages. PITTUMBER DOSS *v.* RUTTON BULLUB DOSS . . . . . **W. R., 1864, 213**

25. ——— **Refusal to allow pleader to appear.**—A pleader cannot sue for damages against the Magistrate for not allowing him to appear for a complainant at an enquiry under section 180, Criminal Procedure Code, 1861, as he has no right to appear at such an enquiry. BINDACHARI *v.* DRACUP **[8 Bom., A. C., 202**

26. ——— **Refusal of master of ship to sign bills of lading.**—The refusal of a master of a ship to sign bills of lading otherwise than with an endorsement as to the damage claimed, is a wrong that may be fully compensated for in damages. GRASEMANN *v.* LITTLEPAGE **[3 W. R., Rec. Ref., 1**

27. ——— **Fraudulent transfer of property.**—*Sale without authority.*—Where the plaintiff's property had been fraudulently transferred,—*Held*, that he was entitled to recover the damage or loss which he sustained on account of such fraudulent transfer from the actual transferor, and from the person who was found to have been the prime mover and instigator in the transaction, as well as from his own agent who consented to such transfer, and the purchaser who, being aware of circumstances sufficient to create suspicion, dealt with persons who had no authority to sell. WHARTON *v.* MOONA LALL **[1 Agra, 96**

28. ——— **Persuading wife to absent herself from her husband.** *Mahomedan law.*—A suit for damages is maintainable by a Mussulman against persons who, without lawful excuse, have persuaded and procured his wife to remain absent from him and live separately. A Mussulman lawfully married to a girl who has attained puberty can maintain a suit for damages against the father of the girl, and against an alleged husband of the girl, for

DAMAGES—*continued.*

1. SUITS FOR DAMAGES—*continued.*

(*b*) TORTS—*continued.*

Persuading wife to absent herself from her husband—*continued.*

wrongfully persuading her to remain absent from the plaintiff's society and for detaining her away from him. MUHAMMAD IBRAHIM *v.* GULAM AHMED [1 Bom., 236

29. ——— **Defamation of character.**—*Dismissal of mooktear, Ground for.*—In an action to recover damages for defamation of character brought by the late mooktear and manager of a parda-nashin Mahomedan lady who had in a petition to the Munsif represented that she had discharged the plaintiff from her service, because he had not managed her properties honestly, and had been guilty of misappropriation, it appeared that the plaintiff had rendered no accounts, and had allowed a year to pass before resenting the libel,—*Held* by KEMP, *J.* (GLOVER, *J.*, dissenting), that the defendant had reasonable grounds for making the statement, and that, in the absence of evidence of malice, the suit was rightly dismissed. AMEENOODDEEN AHMED *v.* KHYROONISSA . . . . 20 W. R., 60

EKBAL BAHADOOR *v.* SOLANO . 2 W. R., 164

30. ——— **Destruction of indigo plants in execution of award.**—*Costs.*—A suit will not lie for damages sustained in consequence of the destruction of indigo plants in execution of an award under section 15, Act XIV of 1859; nor for damages in the shape of the value of kolai crop, recovered by the decree of a competent Court; nor for costs awarded by a competent Court in a possessory suit under the same action. KENNY *v.* KOLUM MUNDLE [5 W. R., S. C. C. Ref., 1

31. ——— **Injury caused in execution of decree.**—*Omission to act legally by decree-holder.*—If a decree-holder has omitted to do what he is legally bound to do, and has thereby caused injury, the party injured may claim damages. RUZNUDEEN HOSSEIN *v.* FUZALUN . 3 W. R., 120

32. ——— *Execution of decree without jurisdiction.—Liability of applicant for execution.*—Where a Court attempts to execute a decree without having jurisdiction to do so, the person applying for that execution would be liable to be sued for damages. DOYLE *v.* DWARKANATH CHATTERJEE . . . . . 8 W. R., 89

See JOYKALEE DOSSEE *v.* CHAND MALLA [9 W. R., 133

33. ——— **Refusal to deliver idol for worship.**—*Right to turn of worship of idol.—Cause of action.*—A refusal to deliver up an idol, whereby the person demanding it was prevented from performing his turn of worship on a specified date, gives the party aggrieved a right to sue for damages. DEBENDRO NATH MULLICK *v.* ODITACHURN MULLICK . . . . . I. L. R., 3 Calc., 390

34. ——— **Intrusion on office.**—*Suit for fees by vatandar joshi against intruder.*—The vatandar joshi of a village has the right to recover pecuniary damages from a person who has intruded upon his office and received fees properly payable to him. RAJA VALAD SHIVAPA *v.* KRISHNABHAT [I. L. R., 3 Bom., 222

35. ——— **Infringement of right.**—*Exclusive right to perform ceremony.*—Where the plaintiff enjoyed the exclusive right of breaking, on a certain day, a curd-pot in a particular part of the temple of Shri Vithoba and Tukaram at Dehu, it was held that the defendants breaking their own curd-pot on that day in any part of that temple was a violation of that right entitling the plaintiff to damages. NARAYAN SADANAND BAVA *v.* BALKRISHNA SHIDESHVAR . . . 9 Bom., 413

36. ——— **Sale of minor's property.**—*Fraud and collusion between vendors and purchasers.—Suit by purchasers against vendors when sale is set aside.*—It is not for the public benefit that, where two parties knowingly deal with the sale and purchase of property of infants who have not by law the power of sale, one of the parties (the purchasers) who obtain possession of the property in a manner calculated to injure the infants should be able to sue the other party (the vendors) for damages. The Privy Council even refused to give costs to either party, considering them both in *pari delicto.* BHOOPNARAIN CHOWBEY *v.* RUGHOONATH GOBIND ROY . . . 18 W. R., 230

37. ——— **Leaving boats in such a position that they are useless until river rises.**—A party who wrongfully takes possession of another's boats and places them in such a position that without any neglect on the part of the owner they become unserviceable until the ensuing rainy season, is responsible for the consequences of his own act, and is not in any way discharged because the police make over the boats to the owner at a time when there is no water in the river and the boats cannot be moved. NUDIAR CHAND SHAHA *v.* PRANNATH SHAHA . . . 21 W. R., 8

38. ——— **Legal ejectment of tenant after he has sown crops.**—*Trespass.—Right to possession.*—*F.* accepted a lease from *N.* of certain land and sowed it with indigo. *B.* then sued *F.* and *N.*, claiming to be maintained in possession of the land and the cancelment of the lease, and obtained a decree on the 10th of January 1873, and subsequently to that date entered upon the land and brought a portion of it into cultivation. *F.*, alleging that he was still in possession, sued to recover damages for trespass and injury to the indigo sown by him which was standing on the ground. It was held that *B.* was at liberty to enter upon the land and to cultivate, notwithstanding he had not taken out execution of his decree, and that, if injury occurred to *F.* by *B.'s* occupation of the land under his decree, he had no claim on the latter for damages. BASUNT KAWAL *v.* FORTH . . . . . 7 N. W., 47

DAMAGES—*continued.*

1. SUITS FOR DAMAGES—*continued.*

(*b*) TORTS—*continued.*

39. ——— **Injury done by raising embankment.**—*Trespass.—No proof of specific loss.*—Where plaintiffs sought to recover damages for some injury done to their property by an embankment raised by defendants, and pleaded that on a former occasion, on which they had sued for damages against the same defendants for the same trespass, they had obtained a decree, and that the renewal of the offence was a continuance of trespass, it was found that the plaintiffs, on whom the burden of proof of injury lay, had failed to sustain it by proving specific loss; *Held* that they were therefore not entitled to a decree *Held*, also, that the precedents quoted, in which decrees for substantial damages had been given on proof of malicious trespass, although specific injury had not been established, were inapplicable to suits like the present, in which the essence of the plaint was a demand for compensation for losses actually incurred, and in which no hint was thrown out of any malice in the alleged act of trespass. JUGGUT LALL CHOWDHRY *v.* TASUDDUCK ALI [25 W. R., 548

40. ——— **Omission of witness to appear.**—*Suit for damages against defaulting witness.*—Before a plaintiff is entitled to recover any damages from a defaulting witness in a former suit, he must prove that he was endamaged by the omission of the defendant to appear. The mere failure of the defendant to appear as a witness is not, *per se*, a sufficient proof of his liability to damages. DWARKANATH KOOREE *v.* ANUNDO CHUNDER SANNEL . . 5 W. R., S. C. C. Ref., 18

41. ——— **Infringement of right.**—*Damnum sine injuriâ.*—A plaintiff whose right has been invaded is entitled to some remedy, whether damage has accrued to him or not. RAMPHUL SAHOO *v.* MISSREE LALL . . . 24 W. R., 97

42. ——— *Actual loss, Proof of.*—Proof of infringement of a right, without proof of actual loss, does not necessarily entitle a plaintiff in this country to a verdict for nominal damages. NABAKRISHNA MOOKERJEE *v.* COLLECTOR OF HOOGHLY . 2 B. L. R., A. C., 276

43. ——— *Proof of consequent injury.*—In order to maintain an action for damages for the infringement of a right, it is not necessary to show that there has been any subsequent injury consequent on such infringement. RAM CHAND CHUCKERBUTTY *v.* NUDDIAR CHAND GHOSE [23 W. R., 230

44. ——— *Failure to prove injury.*—Where defendants infringed plaintiff's legal right, and the lower Court dismissed the suit with costs, on the ground that plaintiff had given no evidence that he had sustained substantial damage,—*Held*, that the plaintiff was entitled at least to a decree without damages and costs KALLIAPPA KAUNDAN *v.* VAYAPURI KAUNDAN . 2 Mad., 442

DAMAGES—*continued.*

1. SUITS FOR DAMAGES—*continued.*

(*b*) TORTS—*continued.*

Infringement of right—*continued.*

45. ——— *Interest in land.—Right of suit.*—*A.* erected an embankment across a river, in consequence of which lands let by *B.* to ryots were overflowed, and the crops lost. The ryots paid rent to *B.* only when crops were reaped from the lands. *Held*, that *B.* had such an interest as to entitle him to sue *A.* for damages. RAM CHANDRA JANA *v.* JIBAN CHANDRA JANA [1 B. L. R., A. C., 203

46. ——— *Erection of buildings.—Right to such buildings.*—Parties are at liberty to build what structures they please on their own lands, but if by doing so they interfere with the free enjoyment of their neighbours' property, they are liable to damages. KASSIM ALI KHAN *v.* BIRJ KISHORE . . . 2 N. W., 182

RAM ROOCH CHOWDREE *v.* DEOKEE NUNDUN [7 W. R., 169

KADER BUKSH BISWAS *v.* RAM NAG CHOWDHRY . . . . 7 W. R., 448

47. ——— *Suit for injury done to land by former proprietor.*—An action for damages will not lie against a present proprietor for injury done to the land during the time of the former proprietor. COLLECTOR OF 24-PERGUNNAHS *v.* JOYNARAIN BOSE [W. R., F. B., 17: 1 Ind. Jur., O. S., 101

48. ——— *Cutting timber.*—Where one acquires, by license, an exclusive right to cut and to authorise others to cut timber in a forest, such right does not vest in him the timber in the forest. He might thereby have a right to recover damages against any person who, by cutting timber, should interfere with his exclusive right, but that would not vest in him the timber so cut by others. SNADDEN *v.* MAHWINE [2 B. L. R., A. C., 292

49. ——— *Obstruction to free use of light and air.*—A person is entitled to the free use of his ancient light and air. When any person wilfully and intentionally obstructs that light and air, he is liable for the removal of the obstruction. Money damages will be no compensation for the injury. MAHOMED HOSSEIN *v.* JAFER ALI [4 W. R., 23

PURAN MUDDUCK *v.* OODAY CHAND MULLICK [3 W. R., 29

50. ——— *Injury to land by bursting of bund.*—Suit for damages caused to the plaintiff's land by the bursting of the defendant's bund. *Held*, that the plaintiff was not entitled to damages if the bund was made in a lawful manner, and if the breach was owing to no fault of the defendant. GOOROO CHURN MULLICK *v.* RAM DUTT . . . . . 2 W. R., 43

DAMAGES—*continued.*

1. SUITS FOR DAMAGES—*continued.*

(*b*) TORTS—*continued.*

Infringement of right—*continued.*

51. ——————— *Stoppage of flow of water.—Prescriptive right.*—A suit will lie to establish a prescriptive claim to irrigation from a running stream, and for damages caused by the stoppage of the water by the proprietors higher up the stream erecting dams on their own lands. BUDDUN THAKOOR *v.* SHUNKER DOSS [W. R., 1864, 106

52. ——————— *Obstruction in exercise of right over water.—Question to decide at trial of suit.—Civil Procedure Code, 1859, s. 197.*—A suit may lie for damages for obstruction in the exercise of a right of *usucapio* over water, &c., although no property in the tank, &c., be asserted. And section 197 of the Code of Civil Procedure does not apply to suits for damages of this nature, and consequently the question of the amount of damages must be determined at the trial and cannot be reserved for determination in execution of the decree. RAMTUHUL LALL *v.* SHEO NATH SINGH [1 N. W., 24: Ed. 1873, 24

53. ——————— *Cause of action.—Right to use of water.*—In a suit for damages for the demolition of a singha or embankment intended to keep in surface water, if the embankment was situated on the defendant's land, such demolition could only be a cause of action where it not only infringed a definite right, but caused actual damage. SEETA RAM *v.* KUMMEER ALI . . 15 W. R., 250

54. ——————— *Damage to crops from interference with right of water.*—In a suit to recover damages for loss caused during the years 1862, 1863, and 1864, by defendant's interference with plaintiff's right to the flow of water from a canal,—*Held*, with regard to the loss sustained in 1864, that plaintiff's right to recover depended upon whether or not the special damage claimed had accrued at the time of the bringing of the suit. VISWAMBARA RAJENDRA DEVEE GARU *v.* SARADHI CHARANA SAMANTARAYA GARU . . . 3 Mad., 111

55. ——————— *Use of water-rights.—Injury to neighbouring land.*—The defendant closed up the outlets of a bank upon his own land, whereby the surface drainage water had immemorially flowed from the plaintiff's land into and over the defendant's land, and so escaped. By reason of the closing of these outlets the water was unable to escape, and the plaintiff's land became flooded and the crops therein damaged. *Held*, that the plaintiff was entitled to maintain a suit to recover from the defendant the amount of damages he had sustained by reason of the ancient flow of the water from his land being thus impeded. *Held*, also, that in a suit for damages sustained by such an act done on the defendant's own land, actual damage to the plaintiff must be shown in order to sustain an action; and that the liability of the plaintiff to remit the rents of ryots whose crops were spoiled was sufficient damage. ANUNDMOYEE DASSEE *v.* HAMEEDONISSA [Marsh., 85: 1 Hay, 152

HAMEEDOONISSA *v.* ANUNDMOYEE DOSSEE [W. R., F. B., 25

56. ——————— *Use of water-rights.—Injury to neighbouring land.*—A suit for damages will lie against a proprietor who pens back the water of a stream by erecting a bund upon his own land, so as to inundate the land of his neighbour, without his license and consent. BECHARAM CHOWDHRY *v.* PUHUBNATH JHA [12 B. L. R., Ap., 53

57. ——— **Abuse or threatening words.**—*Special damage.*—Damages cannot be claimed for mere abuse or threatening language. PHOOLBASSEE KOER *v.* PARJUN SINGH . . 12 W. R., 369

CHUNDURNATH DHUR *v.* ISUREE DOSSEE [18 W. R., 531

58. ——— **Abuse and defamation.**—*Malice.—Estimation of damages.*—If defamatory expressions are used under such circumstances as to induce in the plaintiff reasonable apprehension that his reputation has been injured, and to inflict on him pain consequent on such belief, the plaintiff is entitled to recover damages without actual proof of loss sustained. Vindictive damages should not be awarded, and a distinction should be drawn in awarding damages when the defendant acts from carelessness and when he acts maliciously. In the latter case the plaintiff is entitled to full compensation for the pain suffered, and in the former to a sum sufficient to establish his innocence of the charges made. PARVATHI *v.* MANNAR . . I. L. R., 8 Mad., 175

For further authorities on this point,—

See CASES UNDER JURISDICTION OF CIVIL COURT—ABUSE, DEFAMATION, AND SLANDER.

See CASES UNDER SLANDER.

59. ——— **Injury to reputation.**—*Malicious prosecution.*—Damages may be recovered for injury to one's reputation. RAMJEEBUN MOOKERJEE *v.* WOOMA CHURN HAJRAH [7 W. R., 117

60. ——————— *False charge.*—Where a false charge led to a party being prevented going to his house until he had furnished bail, he was held to have suffered inconvenience and loss of reputation, for which an award of R20 as damages was not unreasonable. MADHUB CHUNDER SIRCAR *v.* BANEE MADHUB ROY . . 15 W. R., 85

61. ——————— *Difficulty of assessing damages.—Injury short of loss of caste.*—The difficulty of assessing the amount of the damages, or the risk of numerous actions of the kind in the Civil Courts, form no ground for dismissing a suit for

DAMAGES—*continued.*

1. SUITS FOR DAMAGES—*continued.*

(*b*) TORTS—*continued.*

Injury to reputation—*continued.*

damages for injury done to a plaintiff's social position and estimation, if a legal ground of action is shown. A plaintiff may be entitled to substantial damages for being beaten with a shoe, notwithstanding that he may not have lost his caste, or sustained a pecuniary loss or physical injury by the act complained of. BHYRAU PERSHAUD *v.* ISHAREE [3 N. W., 313

62. ——————— *Public exhibition of effigy of person.—Suit for damages for defamation of character.*—Making and publicly exhibiting an effigy of a person, calling it by the person's name, and beating it with shoes, are acts amounting to defamation of character for which a suit for recovery of damages will lie. PITUMBAR DASS *v.* DWARKA PERSHAD . . . . 2 N. W., 435

63. ——————— *Injury to personal honour and character.*—A party whose conviction before a Criminal Court is reversed on appeal, and he himself released from confinement, cannot maintain a suit against the complainant for damages to his personal honour, unless he can prove that the complainant had no reasonable and probable cause for making the complaint and charge. KOIBATOOLLAH *v.* MOTEE PESHAKUR . . 13 W. R., 276

64. ——— **Wrongful attachment.**—*Trespass.—Bona fides.*—A judgment-creditor who attaches property which does not belong to his judgment-debtor commits a trespass, for which he is responsible in damages, even though he may have acted without malice and mistakenly. DAMODHAR TULJARAM. *v.* LALLU KHUSALDAS [8 Bom., A. C., 177

65. ——————— *Liability of decree-holder for wrongful execution.*—Without proof of *mala fides* the judgment-creditor is responsible in damages to any person whose property he wrongfully causes to be attached in execution of his decree. RUGNOR *v.* SUNJHEER SINGH . 5 N. W., 211

KANAI PROSAD BOSE *v.* HIRA CHAND MANU [5 B. L. R., Ap., 71

SUBJAN BIBEE *v.* SARIUTULLA [3 B. L. R., A. C., 413

66. ——————— *Cases reviewed.*—Cases which decide that a person whose property has been wrongfully seized by the Court, or wrongfully seized and sold at a Court's sale, as that of the judgment-debtor, is entitled to recover damages from the execution-creditor at whose instigation the property has been so seized or so seized and sold, reviewed. KALUBIN VISAJI *v.* DAMODHAR GOVIND [9 Bom., 92

67. ——————— *Attachment of property of third person.—Liability of execution-creditor for wrongful seizure in execution of decree.*—There is not any universal rule that a judgment-creditor is or that he is not liable in suit for a wrongful seizure, or for injury to the goods while under seizure. His liability must depend upon the circumstances of the case, *i.e.*, upon the fact whether the wrongful seizure or the injury is the result of his own conduct; for instance, if the judgment-creditor personally, or his authorised agent (*ex. gr.*, his pleader), apply, under section 214 of the Civil Procedure Code, for the attachment of property which is specially designated in that application, and if the Court grant its warrant for the seizure of that particular property, and the officer of the Court execute the warrant, and the property be not that of the judgment-debtor, the judgment-creditor would certainly be liable for that wrongful seizure, and the officer of the Court could justify under the warrant, and would not be liable so long as he kept within the duty expressly prescribed for him by it. But if the application of the judgment-creditor were for a general attachment under section 218 of the Code, and the Court took no such security from him as it might take under that section, and if the Court granted a general warrant for the attachment of the moveable property of the judgment-debtor, and the officer of the Court, without any suggestion to that effect from the judgment-creditor or his agent, beyond a general direction to execute the warrant, were to seize property not belonging to the judgment-debtor, the judgment-creditor would not be responsible. *Quære,*—Whether, under such circumstances as those last mentioned, the officer of the Court would be responsible. VANA JAGANNATHJI *v.* HATA DIPAJI [11 Bom., 46

DAMAGES—*continued.*

1. SUITS FOR DAMAGES—*continued*

(*b*) TORTS—*continued.*

Wrongful attachment—*continued.*

68. ——————— *Penalty.—Compensation.—Proof of malice.*—Certain hoondees which *V. A. & Co.* had discounted for *P.*, having, been dishonoured by the drawers, *V. A. & Co.* sued *P.* for the value of the bills, and applied, under section 81, Code of Criminal Procedure, to have certain property attached before judgment as belonging to *P.* An attachment having been ordered, *M.* and *J.* objected by petition that the property belonged to them and not to *P.*, upon which *V. A. & Co.* applied to have them made co-defendants in the regular suit which had been brought against *P.*, on the ground that they (*M.* and *J.*) and *P.* were partners in trade. The decision in the suit released the property on the ground that there was no such partnership, and that the property belonged exclusively to *M.* and *J.* *M.* and *J.* then sued *V. A. & Co.* to recover damages sustained by their goods under the above attachment and profits foregone during the stoppage of their trade by the tortious acts of the defendants. *Held* that as *V. A. & Co.* had made the attachment most carelessly and recklessly, and without sufficient or reasonable ground for assuming *M.* and *J.* to be partners of *P.*, they were rightly amerced in damages. *Held,* also, that their act having been one done without a probable cause, was such as to evince a malicious motive on their part, and that damages in such a case should be in the

DAMAGES—*continued.*

1. SUITS FOR DAMAGES—*continued.*

(*b*) TORTS—*continued.*

Wrongful attachment—*continued.*

nature of a penalty as well as of a compensation. *Held*, further, that plaintiffs were not bound to release their property, and it was no defence to their claim for damages to say that they might have done so by giving security, nor could their declining to do so shift the responsibility of the illegal acts of the defendants. VALABT ALI KHAN *v.* MATADEEN RAM [13 W. R., 3

69. ——————— *Attachment before judgment without sufficient cause.*—Where a Court orders attachment of a defendant's property after it is satisfied that he is about to remove or dispose of it with intent to obstruct or delay the execution of the decree, it must be presumed that there was good and sufficient cause for the plaintiff having moved the Court to do so, even though the suit resulted unsuccessfully; and unless the contrary can be established, damages cannot be claimed. DHURMO NARAIN SAHU *v.* SREEMUTTY DASSEE [18 W. R., 440

70. ——————— *Attachment made contrary to order.*—When a proper application for process has been made and a proper order granted, the officer of Court cannot be considered to be the agent of the person for whose benefit the process of the Court has issued. Nor is such person responsible for the mistake or misconduct of the officer, unless he or his servants have personally interfered and directed the action of the officer. Where, in a suit for damages for wrongful attachment, it appeared that the defendant, in execution of a decree against a boat-owner, had obtained an order for attachment by prohibitory order under section 234 of Act VIII of 1859, of certain boats which had been hired by the plaintiff to take a cargo to Calcutta, and they were wrongly attached under section 233 by actual seizure and detention, during which one of them sank and was lost,—*Held* that, unless it could be shown that the defendant or his servants personally interfered and caused the officer of Court to attach the boats by actual seizure, he was not liable for damages. DOOLAR CHAND SAHOO *v.* RAM SAHOY BHUGGUT [24 W. R., 139

71. ——————— *Attachment of property of third person under general warrant of execution.*—Where *A.* seizes property in attachment of a decree which had been obtained by his own judgment-debtor, and there is nothing to show that that decree was sold to *B.*, and *A.* is not proved to have acted maliciously or without probable cause, *A.* is not liable to *B.* in a suit for damages. The seizure, moreover, having been made under the order of the Court, the defendant was not liable for what was done under the Court's order. *Semble*,—Whether, if a judgment-creditor applies for a general warrant of attachment of all the defendant's property under section 214, and under it causes property of a third person to be seized as property of the defendant, he is not liable to such third person. JOYKALEE DASSEE *v.* CHANDMALLA . . . . 9 W. R., 133

72. ——————— *Warrant of execution.*—A party is not liable to damages in respect of an attachment under a warrant issued by a Court. RAJBULLUB GOPE *v.* ISHAN CHANDRA HAZRAH [7 W. R., 355

73. ——————— *Permission to use property attached.—Principles in action of tort.*—The proposition that a man whose possession was unlawfully invaded by a wrongful attachment ought to have given effect to that invasion, because it was made under color of legal process, by removing the lock of his own store-house, is untenable; and though the plaintiff might have received permission to use his own property, he was neither bound to accept the permission so accorded to him, nor, if he had accepted it, would he have lost his right of action, and he was entitled, at the very least, to a judgment for nominal damages. The principle ordinarily applicable to actions of tort is that the plaintiff is never precluded from recovering ordinary damages by reason of his failing to prove the special damage he has laid, unless the special damage is the gist of the action. *Le Breton* v. *Ennis, 4 Moore's P. C. C., 323* (as to the assessment of damages), followed. MODUN MOHUN DOSS *v.* GOKUL DOSS . 1 Ind. Jur., N. S., 269 [5 W. R., P. C., 91 10 Moore's I. A., 563

74. ——————— *Omission to claim compensation under Civil Procedure Code, 1859, s. 88.*—The omission to apply for compensation under section 88, Act VIII of 1859 (assuming that section to be applicable to the present case), does not bar a regular suit for compensation for illegal attachment; and the fact that security was not given, by which release of the property might have been obtained, does not affect the right of suit for the improper attachment. Further, that, under the circumstances, the attachment being needless and unjustifiable, and without due authority of law, the award of damages was fair and unquestionable. DANIEL *v.* MOHUN BIBEE . . . . 1 Agra, 104

75. ——— **Wrongful injunction.**—*Civil Procedure Code, 1859, s. 96 (1877-82, s. 497).—Compensation for injunction.*—Section 96 of the Civil Procedure Code, 1859 (section 497 of 1877-82), allowed the power of bringing a suit for damages, leaving that remedy to those who did not wish to take advantage of the remedy provided by that section. WILSON *v.* KANHYA SAHOO . . . 11 W. R., 143

76. ——————— *Civil Procedure Code, 1859, ss. 92, 96.—Suit for compensation.—Cause of action.*—*A.*, having brought a suit against *B.*, obtained and issued, on the 24th July 1868, an injunction against him under section 92, Act VIII of 1859. The suit was, on the 18th of August 1868, dismissed; but no compensation was awarded to *B.*,

DAMAGES—*continued.*

1. SUITS FOR DAMAGES—*continued.*

(*b*) TORTS—*continued.*

Wrongful injunction—*continued.*

under section 96 of Act VIII of 1859, in respect of the injunction which had been issued against him. *A.* and *B.* both appealed, the former against the decision dismissing his suit, the latter for compensation. Both appeals were dismissed on the 23rd November 1869; *B.'s* because it was engrossed on a stamp paper of the value of eight annas only. *B.*, on the 16th December 1869, then instituted a suit against *A.* in the Small Cause Court for damages in consequence of the injunction which *A.* had caused to issue against him in his suit. *Held* that *B.* was not debarred, by section 96 of Act VIII of 1859, from instituting a suit against *A.* for damages, there not having been an award of compensation under that section. The cause of action accrued from the time at which the plaintiff was first damaged by the wrongful injunction, continued as long as the injunction remained in force, and limitation began to run as soon as the injunction was at an end. NANDA KUMAR SHAHA *v.* GAUR SANKAR

[5 B. L. R., Ap., 4: 13 W. R., 305

2. MEASURE AND ASSESSMENT OF DAMAGES.

(*a*) BREACH OF CONTRACT.

77. ——— Suit for non-delivery of goods.—In a suit for the non-delivery of goods agreed to be sold by the defendant to the plaintiff in a case where no money has passed, the measure of damages is in general the difference (if any) between the agreed price and the market value on the day when the goods ought to have been delivered. SHARMAN *v.* GOUR SHAH BANGALLY . **Marsh., 542**

78. ——— *Omission to specify time.*—In an action by a vendee against a vendor for non-performance of a contract to deliver goods which specifies no time for delivery, the measure of damages is the difference between the contract price and that which goods of a like description bore on the lapse of a reasonable time for delivery. MANSUK DASS *v.* RANGAYYA CHETTI . **1 Mad., 162**

79. ——— *Reasonable time for delivery.*—In an action by the vendee against the vendor for breach of a contract to deliver goods "in two or three days," the measure of damages is the difference between the contract price and the price which similar goods bore on the lapse of a reasonable time for delivery, not less than three days from the date of the contract. RAMJI MADAUJI *v.* RANGA CHETTI . . . . **1 Mad., 168**

80. ——— *Delay in delivery of goods by carrier.*—The damages claimable in a suit against a carrier on account of delay in delivering goods are the excess which is found by comparing the price of the goods on the day they ought to have been delivered with the price on the day when they were delivered. BULDEO DASS *v.* NATHOO MULL . . . . **2 Agra, 132**

DAMAGES—*continued.*

2. MEASURE AND ASSESSMENT OF DAMAGES—*continued.*

(*a*) BREACH OF CONTRACT—*continued.*

Suit for non-delivery of goods—*continued.*

81. ——— *Forbearance of buyer at seller's request.*—The defendants, by bought and sold notes, contracted, in February 1877, to sell to the plaintiffs 200 tons of wheat, delivery under the contract to be given during all April on 15 days' notice from the buyers. Notice was given on the 9th of April, but the defendants were unable to give delivery within the agreed time, and the plaintiffs, on the 11th May, instructed their attorneys to demand immediate payment of the difference between the contract price and the then market price, treating the contract as rescinded. Subsequently the defendants being prepared to give delivery of 350 bags, the plaintiffs agreed to take delivery without "prejudice to their right of claim against the sellers on account of the remaining 175 tons still undelivered." This and several other parcels, making altogether 113 out of the 200 tons, were delivered during the latter part of May; but on the 31st of May plaintiffs refused to take further deliveries, alleging that the quality of the wheat offered was inferior, and brought a suit for damages for the non-delivery under the contract of the remaining 87 tons. *Held* that there was no binding agreement on the part of the plaintiffs to give time for the fulfilment of the contract after April, but merely a forbearance on their part to pursue their rights, and that the plaintiffs were entitled to the full measure of damages. *Ogle* v. *Vane, L. R., 2 Q. B., 275;* and *Freeth* v. *Burr, L. R., 9 C. P., 208,* cited and followed. GLADSTONE *v.* SEWBUX

[4 C. L. R., 106

82. ——— Action for breach of collateral contract.—*Non-acceptance of goods.*—The defendant entered into a contract with the plaintiffs to purchase from them a quantity of gunny bags, of which the defendant was to take delivery at certain stated times. On failure by the defendant to take delivery, the plaintiffs brought a suit for breach of the contract, estimating the damages at the difference between the contract price and the market prices on the days when the defendant ought to have taken delivery. It was proved that the plaintiffs never had the goods in their possession, but that they could have obtained them under a contract they had with a third person, and it was found that the plaintiffs were ready and willing to deliver them at the time contracted for. The lower Court held that the measure of damages was the difference between the contract price of the bags and the amount which it cost the plaintiffs under their collateral contract to procure and deliver them. *Held,* reversing the decision of the Court below, that the proper measure of damages was the difference between the contract price and the market prices at the dates of failure by the defendant to take delivery. COHEN *v.* CASSIM NANA . **I. L. R., 1 Calc., 264: 25 W. R., 273**

DAMAGES—*continued.*

2. MEASURE AND ASSESSMENT OF DAMAGES—*continued.*

(*a*) BREACH OF CONTRACT—*continued.*

83. ——— Failure to deliver timber.—*Place of delivery.*—The plaintiff brought a suit at Tonghoo in British Burmah to recover possession of certain timber, which he alleged the defendants had wrongfully, and in collusion with the Burmese Governor of Ninghan, taken out of his possession in foreign territory and removed to Tonghoo. The defendants stated that they had acquired the timber from the Governor of Ninghan in terms of an agreement between them and the Burmese Government. It appeared that the Governor of Ninghan had confiscated the plaintiff's timber in contravention of a royal mandate. After the institution of the suit, the defendants removed the timber from Tonghoo to Rangoon. The Court below having fixed the price of the timber at Rangoon as the alternative damages in case of non-delivery, the High Court refused to interfere with such award. BOMBAY-BURMAH TRADING CORPORATION *v.* MAHOMED ALI SHERAGEE **[10 B. L. R., 345 : 19 W. R., 123**

84. ——— Failure to supply wood when required.—*Omission to make requisition.*—In a suit for damages for breach of contract to supply wood which defendant had engaged to supply for the construction of a house, where the intention was found to have been that the plaintiff should from time to time give defendant notice of the different articles of wood-work required,—*Held* that the defendant was only liable for damages to the extent of the wood which he did not supply according to the order given to him, not for the wood for which requisition had not been made. RADHA GOBIND SHAHA *v.* INAM BUKSH OSTAGUR . . **15 W. R., 217**

85. ———Bailment.—*Misappropriation of Government promissory notes.—Negligence of Treasury Officer.*—The agent of the plaintiff delivered to the Treasury Officer at Meerut nine Government promissory notes, aggregating R48,000 in value, in order that such notes might be transmitted to the Public Debt Office at Calcutta for cancellation and consolidation into a single note for R48,000, having previously indorsed the plaintiff's name on such notes at the request of a subordinate of the Treasury Officer, and received a receipt for such notes under the hand of the Treasury Officer. Owing partly to such indorsements, and partly to the negligence of the Treasury Officer, such subordinate was enabled to misappropriate and negotiate two of such notes, aggregating R12,000 in value. The remaining seven of such notes were despatched to Calcutta, and a consolidated note for R31,200 was returned and delivered to the plaintiff, when the misappropriation of the two notes was discovered. The plaintiff sued Government, claiming "that it might be directed to make restitution of the two notes or deliver two other notes of equal value or their value in cash" with interest. On behalf of Government it was contended that it was not liable to the plaintiff's claim, inasmuch as the plaintiff, by his agent, had contributed to the loss of the wo notes, and a master was not liable in

DAMAGES—*continued.*

2. MEASURE AND ASSESSMENT OF DAMAGES—*continued.*

(*a*) BREACH OF CONTRACT—*continued.*

Bailment—*continued.*

damages for loss or injury sustained through the fraud or dishonesty of his servant without the scope of his employment. *Held* that the two notes not having been delivered to the Treasury Officer as a bailee but having been surrendered, the receipt given by that officer must be regarded as an undertaking on the part of Government to deliver a consolidated note for R48,000 in due course, and the plaintiff's suit was in reality one for damages on account of the refusal of Government to discharge its obligation, the measure of those damages being the amount by which the note for R31,200 fell short of R48,000 with interest, and such being the suit, the contention of Government was not any answer to it. SECRETARY OF STATE FOR INDIA IN COUNCIL *v.* SHEO SINGH RAI **[I. L. R., 2 All., 756**

86. ——— Failure to deliver steamer according to contract.—*Loss of freight.—Charter-party.*—The plaintiff entered into a contract of charter-party with the defendants, whereby it was agreed between them and defendants "acting for the owners" that "the steamer *Atholl*, now on her passage to Calcutta, being tight, staunch, and strong, &c., shall receive on board from the charterers a complete cargo of merchandise, to consist of 700 tons dead weight, &c., and being so laden shall therewith proceed to London, with liberty to call for any legal purpose at any intermediate port or ports, &c.; freight to be paid on the above cargo on right delivery of the same at and after the rate of £4 2*s.* 6*d.* per ton. Charterers to have the option of cancelling the charter-party, if the steamer has not arrived in Calcutta on the 15th April 1871." The defendants signed the charter-party as "agent of steamer *Atholl*." The steamer was not, at the time the charter-party was entered into, on her way to Calcutta, being then in the port of London, and she did not start for some days after the date of the charter-party. She touched at Madras and Colombo on her way, and did not arrive in Calcutta until 11th April. Rates of freight having declined since the middle of March, at which time, it was alleged, the steamer ought to have arrived, the plaintiffs sued the defendants for damages. *Held*, the defendants were liable. The measure of damages was the difference between the value the steamer would have been to the plaintiffs as an instrument for earning freight at market prices, if she had been put at their disposal at the time when she ought to have been under the contract, *i.e.*, a fortnight or three weeks earlier, and what she was worth to them in the same view at the time when she actually was delivered. SCHILLER *v.* FINLAY . . . . . **8 B. L. R., 544**

87. ——— Failure to ship goods according to contract.—*Freight.—Expenses of carriage.—Sub-charterers.*—Where the defendant agreed to ship goods for a certain port, in a ship of which the plaintiffs were the sub-charterers, but

DAMAGES—*continued.*

2. MEASURE AND ASSESSMENT OF DAMAGES—*continued.*

(*a*) BREACH OF CONTRACT—*continued.*

Failure to ship goods according to contract—*continued.*

failed to ship any portion of the goods, and the plaintiffs were unable to obtain any freight,—*Held*, in an action to recover the whole amount of the freight which would have been payable to the plaintiffs if the contract had been carried out, that the plaintiffs were entitled to recover as damages a sum equivalent to the entire freight agreed to be paid by the defendant for the goods in question, after deducting therefrom a proportionate part of the expenses of carriage which had been saved by reason of the service not having been rendered. *Held*, also, that the sum payable by the plaintiffs to the original charterers of the vessel for the intended voyage ought not to be deducted from the sum payable by the defendant, as the damages payable by the defendant must depend upon his own contract with the plaintiffs, and not upon the terms of the bargain between the plaintiffs and the original charterers. DE ANGELIS & CO. *v.* MAYAPPA SETTY

[I. L. R., 5 Calc., 578: 5 C. L. R., 57

88. ——— Breach of warranty.—*Sale of special machine.*—The plaintiff applied to the defendant to sell him an ice-making machine capable of turning out 100 seers of pure ice per hour. The defendant supplied a machine which he represented as capable of turning out the required amount of ice. It was in evidence that the machine was to be set up at Allahabad; that the defendants had undertaken not to sell another machine of the same sort to any one at Allahabad, so that practically the plaintiff would have had a monopoly, or nearly so, as an ice purveyor at that station. The ice machine turned out eventually a quantity much less than 100 seers a day. *Held* that the plaintiff was entitled as damages to the amount paid for the machine, the expenses of ascertaining whether it would turn out 100 seers a day, and reasonable interest on the whole; the defendants to be at liberty to take back the machine. LAMOUROUX *v.* EVILLE . **1 Ind. Jur., N. S., 274**

89. ——— Suit for breach of contract to admit into partnership.—*Partnership for specified time.*—In a suit brought for damages for breach of a contract to admit the plaintiff into partnership,—*Held* that the damages to be awarded, although they should be estimated with reference to the profits which the plaintiff might ultimately have derived from the partnership, ought not to have been assessed at such a sum as would place the plaintiff in the position which he might have held at the conclusion of the partnership. Where the partnership was to endure for two years,—*Held* that one year's profits would be a fair award of damages. LEWIN *v.* MORRISON . . . . **2 Agra, Pt. II, 151**

90. ——— Failure to pay calls on shares.—*Agreement to forfeit shares.*—Where a party takes shares in a trading company, agreeing to forfeit his shares if he does not pay calls upon them at certain

DAMAGES—*continued.*

2. MEASURE AND ASSESSMENT OF DAMAGES—*continued.*

(*a*) BREACH OF CONTRACT—*continued.*

Failure to pay calls on shares—*continued.*

stated intervals, the penalty of forfeiture should be enforced against him if the calls are not paid according to agreement. The damages should not be measured by the amount of the call. ACHUMBIT SHAHA *v.* ROHIMOONISSA *alias* BIBEE NOOR JAN

[24 W. R., 358

91. ——— Breach of contract to register document.—*Nature of suit.*—A potta granting an ijara and a kabuliat in similar terms having been executed respectively by and exchanged between the plaintiffs and the defendant, when the parties went to register the potta the defendant refused to allow it to be registered, alleging that the plaintiffs had not performed certain conditions which were incumbent on them before they were entitled to the ijara. In a suit for a refund of the deposit money and for damages,—*Held* that the suit was brought not on the potta and kabuliat, but on an implied contract by the defendant to do that which was necessary to give effect to his own potta, *viz.*, to allow it to be registered, and that the real question was whether the plaintiffs had done all that they were required to do to entitle them to the assent of the defendant to registration. As the potta had been executed and handed over, if it specified no pre-requisite conditions, the natural presumption was that no such conditions existed; although that presumption might be rebutted by sufficient evidence. Damages for a breach of a contract of this kind, though not necessarily the same as for keeping a person out of possession, would yet be the loss occasioned to the plaintiff by the contract not having been performed. *Held*, further, that although the amount the refund of which was sued for was in fact in deposit for the rents of the old lease which had not yet expired, yet as the defendant had abandoned that lease and entered into a new arrangement as regarded the deposit, he could not now fall back on the old contract once abandoned, nor could he retain the money under the new contract which he had wrongfully refused to carry out. MONOMOTHONATH DEY *v.* SREENATH GHOSE . . **20 W. R., 107**

92. ——— Breach of contract to convey immoveable property.—Where a vendor having agreed to convey, without any reasonable excuse, conveys the property to a third party in order to obtain a higher price, the vendee is entitled by way of damages to the additional price obtained by the sale. TRILOKHYA NATH BISWAS *v.* JOY KALI CHOWDHRAIN . . . . . **11 C. L. R., 454**

93. ——— Refusal to execute lease as agreed.—*Amount of rent agreed on.*—Under an indenture of lease, *A.* and *B.* covenanted to give *C.* and *D.* possession of premises comprised therein. The lease was executed by *A.*, *C.*, and *D.*, and *B.'s* assent was comprised therein; but he refused to execute. On breach by *A.*, in an action for damages against *A.* and *B.*,—*Held*, *B* was not liable; but as against *A.*, there being no allegation of special damage, the mea-

DAMAGES—*continued*

2. MEASURE AND ASSESSMENT OF DAMAGES—*continued.*

(*a*) BREACH OF CONTRACT—*continued.*

Refusal to execute lease as agreed—*continued.*

sure of damages would be the difference between the rack rent and the rent that was agreed to be paid. GOBERDHONE DASS *v.* NITTANUND MULLICK [1 Ind. Jur., N. S., 41

94. ——— Refusal to give lease as agreed.—*Nominal damages.*—A party who took from certain proprietors of an estate a lease of their interest therein without advance or premium, not having been put in possession, and finding another party in possession with an adverse title, commenced a suit against him, which was unsuccessful. He then sued the lessors and their representatives for damages to recover the expenses of the litigation, and the whole of the profits he had expected from the lease. *Held* that the plaintiff had no right to recover from the lessors the expenses of the litigation, and as it was not contended that the lessors had wilfully misrepresented things, he was entitled only to nominal damages. MAHOMED ESA KHAN *v.* KESHUB LAL [14 W. R., 382

95. ——— Breach of clause in lease.—*Rent suit.—Substantial damage.—Nominal damage.*—*B.* obtained a lease of certain lands from *A.*, agreeing thereunder to pay to *A.* a certain rental for the land, and also a sum of R183-6-3 yearly to *A.'s* superior landlord, obtaining a receipt therefor. *A.* sued *B.* for the rent due to himself, and for the sum due to his superior landlord. *Held* that *A.* was entitled to recover the sum due to his superior landlord as damages for breach of the contract, and that the amount of such damages ought not to be taken as nominal, but should be assessed on the footing of the sum for which *A.* might become liable to his superior landlord. RUTNESSUR BISWAS *v.* HURISH CHUNDER BOSE . . . . I. L. R., 11 Calc., 221

96. ——— Contract assigning mortgage rights.—*Interest.—Guarantee of loss.*—Defendants assigned their mortgage rights under two deeds to plaintiff, stipulating to make good any loss which the latter might sustain by reason of the opposition or resistance of the mortgagors. Plaintiff, in a suit against the mortgagors, failing to establish one of the mortgages, sued the original mortgagees to recover damages, with interest and costs incurred by him in a suit against the mortgagors. *Held* that the measure of damages or loss to which the plaintiff was entitled was not the sum paid by him as consideration, but the value of the thing which he had been deprived of; and that the suit being in its nature a suit for unliquidated damages, plaintiff was not entitled to the interest on the sum awarded as damages. PARBUTTI *v.* MISSER CHIMMUN LALL . . 1 Agra, 82

97. ——— Suit for damages for being kept out of indigo factory.—*Calculation of damages.*—Suit for damages sustained by plaintiff during the period she was out of possession of an indigo factory with appurtenances. *Held* that the

DAMAGES—*continued.*

2. MEASURE AND ASSESSMENT OF DAMAGES—*continued.*

(*a*) BREACH OF CONTRACT—*continued.*

Suit for damages for being kept out of indigo factory—*continued.*

lower Court was right in taking, as the basis of its calculation of damages, a *bonâ fide* agreement entered into between the plaintiff and her lessees, showing the amount of rent which she would have received yearly but for the illegal act of the defendant; that, as the indigo land was an appurtenance to the factory, by ousting the plaintiff from the factory all benefit derivable from chur lands fit only for indigo was lost by her, and that the sum which represented that loss had been rightly included in the calculation of damages to which plaintiff was entitled. HURISH CHUNDER KOONDOO *v.* BAMA KALEE DEBIA [5 W. R., 194

98. ——— Breach of contract to cultivate indigo.—*Agreement to deliver indigo.—Risk of loss in manufacture.*—Where a ryot took advances from a planter for the cultivation of indigo, stipulating to deliver a certain number of bundles of the plant, and further stipulating that, if he failed to do so by neglecting to cultivate or cut, he would pay as damages the price of manufactured indigo for the bundles ascertained to be due,—*Held* that, if the ryot's failure to supply the bundles stipulated for arose through his neglect to cultivate, he was bound to pay as damages the profit which the planter would have derived from converting the indigo plant, which ought to have been delivered, into indigo, and selling that indigo at a fair price: the risk of failure in the course of manufacture to be reckoned in estimating the damages. HILLS *v.* BUDU KHAN [12 W. R., 533

99. ——— *Mode of performance.—First failure to sow.*—In a suit for damages for breach of contract to cultivate indigo,—*Held*, (1) that if the ryots sowed at any time in the sowing season within three years of the institution of the suit, they could not be deemed to have committed a breach of contract, and that therefore the cause of action on such breach of contract could not commence before the close of the sowing season. (2) That only one set of damages for one breach of contract alone could be recovered, and not a separate set of damages for each breach of failure to do each of all the various acts specified. (3) That such stipulated damages should be for one year only, *i.e.*, that the first breach involved a liability to pay once, and once only, the stipulated damages, and that the contract ceased and determined therewith. (SHUMBOO NATH PUNDIT, *J.*, dissenting.) MOTEE SAHOO *v.* FORBES . . . . 6 W. R., 278

100. ——— *Bengal Regulation VI of 1823, s. 5, clause 2.*—*Held* that the limit of damages recoverable under clause 4, Regulation VI of 1823, was three times the sum advanced, and that the amount of advance itself could not be included or considered, except as the mode of measuring the damages. ZYN-OOD-DEEN *v.* WRIGHT [3 Agra, 77

DAMAGES—*continued.*

2. MEASURE AND ASSESSMENT OF DAMAGES—*continued.*

(*a*) BREACH OF CONTRACT—*continued.*

Breach of contract to cultivate indigo— *continued.*

101. ——— *Bengal Regulation VI of 1823, s. 5, clause 4.*—When a breach of contract to sow indigo arises, not from accident, but presumably from dishonesty, the case no longer falls within clause 4, section 5, Regulation VI of 1823, which limited the amount of penalty to three times the sum advanced, but the plaintiffs were entitled to recover an amount of damages not exceeding the sum which the defendant stipulated to pay on failure by him to perform his contract. LAL MAHOMED BISWAS *v.* WATSON [4 W. R., 62 : 1 Ind. Jur., N. S., 3

102. ——— *Bengal Regulation VI of 1823.—Fraud.*—It is not imperative on the Courts, in cases of breach of contract for the supply of indigo plant, according to the provisions of Regulation VI of 1823, to award three times the amount of the advance. Where the breach is not fraudulent, the penalty should be adjudged with reference to the extent of the injury sustained, but not exceed three times the sum advanced. Where the breach is fraudulent, the extent of the injury sustained is, without any restriction whatever, the standard for regulating the amount awardable. DALEEP SINGH *v.* SEITH ROSHUM LALL . . 1 Agra, 69

103. ——— *Liquidated damages.*—By a contract for the cultivation of indigo, the defendants agreed, in consideration of certain payments, to prepare the land, sow the seeds that should be supplied, and reap the crops: and it was stipulated that in case the defendant should neglect to cultivate the lands, the amlah of the factory might cultivate them, and deduct the expense from the money payable to the defendant, and that if the lands were not prepared for the seed at the time of the full moon in the month of Magh, "in consequence of the loss of indigo and its profits, the defendant should pay compensation at the rate of twelve sicca rupees per beegah." *Held* that the stipulation for the payment by the defendant of twelve sicca rupees per beegah, in the event of the land not being prepared for seed by the time mentioned, was a reservation in the nature of liquidated damages; and that the plaintiff was not entitled to recover more than that sum in respect of the breach of that stipulation, although loss to a greater extent may have been sustained. MACRAE *v.* JHOOMUCK MISSER [Marsh., 386 : 2 Hay, 391

104. ——— *Measure of damages.*—In estimating the measure of damages to be paid for breach of contract to cultivate indigo, the period of the breach should be taken as the time for estimating the damages. Generally, the natural and immediate consequence of the breach of contract should alone be looked to, and not some possible remote result. Supposed profits ought not to be given as part of the damages, unless under special and extraordinary circumstances. ZEENUTTUNISSA *v.* TOMBS . . . . W. R., 1864, 251

105. ——— *Act X of 1836, s. 3.*—When there has been a breach of contract to sow and cultivate indigo, both liquidated damages and the amount advanced to the cultivators cannot be recovered under section 3, Act X of 1836. MAHOMED KASEM CHOWDHRY *v.* FORBES [5 W. R., 277

MAHOMED KASEM *v.* FORBES . 8 W. R., 257

106. ——— Suit on breach of contract to cultivate and deliver indigo, for recovery of the amount specified in the contract. *Held* that, unless it was clear that the intention of the parties to the agreement was to treat the sum mentioned not as a penalty but as liquidated damages, behind which the Court should not look, the Court could not award damages beyond the amount of injury actually sustained. DOYLE *v.* MUNDAREE MUNDUL [5 W. R., S. C. C. Ref., 10

HINGUN SOWDAGAR *v.* BOISTUM CHURN OJAH [6 W. R., Cir. Ref., 5

107. ——— *Liquidated damages.*—In a suit to recover damages under a kabuliat, in which defendant had engaged to sow and cultivate indigo, and in case of failure to pay as damages a specified sum for every year,—*Held* that the amount agreed to be paid should be treated as liquidated damages and not as a penalty. LEDLIE *v.* BHADOO PORAMANICK . . 11 W. R., 558

108. ——— The sum agreed to be paid by a ryot as damages for breach of contract in respect to the sowing of certain lands with indigo must be regarded as liquidated damages and not as a penalty. TALIM MUNDUL v. WATSON & Co. [17 W. R., 94

109. ——— *Sum agreed on by parties.*—Where the contracting parties have agreed at what sum the amount of damages for breach of a contract shall be estimated, it is not necessary to prove the amount of loss sustained. PALMER *v.* SECRETARY OF STATE FOR INDIA . 2 Agra, 194

110. ——— **Breach of contract.**—*Liquidated damages.—Penalty.—Pleading.*—Where the parties to a contract stipulate for the payment of a specified sum for any breach of it, and the damages resulting from any such breach are uncertain and incapable of accurate valuation, the sum agreed to be paid will be treated as liquidated damages, and not as penalty. In a suit for breach of contract it is open to the defendant to plead in that suit (without being obliged to bring a fresh suit) that the plaintiff, being the first to break the agreement, cannot now

DAMAGES—*continued.*

2. MEASURE AND ASSESSMENT OF DAMAGES—*continued.*

(*a*) BREACH OF CONTRACT—*continued.*

Breach of contract—*continued.*

sue for damages for something subsequently done by the defendant in contravention of it. ASHRUFUNISSA BEGUM *v.* STEWART . . . 7 W. R., 303

111. ——— Breach of contract in selling fish.—*Liquidated damages.*—In a suit for damages on the ground that the defendants, after executing an agreement by which they stipulated to sell fish every day in the plaintiff's bazar, and to pay a fee per diem, and bound themselves to pay damages to a specified extent in the event of their leaving his bazar and resorting to another bazar, had left his bazar where they were selling fish,—*Held* that the sum stipulated to be paid was merely a penalty, and that plaintiff was not entitled to recover as damages anything beyond the damages he had actually sustained. MADHUB CHUNDER ROY *v.* LUCKEE JELANEE [9 W. R., 212

112. ——— Compensation for breach of contract.—*Contract Act, s. 74.*—Where a kobala is not executed within the stipulated date, an intending purchaser is not entitled to compensation under the Contract Act, section 74, unless he can show that he tendered the purchase-money and the bond, together with a draft of the kobala, to the opposite party, who then refused to execute. FUKEER AHMED *v.* ISSUR CHUNDER DAS . . 20 W. R., 481

113. ——— *Liquidated damages.—Penalty.—Measure of damages.—Act IX of 1872 (Contract Act), s. 74.*—Under section 74 of the Contract Act, 1872, the Courts are not bound, even in cases where the parties to a contract have, in anticipation of a breach, expressly determined by agreement what shall be the sum payable as damages for the breach, to award such sum for a breach, but may award for the same "reasonable compensation" not exceeding such sum. As a general principle, compensation must be commensurate with the injury sustained. Acting upon this principle, when the injury consists of a breach of contract, the Court would assess damages with a view of restoring to the injured party such advantages as he might reasonably be expected to have derived from the contract had the breach not occurred. *Held*, therefore, where the parties to a contract to deliver a certain quantity of raw indigo on a certain day agreed that a certain sum should be paid as compensation in case such indigo was not delivered as agreed, that the method of assessing damages in case of a breach of the contract would be to ascertain the quantity of indigo which could have been pressed out of the stipulated amount of indigo plant, to ascertain the price at which the indigo might have been fairly sold in the market during the season to which the contract related, and to deduct from such price the ordinary charges of producing and selling the quantity of indigo in question; and that more than the amount so ascertained ought not equitably to be awarded, such amount being "reasonable compensation" for

DAMAGES—*continued.*

2. MEASURE AND ASSESSMENT OF DAMAGES—*continued.*

(*a*) BREACH OF CONTRACT—*continued.*

Compensation for breach of contract—*continued.*

a breach of the contract. *Srigopal Pal Chowdhry* v. *Bengal Indigo Company, W. R., 1864, 354,* is presumably overruled by the cases under the Contract Act, section 74. NAIT RAM *v.* SHIB DAT [I. L. R., 5 All., 238

(*b*) TORTS.

114. ——— Assessment of damages, Practice as to.—In a suit for recovery of damages, the Court which tries the case must, before passing final decree, assess the damages, and not leave them to be assessed in execution of the decree. The practice on the original side of the Court as to assessing the amount of the damages discussed. MANIRAM *v.* BIBI MASHIHUN [4 B. L. R., Ap., 66

KRISTO MOHUN MOOKERJEE *v.* JUGGURNATH ROY JOOGEE . . . 11 W. R., 236

BINDA BIBI *v.* LALA RAMSARAN SINGH [1 B. L. R., S. N., 23

BINDA BIBI *v.* LALA RAMSARAN SINGH AND BHENUCK SINGH *v.* JUGGER SINGH [10 W. R., 199

115. ——— Wrongful act.—*Injury done.—Punishment.*—In assessing damages caused by a wrongful act, the injury sustained should alone be considered, not the punishment to be indicated. BULOBHUDDUR SINGH *v.* SOLANO . 5 W. R., 107

116. ——— Nominal damages.—*Obligation of Court to award nominal damages.—Semble,*—When the Court is of opinion that the plaintiff is not entitled to any substantial damages, it is not bound to award him nominal damages. FUTEEK PAROOEE *v.* MOHENDER NATH MOZOOMDAR [I. L. R., 1 Calc., 385

117. ——— Right to damages.—*Establishment of cause of action.—Assignment at too large a sum.*—Where a cause of action is established the plaintiff is entitled to some damages. His claim ought not to be dismissed altogether by the lower Appellate Court because the first Court assessed the damages at too large a sum. PARUSNATH SHAHA *v.* BROJOLAL GOSSAIN . . . 8 W. R., 44

118. ——— *Plaintiff exaggerating his claim.*—A plaintiff who comes into Court with a monstrously exaggerated statement of injury sustained, is only rightly served if the Court dismiss his claim *in toto*, although some injury was found to have been sustained by him. THAKOOR LULEET NARAIN DEO *v.* JUGGURNATH MISSER [8 W. R., 476

119. ——— *Plaintiff exaggerating his claim.*—A Judge in appeal was held to have done wrong in dismissing a plaintiff's case in

DAMAGES—*continued.*

2. MEASURE AND ASSESSMENT OF DAMAGES—*continued.*

(*b*) TORTS—*continued.*

Right to damages—*continued.*

toto with all costs, on the ground that he had monstrously exaggerated his claim in the first instance, when there was a ground, although small, for the plaintiff's contention. RAMCHUNDER CHUCKERBUTTY *v.* MARIOTT . . . **15 W. R., 465**

120. ——— *Failure to prove special damage.*—Where special damage is the gist of a plaintiff's case, and he fails to prove such damage, he is precluded from recovering ordinary damages. WILSON *v.* KANHYA SAHOO **[11 W. R., 143**

121. ——— **Responsibility of each member of common assembly.**—*Compensation.—Duress.—Held,* that in a suit for compensation for damage done to property, each and every one of the persons was equally responsible to make compensation for the loss sustained, when he happened to be a part of the common assembly and executed a common purpose, and that each one was not liable only in proportion to his share of the plunder received or of the damage done by him. Coercion to form a member of the assembly, or bear a part in the damage, is no excuse from responsibility in a civil suit for compensation. GANESH SINGH *v.* RAM RAJA **[3 B. L. R., P. C., 44: 12 W. R., P. C., 38**

122. ——— **Mental anxiety.**—*Damage arising from tort.*—Damages are not usually awardable under the express head of "mental anxiety;" but in all cases in which damage arises from a tort, as distinguished from a breach of contract, the Courts in awarding damages are not compelled to estimate the damage too precisely, but are at liberty to give damages which may effectually protect the injured party from a repetition of the wrong. FUROOKH HOSSEIN *v.* FUZUL HOSSEIN **[1 N. W., 209: Ed. 1873, 292**

123. ——— **Abuse and assault.**—*Position in life of plaintiff.*—In a suit for damages occasioned by abuse and assault, the plaintiff's position should be considered for the purpose of seeing how far the compensation awarded is commensurate with the injury inflicted, but not for giving a decree against the defendant beyond any possibility of his ever satisfying it, simply because the plaintiff is a man of a somewhat high position in life. JOYPAL ROY *v.* MUKHOOND ROY . . **17 W. R., 280**

124. ——— **Assault without provocation.**—In a suit for damages for an assault made without provocation, the damages given should be commensurate to the injury and annoyance caused, even though there has been no serious personal injury sustained. RAMJOY MUZOOMDAR *v.* RUSSELL **[W. R., 1864, 370**

125. ——— **Injury done by cattle trespassing.**—*Striking average.*—Striking an average on the amounts stated by several witnesses is not a proper mode of assessing the amount of damages sustained by the plaintiff in respect of injury done to his crops by the defendant's cattle. SURUTOLLAH CHOWDHRY *v.* MADUR BUX CHOWDHRY **[W. R., 1864, 363**

126. ——— **Loss of cultivation by cutting embankment.**—In a suit for damages for loss of cultivation by the cutting of a bank, the plaintiff is entitled not merely to the rent of the land, but also to the profits of cultivation. PUNNUN SINGH *v.* MEHER ALI . . . **W. R., 1864, 365**

127. ——— **Defamation.**—*Conviction and fine by Criminal Court.*—A Civil Court is not bound to give damages for defamation after the defendant has been convicted and fined for the offence in the Criminal Court where plaintiff has suffered no actual damage. OOMA CHUBN *alias* GOPAL CHUNDER ROY MOZOOMDAR *v.* GIRISH CHUNDER BANERJEE **[25 W. R., 22**

128. ——— **Compensation for land taken by Railway Company under Act VI of 1857.**—*Compensation.—Probable damages to adjoining lands.*—When land is taken up for a railway company under Act VI of 1857, the owner should claim for all damages likely to be caused to his adjoining lands by the works of the company; and no suit will lie for damages so caused if they could reasonably have been foreseen at the time of the fixing of compensation. Whether such damages could reasonably have been foreseen or not is a question of fact to be determined by the lower Court. TAPIDAS GOBINDBHAI *v.* B. B. AND C. I. RAILWAY COMPANY. B. B. AND C. I. RAILWAY CO. *v.* TAPIDAS GOVINDBHAI . . . **6 Bom., A. C., 116**

129. ——— **Malicious prosecution.**—*Injury to feelings.*—In estimating damages for a malicious prosecution, a Civil Court is not necessarily wrong in taking into consideration the plaintiff's feelings. HURO LALL BISWAS *v.* HURO CHUNDER ROY **[12 W. R., 89**

130. ——— *Compensation*—In a suit for malicious prosecution on a false charge of dacoity, a Civil Court in awarding damages is not limited to the amount mentioned in section 270 of the Code of Criminal Procedure. SHAMACHURN HALDER *v.* BEHARI LALL KOILAY **[14 W. R., 443**

131. ——— **Wrongful distraint.**—*Actual loss.*—In a suit for damages for excessive distress, the Judge awarded to the plaintiff damages equivalent only to the actual loss sustained. *Held* that he had a discretion with respect to the amount of the damages, and that there was no ground for interfering with his assessment. TEEKARAM KYBUTT *v.* RAJKISHEN ROY . . . **Marsh., 495**

DAMAGES—*continued.*

2. MEASURE AND ASSESSMENT OF DAMAGES—*continued.*

(*b*) TORTS—*continued.*

133. ——— **Wrongful act.**—*Suit for possession of property.—Prospective loss.*—Damages should be awarded according to the loss caused to plaintiff by the wrongful act of the defendant; and, where such act renders it probable that plaintiff will be a loser in future time, the award should embrace prospective loss. KOOMAREE DASSEE *v.* BAMA SOONDHREE DASSEE . . . . **10 W. R., 202**

134. ——— **Suit for negligence.**—*Mode of assessment.—Practice.—Fresh issues.—Civil Procedure Code (Act X of 1877), s. 566.*—In a suit for negligence, where it is possible that the Court may take one or more different views as to the proper measure of damages, the plaintiff must come prepared with evidence as to the amount of damages according to whichever view the Court may adopt, and if the evidence produced is applicable to one view only, the Court cannot give the plaintiff a re-trial and allow him to remodel his case with fresh evidence under section 566 of the Civil Procedure Code. That section is intended to provide for cases where some point has come to light in the Appellate Court which has not been raised, or the importance of which has not occurred to the parties or to the Judge, in the Court below. ANUNDO LALL DASS *v.* BOYCAUNT RAM ROY

[I. L. R., 5 Calc., 283: 4 C. L. R., 473

135. ——— **Wrongful conversion.**—*Detention of ornaments pledged.*—In an action for damages for the detention of ornaments pledged with the defendant which the defendant has wrongfully converted to his own use, the measure of damages is the value of ornaments, less the sum for which they have been pledged. HASAM KASAM *v.* GOMA JADAVJI . . . . . **5 Bom., O. C., 140**

136. ——— *Conveyance of timber.—Price at place of destination.*—In an action for the wrongful conversion of certain timber, the plaintiff claimed to recover as damages the market value of the timber at the town of Rangoon, to which it was being conveyed at the time of the conversion. *Held*, that the cost of carriage to Rangoon from the place where the wrongful conversion occurred must be deducted. BOMBAY-BURMAH TRADING CORPORATION *v.* MAMOMED ALLY

[I. L. R., 4 Calc., 116

137. ——— **Injury to indigo crop.**—*Gross negligence.*—In a suit in which it is proved that defendants maliciously and from gross negligence allowed their cows to trespass on plaintiff's lands, and to destroy the indigo plants thereon, knowing the value of the crops to the plaintiff, it was held that the case was one of tort, in which the wrong being deliberate and malicious, the plaintiff was entitled by way of damages, not to the mere value of the growing plants destroyed as the actual loss sustained, but to substantial damages sufficient to compensate the plaintiff for the loss of profits which would have been obtained from the indigo plant. SREEHURREE ROY *v.* HILL . . . . . **9 W. R., 156**

DAMAGES—*continued.*

2. MEASURE AND ASSESSMENT OF DAMAGES—*continued.*

(*b*) TORTS—*continued.*

138. ——— **Suit for value of trees cut down.**—*Person with some claim of right.*—Suit for damages in respect of the value of trees cut down by the defendant, not as a wrong-doer, but as one having some claim of right to justify him. *Held*, that the computation of damages in such a case is not a matter of exact calculation, but must be left to the discretion of the Judge who hears the evidence. FORBES *v.* MEER MAHOMED KASSEEM

[1 W. R., 238

139. ——— **Suit for illegal ejectment.**—*Surety of lessee.*—Explanation of the principle of assessing damages in a suit by a surety of the lessee who has afterwards become his partner for damages for illegal ejectment of the lessee before the expiration of the lease. BURRODA KANT ROY *v.* RAM TUNNOO BOSE . . . **7 W. R., P. C., 51**

S. C. BURDAKANTH ROY *v.* ALUK MUNJOOREE DASSIAH. . . . . **4 Moore's I. A., 321**

140. ——— **False representation.**—*Cause of action.—Recurring damages.*—Where plaintiff had in a former suit brought to recover a part of the consideration-money, together with the excess rents paid by him on a putni settlement which defendant had induced him to take on a false representation regarding the lots included in it, obtained consequential damages,—*Held*, that he could not succeed in a second suit to get back so-called excess of rent paid by him in terms of the putni pottah since the institution of the first suit. When once the cause of action is matured, the subsequent occurrence of further damage, after or before adjudication of the original matter, does not originate a fresh cause of suit. NILMONEE SINGH DEO *v.* ISSURCHUNDER GHOSAL . . . . . **9 W. R., 121**

141. ——— **Actions for compensation for destruction of life.**—*Act XIII of 1855.*—Mode of estimating damages in actions brought under Act XIII of 1855 discussed. VINAYAK RAGHUNATH *v.* GREAT INDIAN PENINSULA RAILWAY COMPANY

[7 Bom., O. C., 113

LYELE *v.* GANGA DAI . **I. L. R., 1 All., 60**

SORABJI RATANJI *v.* GREAT INDIAN PENINSULA RAILWAY COMPANY

[7 Bom., O. C., 119, note

RATANBAI *v.* GREAT INDIAN PENINSULA RAILWAY COMPANY . **7 Bom., O. C., 120, note**

And, on appeal, RATANBAI *v.* GREAT INDIAN PENINSULA RAILWAY COMPANY

[8 Bom., O. C., 130

142. ——— **Suit against Collector for acting illegally at sale.**—In a suit against the Collector personally for damages on account of loss sustained by illegally selling to the second highest bidder, the difference between the two bids is the proper measure of the plaintiff's loss, and not the actual or probable value of the estate. CORNELL *v.* OODY TARA CHOWDHRAIN . . **8 W. R., 372**

DAMAGES—*continued.*

2. MEASURE AND ASSESSMENT OF DAMAGES—*continued.*

(*b*) TORTS—*continued.*

143. ——— Action of trespass.—*Damage to property by alteration of neighbouring house.—Injunction.*—Plaintiff and defendants, occupants of neighbouring houses, were joint tenants of the party-wall. Defendants unroofed their house, raised the wall, and placed beams on it to rebuild their house. The lower Appellate Court found that, in consequence of this alteration, the rain from defendants' house descended upon plaintiff's verandah and caused damage to plaintiff, and decreed that defendants should restore the wall to its former height, and remove the beams placed on it. *Held*, on special appeal, that taking the finding to be that the alteration created "stillicidium," where it did not exist before, or that it rendered more burdensome an existent "servitus stillicidii," it would be very dangerous to hold that every trifling excess in the exercise of a servitude should justify the pulling down of the building creating the excess; that in the present case the damages should be assessed and awarded, and the injunction to remove the roof of the house and reduce the wall be made conditional upon the defendants not removing the cause of the nuisance. In such a case, the measure of damages is the amount which will induce the defendants to abate the nuisance. AKILANDAMMAL *v.* VENKATA CHALA MUDALI . . . . . **6 Mad., 112**

144. ——— ——— *Trespass to immoveable property.—Quarrying stone without leave.*—Where the defendants without leave quarried on the land of the plaintiff and removed a large quantity of stone therefrom, it was held that the plaintiff was entitled to recover by way of damages the value of the stone after it was quarried, and that the defendants were not entitled to a deduction therefrom of the cost they had incurred in quarrying the stone. DAJIBA ANANDRAV *v.* BOMBAY, BARODA, AND CENTRAL INDIA RAILWAY COMPANY **[6 Bom., A. C., 235**

145. ——— Infringement of trade mark.—*Damage caused to plaintiffs by way of enhancement of loss, and not by loss of profit.*—Where the infringement of the plaintiffs' trade mark by the defendants caused a loss of profit to the plaintiffs, not by diminishing the amount of goods sold by the plaintiffs, by taking away their customers or ousting them from their usual market, but by causing the goods actually sold by the plaintiffs to be sold at a diminished price,—*Held*, that the defendants were liable for the loss sustained by the plaintiffs; and that the amount of the reduction in the price of the goods sold was the measure of damages. The plaintiffs sued the defendants for the infringement of a trade mark used by the plaintiffs upon bundles of yarn sold by them, and known as "No. 20 red tie" yarn. They alleged that the defendants introduced into the Madras market a quantity of yarn bearing similar marks to those upon the plaintiffs' yarn, but of very inferior quality; and that, in consequence of this action of the defendants, the selling price of the plaintiff's yarn was, during the months of April and May 1885, depreciated beyond the amount of depreciation attributable to the natural fall of market prices in those months; and they contended that such depreciation was the natural and reasonable result of the defendants' wrongful act. The plaintiffs calculated the damages sustained by them at R6,000. It appeared that, during the months in question, the plaintiffs' mill was not working at a profit, and would have made no profits even if the plaintiffs had obtained for their yarn the ruling market price. The damage, therefore (if any), caused to the plaintiffs by the action of the defendants, was not in form of profits, but in the form of enhancement of loss. *Held*, upon the evidence, that the extra fall in the price of the plaintiffs' yarn beyond the general market depression was due, not simply to the introduction of the defendants' yarn into the Madras market, but to its introduction with the trade mark similar to that of the plaintiffs. The Court found that the said wrongful act of the defendants prejudicially affected the sale of the plaintiffs' yarn to the extent of about two annas per bundle; that the damage thus sustained by the plaintiffs was the reasonable and probable result of the defendants' action; and that the plaintiffs were entitled to recover such damage from the defendants. MANOCKJI PETIT MANUFACTURING COMPANY *v.* MAHALAXMI SPINNING AND WEAVING COMPANY **[I. L. R., 10 Bom., 617**

146. ——— Wrongful execution of decree.—*Execution of decree after sale of decree.*—The defendant, being the holder of a decree, whereby a certain sum was declared due as a lien on two mouzahs therein mentioned, sold his decree to the plaintiff in the present suit, who had purchased the proprietary right in the mouzahs subject to the lien. Subsequently the defendant, who retained possession of the decree, sued out execution and realised the amount due under it, together with subsequent interest thereon. *Held*, that the plaintiff was entitled to recover back the money paid by him as the consideration for the sale, together with damages proportionate to the loss sustained by reason of the subsequent improper execution of the decree, *viz.*, the amount of subsequent interest. GOOR SAHAI *v.* HUR SAHAI . . . . . **3 Agra, 202**

147. ——— Wrongful attachment.—*Death of cattle seized.*—In execution of a decree against his judgment-debtor, the defendant caused the cattle of the plaintiff, a stranger, to be seized and taken. The plaintiff filed his claim under section 246, Act VIII of 1859, which was allowed. Subsequently to the admission of the claim, but before the order for release of the cattle, three of the bullocks died. The plaintiff sued for damages consequent on the seizure of the cattle, and for the value of the three bullocks which had died during the time they were in the custody of the officer of the

DAMAGES—*continued.*

2. MEASURE AND ASSESSMENT OF DAMAGES—*continued.*

(*b*) TORTS—*continued.*

Wrongful attachment—*continued.*

Court. *Held*, that the defendant was liable to the plaintiff for damages sustained by him in consequence of the seizure and detention of the cattle,—*i.e.*, for a sum sufficient to cover what would have been plaintiff's expenses for hiring bullocks to cultivate his land. SUBJAN BIBI *v.* SABIATULLA.

[3 B. L. R., A. C., 413: 12 W. R., 329

148. ——————— *Liability of execution-creditor in damages for wrongful seizure.—Attachment of stranger's property.*—Certain unthreshed rice belonging to the plaintiff was wrongfully attached by the defendants under a money decree obtained by them against a third party. The attachment had been made under a warrant which specified the rice in question, and which had been issued upon a darkhast presented by the defendants, in which they prayed for the attachment of this particular rice as their judgment-debtor's property. The rice, while in the custody of a bailiff of the Court nazir in the place where it had been attached, was clandestinely threshed and carried off by thieves, who left the straw. In a suit brought by the plaintiff to recover the value of the unthreshed rice from the defendants,—*Held*, the measure of damages should be the value of the rice as it stood at the time of the wrongful attachment made at the instance of the defendants. If, however, the plaintiff accepted the straw left by the thieves, the value of the straw as it stood at the time of such acceptance should be deducted from the value of the straw and rice when unsevered from each other. GOMA MAHAD PATIL *v.* GOKALDAS KHIMJI . **I. L. R., 3 Bom., 74**

149. ——————— *Loss of timber on attached estate.*—This suit was brought to cancel a decision of the Magistracy (A.), dated 11th December 1869, whereby first defendant was put in possession of the Choladi forest, to establish plaintiff's jeum right thereon, and to recover the same with R14,000, value of timber. The facts as they appeared, were that there was a coffee estate called Choladi, carved out of the same jungle as that in which the Choladi forest was, but not adjoining it and in a different talook. The cultivation of that estate was begun in 1862 by *G.* who in 1865 transferred his interest to *B.*, who in 1867 was succeeded by first defendant. In the following year the first defendant proceeded to lay claim to the land in dispute, and in 1868 he prosecuted some hill-men for trespass and had their crops attached. In June 1869 he procured an order from the Deputy Magistrate whereby the Gudalur Sub-Magistrate was ordered to attach certain lands (no boundaries being specified). The land and timber thereon were accordingly attached and an order of attachment served on plaintiff. The case then came before the Assistant Magistrate, who, after holding an enquiry as to possession, passed the order (A.), cancellation whereof was prayed in the plaint. The District Judge found that down to the interference of the Magistrate in 1868, plaintiff was in possession as owner, and he further decreed that defendant should pay plaintiff R14,000 on account of the timber which had been carried off, by whom it did not appear. On appeal, the High Court confirmed the decision of the District Judge on the question of title, but reversed it as to the value of the timber carried off, because there was no causal connection between its loss and a wrongful act of the defendant which was needed to justify the award of that sum as damages. There was no evidence of the mode of the loss. The occasion for it was given by an order of a Magistrate, and the mere preferring of the complaint which gave birth to that order did not render the defendant responsible in the circumstances of the case. IRVINE *v.* THACHARAKAVIL MANA VIKRAVEN TIRAMELPAD OF NILAMBUR . . . . . **7 Mad., 235**

150. ——— **Wrongful detention of property.**—The proper measure of damages for wrongful detention of property is the difference between the value of the property when seized and its value when restored. NUNDEERAM SINGH *v.* INDERCHUND DOGARE . . . . . **Cor., 89**

S. C. in Court below. INDERCHUND DOGARE *v.* NUNDEERAM SINGH . . . . **Cor., 3**

151. ——————— *Interest on value of goods.*—In a suit for damages for detention of property, interest at the bazar rate on the value of the goods awarded and recovered may not be an adequate measure of damages. The Judge should take into consideration all the circumstances of each case presumably within the knowledge of the defendant at the time he committed the act which forms the cause of action, and allow for their natural and immediate consequences. PUNJU *v.* OODOY . **18 W. R., 337**

152. ——— **Suit for damages for taking and detaining coffee estate and properties and for destruction of crop.**—*Profits of estate.*—The plaintiff brought a suit against the defendant to recover damages for the wrongful taking and detention by the defendant of a coffee estate and certain moveable property belonging to the plaintiff, and for the loss sustained, partly by the destruction of the growing "supplemental crop," and partly by neglect of the proper cultivation of the estate. The possession of the estate had been in the first instance given in right of the defendant's claim as mortgagee, and afterwards retained mistakenly in the same right. The Civil Judge awarded the plaintiff R20,000 as compensation for the injury, privation, and suffering resulting to the plaintiff from the defendant's wrongful acts in obtaining and withholding possession of the estate. *Held*, that the defendant should not have been adjudged to pay more than the value of the profits of the estate, and of any property removed from the estate, and compensation for any injury caused to the estate by the acts or neglect of the defendant or his agents. MCIVOR *v.* STAINBANK . **5 Mad., 70**

DAMAGES—*continued.*

2. MEASURE AND ASSESSMENT OF DAMAGES—*continued.*

(*b*) TORTS—*continued.*

153. ——— Suit for plundered property.—*Misappropriation.—Presumption.*—In a suit to recover the value of plundered property, when a question arose as to the amount of the property misappropriated, it was ruled that, unless the defendant produced the property and showed it not to be of the value stated by plaintiff, the strongest presumption should be made against him, and the highest value assumed. SOONDUR MONEE CHOWDHRAIN *v.* BHOOBUN MOHUN CHOWDRY . . **11 W. R., 536**

3. REMOTENESS OF DAMAGES.

154. ——— Suit for trespass.—*Expenses of criminal proceedings.—Loss of income.*—The plaintiffs, describing themselves as the agent and gomashta of the hereditary durmakurtah of the Trivellore Pagoda, brought a suit for damages against the defendant, the committee of the district, appointed by virtue of Act XX of 1863, and their servants, for a trespass by the defendants in forcibly dispossessing them of the pagoda and the property therein, and for the wrongful removal and retention of the property. The plaint stated that the defendants were punished criminally for the trespass by the Magistrate, who, after enquiry under sections 318 and 319 of the Criminal Procedure Code, restored the possession of the pagoda to the plaintiffs. The damages claimed were the value of jewels, cash, records, and accounts not restored; the expense incurred by the durmakurtah in the purification of the pagoda; the amount of counsel's and vakeel's fees in the criminal proceedings; and the amount of income received by the defendants during their possession during a festival held at the pagoda. *Held* that the plaint was brought by the plaintiff personally, and not on behalf of the plaintiffs by the durmakurtah through his recognised agents; that the plaintiffs were entitled to recover a moderate amount of damages for the wrong done to them in ejecting them from the pagoda; that the expenses incurred in the criminal proceedings instituted by the plaintiffs were not recoverable as damages, such damages not being directly traceable to the wrong and its natural and necessary consequences; that the amount of income received by the defendants during the festival was a loss sustained by the durmakurtah and not by the plaintiff personally; and that the plaintiff had failed to make out the loss of property alleged. VENKATASA NAIKER *v.* SRINIVASSA CHARYAR . . **4 Mad., 410**

155. ——— Invasion of right of private ferry.—*Damages for trespass to lands.*—In a suit to maintain the old boundaries of a ferry, the plaintiffs did not assert that they enjoyed a right of private ferry which had been invaded by an order of the Magistrate extending the boundaries of a public ferry, but only that they had theretofore, without charging toll, transported, in their own boats, or in boats hired by them, their labourers and cultivators, and implements of husbandry; and that in the exercise of this right, the order of the Magistrate was

DAMAGES—*continued.*

3 REMOTENESS OF DAMAGES—*continued.*

Invasion of right of private ferry—*continued.*

injurious to them. *Held*, that such damage was much too remote to entitle them to relief. *Held*, also, that the damage done to the plaintiffs by passengers and carriers trespassing on their lands on their way to the ferry was too remote to entitle them to maintain the suit. RAM GOVIND SINGH *v.* MAGISTRATE OF GHAZEEPORE . . . . **4 N. W., 146**

156. ——— Expected custody of idols.—*Uncertain damages.—Anticipated profits.*—A claim for damages for being prevented from receiving certain sums which the plaintiffs might have received if they had had the custody of certain idols retained by the defendants was not allowed. RAMESSUR MOOKERJEE *v.* ISHAN CHUNDER MOOKERJEE . . . . . **10 W. R., 457**

157. ——— Charter-party.—*Unseaworthiness of ship.—Expense of renewing bills.—Delay.—Loss by exchange.*—The plaintiffs chartered a ship of the defendant, and by the charter-party it was stipulated that the said ship, being tight, staunch, and strong, should receive from the plaintiffs a full cargo of rice or grain, and being so loaded should therewith proceed to St. Denis, the freight to be paid there on right delivery of cargo. The penalty for non-performance of the charter-party was to be the estimated amount of freight. The plaintiffs began to load on May 3rd, and continued doing so until June 10th, having then shipped very nearly the full cargo; they then stopped loading in consequence of a notice from the defendant that the ship was leaking. In consequence of the leakage the cargo had to be shifted, and a portion of it found to be damaged had to be replaced after the leak was stopped. The charges of shifting the cargo and the cost of the cargo substituted were paid by the defendant. Considerable delay occurred in consequence of the leak, and the loading was not completed until the end of July. On May 28th, when the plaintiffs had loaded a portion of the cargo, and had obtained bills of lading, they drew a bill of exchange at sixty days for the value of the cargo covered by the bills of lading on their agent at St. Denis, which they sold to the Comptoir d'Escompte de Paris, hypothecating the cargo for the amount of their draft. Other similar drafts were subsequently drawn and sold. When the plaintiffs received notice of the leakage, they, in anticipation of the delay which would occur in consequence, arranged with the Comptoir d'Escompte that the bills should not be forwarded forthwith, but should be held by the Comptoir d'Escompte, and renewed by the plaintiffs on the completion of the loading, the plaintiffs paying interest on the bills in the meantime at 9 per cent. per annum. On renewing the bills, the plaintiffs, in consequence of the difference in the rate of exchange, were out of pocket R400. In an action against the owner for breach of the charter-party in not supplying a ship tight, staunch, and strong, as stipulated, the plaintiffs sought to recover, as damages arising out of such breach of the charter-party, the interest paid by them

DAMAGES—*continued.*

3. REMOTENESS OF DAMAGES—*continued.*

Charter-party—*continued.*

on the drafts in pursuance of their arrangement with the Comptoir d'Escompte, the sum they had to pay on renewing the bills, a further sum for interest on bills they could not negotiate in consequence of not being able to obtain bills of lading from the defendant, and the value of the stamps on the bills, which had been cancelled in pursuance of the plaintiffs' arrangement with the Comptoir d'Escompte. *Held* that such damages were too remote. ROBERT AND CHABRIOL *v.* ISAAC . . 6 B. L. R., Ap., 20

158. ——— **Breach of covenant in not giving lessee possession.**—*Expenses of litigation for possession.*—In a lease for a period of nine years, without payment of salami, entered into between *A.* and *B.*, *A.* bound himself by the following covenant: "In the event of *B.* not being put in possession of the leased premises, *A.* will have to make good anything in the shape of khisara or nuksan (loss) to which *B.* may be put in consequence." On *A.* failing to put *B.* in possession of the premises mentioned in the lease, *B.* brought a suit against the party in possession, but failed to recover possession. In a suit by *B.* against *A.* for recovery of damages for breach of contract, measuring the amount of damages at the expenses he had to incur in the suit for possession, and also the whole of the profits which he expected to derive from the lease,—*Held* that the plaintiff was entitled to recover only nominal damages. MAHOMED ISA KHAN *v.* KISHO LAL [6 B. L. R., Ap., 44

159. ——— **Loss of profits from non-cultivation.**—*Magistrate's order as to possession.—Disputed possession.—Non-cultivation.—Criminal Procedure Code, 1872, s. 531.*—A dispute having arisen regarding the possession of certain land, an order was passed under section 531 of the Code of Criminal Procedure, forbidding both plaintiff and defendant to interfere with the land until either established his title in a Civil Court. The land in consequence of this order was not cultivated in the following year. The plaintiff sued for damages for the loss of profits resulting from non-cultivation of the land. *Held*, that the damages were not the probable result of the defendant's act, being the consequence of the order of the Magistrate. AMMANI AMMAL *v.* SELLAYI AMMAL [I. L. R., 6 Mad., 426

160. ——— **Breach of condition in lease.**—*Speculative damages.*—Where it was stipulated in a lease that if the tenant did not cultivate, the landlord might enter and cultivate a portion of the land demised,—*Held* that, on breach of the condition by the tenant, the landlord might be entitled to recover any damage directly consequent on the breach of contract, but he was not entitled to claim speculative profits which he might have derived from the most hazardous crops. ABDOOL GHUNNEE *v.* GOODEEE RAI . . . 2 Agra, Pt. II, 192

DAMAGES—*continued.*

4. RENT SUITS, DAMAGES IN—

161. ——— **Beng. Rent Act VIII of 1869, s. 44.—Beng. Act VI of 1862, s. 2.**—*Additional damages.—Discretion of Court.*—The award of additional damages under section 2, Bengal Act VI of 1862, was discretionary and not imperative. Before awarding such damages, the Court, in the exercise of its discretion, had to look to the condition of the parties and the particular hardship inflicted on the landlord by the omission of the under-tenant to pay his rents. RAMBUDDUN SINGH *v.* SEEE KOONWAR . . W. R., 1864, Act X, 22

DHEERAJ MAHTAB CHUND *v.* DEBENDER NATH THAKOOR . . W. R., 1864, Act X, 68

GOPAL LAL THAKOOR *v.* MAHOMED KADIR [W. R., 1864, Act X, 73

BOLYECHAND DUTT *v.* PUNCHANUN CHOBAY [W. R., 1864, Act X, 84

ZAMEEROODINNISSA KHANUM *v.* PHILLIPE [1 W. R., 290

162. ——— **Beng. Act VI of 1862, s. 2.**—*Additional damages.—Interest under s. 20, Act XI of 1859.—Construction of statute.*—Damages under section 2, Bengal Act VI of 1862, were awardable, in addition only to *rent and costs*, and were to be regarded as in substitution for, not in addition to, the interest awardable under section 20, Act XI of 1859. Retrospective effect was not to be given to the penal provision of section 2, Bengal Act VI of 1862. NOBOKANATH DEY *v.* BORADAKUNTH ROY [1 W. R., 100

163. ——— *Facts justifying award of damages.*—Before awarding damages for arrears of rent under section 2, Act VI of 1862, the Court should find whether, when the rent was demanded, it was withheld without just reason or not. MOHANUND CHOWDHRY *v.* EGLINTON [1 W. R., 343

164. ——— *Damages when not awardable.*—Damages were not awardable under section 2, Bengal Act VI of 1862, in a suit for rent in which the plaintiff's allegations as to the rate of rent had been disbelieved and a decree given him at the rates admitted by the defendant. BROKWITH *v.* NOORJUMMA . . . 2 W. R., Act X, 11

165. ——— **Beng. Rent Act, 1869, s. 44.**—*Beng. Act X of 1871, s. 25.—Beng. Rent Act, 1869, s. 44.*—Tenant are liable in damages for neglect to pay road nd public works cesses. SARODA PROSAD GANGOOLY *v* PROSONNO COOMAR SANDIAL [I. L. R., 8 Calc., 290

166. ——— **Withholding receipt on payment of rent.**—*Act X of 1859, s. 10.—Injuria sine damno.*—Where money is actually paid as rent and the necessary receipt is withheld, the case is not one of *injuria sine damno*, but one in which the law (section 10, Act X of 1859) gives the Court discretion to award any sum as damages not exceeding double the amount for which the receipt is withheld

DAMAGES—*continued.*

4 RENT SUITS, DAMAGES IN—*continued.*

Withholding receipt on payment of rent —*continued.*

JOHEEROODDEEN MAHOMED *v.* DABEE PERSHAD SINGH . . . . . 13 W. R., 391

DANCING GIRLS.

See HINDU LAW—CUSTOM—IMMORAL CUSTOMS . I. L. R., 1 Mad., 168, 356 [I. L. R., 4 Bom., 545

DAUGHTER.

See CASES UNDER HINDU LAW—INHERITANCE—SPECIAL HEIRS—FEMALES —DAUGHTERS.

DAUGHTER, APPOINTMENT OF—

See HINDU LAW—CUSTOM—APPOINTMENT OF DAUGHTER. [15 B. L. R., P. C., 190

DAUGHTER'S SON.

See CASES UNDER HINDU LAW—INHERITANCE—SPECIAL HEIRS—MALES—DAUGHTER'S SON.

See OUDH ESTATES ACT. [I. L. R., 3 Calc., 626

DEAF AND DUMB PERSON.

See CRIMINAL PROCEDURE CODE, 1882, ss. 340, 341 (1872, s. 186) 7 N. W., 131 [19 W. R., Cr., 37 22 W. R., Cr., 35, 72

See CASES UNDER HINDU LAW—INHERITANCE—DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF INHERITANCE—DEAFNESS AND DUMBNESS.

See PARTIES—DISABILITY TO SUE. [2 N. W., 414

DEATH, CONFIRMATION OF SENTENCE OF—

See CRIMINAL PROCEDURE CODE, 1882, s. 376 (1872, s. 288). [I. L. R., 1 Bom., 639 19 W. R., Cr 57

DEATH OF HUSBAND.

See ABATEMENT OF PROSECUTION. [4 Mad., Ap., 55

DEATH OF JUDGE BEFORE JUDGMENT.

See JUDGMENT—WHAT AMOUNTS TO. [B. L. R., Sup. Vol., 774

——— *Re-hearing of case.*—When a Judge dies after hearing and deciding a case, the only record of his decision being an entry in the Court order-book, it is not competent to any co-ordinate Court to take up and re-hear the case; but the High Court will, on the ground of want of record of reasons

DEATH OF JUDGE BEFORE JUDGMENT—*continued*

for the decision, reverse the order and remand the case for re-hearing. SUKRAM *v.* KALA KAHAR [3 B. L. R., A. C., 105

DEATH OF PARTY INSTITUTING PROCEEDINGS IN INSOLVENCY.

See INSOLVENT ACT, s. 36 6 B. L. R., 119

DEATH OF PARTY TO EXECUTION PROCEEDINGS.

See SALE IN EXECUTION OF DECREE—INVALID SALES—DEATH OF DECREE-HOLDER BEFORE SALE. [I. L. R., 3 All., 75

See SALE IN EXECUTION OF DECREE—INVALID SALES—DEATH OF JUDGMENT-DEBTOR BEFORE SALE. [I. L. R., 6 All., 255

DEATH OF PARTY TO APPEAL.

See APPEAL IN CRIMINAL CASES—PROCEDURE . I. L. R., 2 Bom., 564

See CASES UNDER PARTIES—SUBSTITUTION OF PARTIES—APPELLANTS AND RESPONDENTS.

DEATH OF PARTY IN PROCEEDINGS IN LAND DISPUTE.

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—DECISION OF MAGISTRATE AS TO POSSESSION. [2 C. L. R., 264

DEATH OF PARTY TO SUIT.

See CASES UNDER PARTIES—SUBSTITUTION OF PARTIES.

DEATH, PRESUMPTION OF—

See CASES UNDER HINDU LAW—PRESUMPTION OF DEATH.

See CASES UNDER MAHOMEDAN LAW—PRESUMPTION OF DEATH.

DEBT BARRED BY LAW OF LIMITATION, AUTHORITY TO PAY—

See ADMINISTRATOR GENERAL. [I. L. R., 1 Mad., 267

DEBT PAYABLE BY INSTALMENTS.

See CASES UNDER BOND.

See CASES UNDER LIMITATION ACT, 1877, ART. 75.

See CASES UNDER LIMITATION ACT, 1877, ART. 179—ORDERS FOR PAYMENT AT SPECIFIED DATE.

DEBTOR, ARREST OF—

See CASES UNDER ARREST—CIVIL ARREST.

See CASES UNDER ATTACHMENT—ATTACHMENT OF PERSON

DEBTOR, DISCHARGE OF—

See CASES UNDER SUBSISTENCE MONEY.

DEBTOR AND CREDITOR.

See CASES UNDER EXECUTION OF DECREE.

See CASES UNDER SALE IN EXECUTION OF DECREE— DISTRIBUTION OF SALE PROCEEDS.

1. ——— **Gift by judgment-debtor.**—If a judgment-debtor has sufficient other property to satisfy a decree against him, it cannot be said that, in point of law, every gift of any part of his property is void on the ground that the whole was hypothecated for the payment of the decree. KRIPANATH SURMA *v.* NEITOKALEE DABEE . . **12 W. R., 137**

2. ——— *Voluntary gift by husband to wife.*—A voluntary gift by a husband to his wife is not void against the husband's creditors if at the time of the gift the husband was solvent, and the wife was put in possession under the gift, especially if the plaintiff became a creditor of the husband long after the gift. ENAET ALI *v.* RAMPREAH KOONWAR . . . . . **1 W. R., 21**

3. ——— *Conveyance by husband to wife in fraud of creditors.— Voluntary deed.*—If a man largely indebted executes a conveyance of property to his wife, as in satisfaction of dower, the conveyance is void as against his creditors, if executed for the fraudulent purpose of keeping the property in his own hands out of the reach of the creditors. So also a conveyance by a man in such circumstances to his wife is fraudulent and void if no dower is due, and the conveyance is voluntary, and not made in satisfaction of any debt due to him. MAHOMED BUSSEEROOLLAH CHOWDHRY *v.* ABEMOONISSA . . . . . **7 W. R., 513**

4. ——— *Voluntary transfer.—Bonâ fide gift.—Gift not to defraud creditors.*—A voluntary transfer of property by way of gift, if made *bonâ fide*, and not with the intention of defrauding creditors, is valid as against creditors. The Hindu and English law on the subject discussed. GANUBHAI *v.* SRINIVASA PILLAI . **4 Mad., 84**

5. ——— **Transfer of property by judgment-debtor.**—It is not illegal for a judgment-debtor to dispose of all his property before attachment, provided the transaction is an actual conveyance and not merely nominal. DIGUMBUREE DASSEE *v.* BANEY MADHUB GHOSE . **15 W. R., 155**

CHUNDER MADHUB DOSS *v.* AMEER ALI **[25 W. R., 119**

RAM BURUN SINGH *v.* JANKEE SAHOO **[22 W. R., 473**

6. ——— *Sale made pending suit against vendors for debt.—Sale to prevent land being taken in execution.*—A sale made of immoveable property pending a suit against the vendors to recover a debt is valid, although the motive of the vendors may have been to prevent the land being attached and sold in execution. PULLEN CHETTY *v.* RAMALINGA CHETTY . . . **5 Mad., 368**

DEBTOR, DISCHARGE OF.—Transfer of property by judgment-debtor—*continued.*

7. ——— *Fraudulent assignment.—Suit by creditor to set aside transfer.*—When a person being in debt transfers his property, with a view to defeat and defraud any of his creditors, any creditor, after he has established his right as a judgment-creditor, may maintain a suit to set aside the alienation, notwithstanding that the transfer was made before he sued for his debt, or that the debt was unsecured. SUJUN KOONWER *v.* PIRBHOO LALL **[2 Agra, Pt. II, 211**

8. ——— *Assignment in fraud of creditors.—Possession of property sold remaining in vendor.*—Where a person purchases for one who is in failing circumstances and has decrees against him in execution, and allows the vendor (being his relative) to remain in possession of the goods sold, as well as the profits thereof, he may perhaps purchase in good faith; but the Courts are not justified in declaring the validity of such a transfer without there being the clearest proof that the purchaser has bought, and paid the consideration, and some sufficient explanation of the apparently suspicious circumstances attending the purchase. KALLYAN *v.* DOULUTA . . . . **1 Agra, 79**

9. ——— **Deed, Execution of, by judgment-debtor.**—*Deed executed in fraud of creditors.*—Where a mortgagor executes a deed of sale for the purpose of defrauding and defeating his creditors, it is void against any of the creditors who may obtain a decree against him, although the deed may have been executed before execution was taken out on the decree. RADHA MOHUN DUTT *v.* BISSESSUR BUNDOPADHAYA . . . . **6 W. R., 90**

10. ——— **Deed executed by judgment-debtor.**—*Assignment to defeat creditors.—Consideration.—Validity of transaction, for valuable consideration defeating execution.*—Plaintiffs sued for certain lands under an agreement executed to their elder brother, *S.*, by defendants in the following terms: "You have this day received a loan of R1,345-4-4 from *D.* and from me, *B.*, for the purpose of remitting to the Court, in satisfaction of the warrant amount, in the matter of the suit No. 26 of 1835 on the file of the Provincial Court between your father, the late *U.* appellant, and *M.* respondent. You have, owing to the encumbrances consequent on a few more suits against you, caused all the property which you own in Vegayammapetta to be attached for the said (warrant) amount, and caused six puttis of land, houses, back-yards, and certain moveable property out of the same, to be knocked down in auction in our names, and some other personal property in the names of others; and have therefore proposed to us to execute a kararnama (to you) engaging (ourselves) to carry and pay the above-mentioned (R1,345-4-4) into the Court; to obtain receipts for the amount and certificates in our names for the real property; to allow the tiled house, back-yard having fruit trees and moveable property, to be held by you as hitherto; *V.* and myself, *B.*, to enjoy the produce of the six puttis of land for twenty years from Saruari to Sittadhri, on account of the said loan and interest there-

DEBTOR, DISCHARGE OF.—Deed executed by judgment-debtor—*continued.*

on; and to restore the land, together with the certificates (to be) issued by the Court in our names. We have accordingly agreed to your proposal," &c. The Principal Sudder Ameen considered that the agreement was invalid, on the ground that it appeared to have been executed with a view to defraud creditors of *S.* *Held* on appeal, that the real nature of the transaction was that *S.* borrowed money from defendants to enable him to buy in his own land; that defendants purchased only for and on behalf of *S.*, taking from him an assignment of part of the property for twenty years, in order to repay themselves the money lent; that there was therefore abundant consideration for the defendants' promise to give up possession at the end of twenty years. *Held* also, following the English law, that where there is a real transaction between the parties for valuable consideration, whether it be by way of sale or mortgage, the transaction is valid even as against a creditor, though the object may have been to defeat an expected execution. SANKARAPPA *v.* KAMAYYA **[3 Mad., 231**

11. ——————— *Assignment of property by debtor.—Stat. 13 Eliz., c. 5.*—An assignment made *bonâ fide* and for valuable consideration, before execution put in, and without notice of claim of execution creditor, held not to be void under the statute 13 Elizabeth, cap. 5. TARRUCKNATH PAULIT *v.* GLADSTONE . . . . **1 Hyde, 178**

12. ——————— *Voluntary assignment.—13 Eliz., c. 5: 27 Eliz., c. 4.*—A *bonâ fide* conveyance though voluntary is valid as against a subsequent judgment-creditor,—*Quære,*—Whether 13 Elizabeth, cap. 5, and 27 Elizabeth, cap. 4, relating to voluntary conveyances, are in force in this country. SOODHEEKEENA CHOWDHRAIN *v.* GOPEE MOHUN SEIN . . . . . **1 W. R., 41**

13. ——————— Assignments set aside as not being *bonâ fide.* BHAWAN LAL *v.* AKEEDUN . . . . . **1 W. R., 319**

JOTENDRO MOHUN TAGORE *v.* BROJOSOONDUREE DABEE . . . . **1 W. R., 362**

14. ——————— *Fraudulent assignment.—Action of trespass.—Want of possession.—Stat. 13 Eliz., c. 5.*—In an action of trespass against the Sheriff, it appearing that the plaintiff had never had possession of the property alleged to be converted, and that the conveyance to the plaintiff of the property seized had been effected with the view of defrauding the creditors of an insolvent, who shortly before such conveyance was the owner of the same,—*Held* that the plaintiff was not entitled to recover. The doctrine of a fraudulent conveyance being void as against creditors, held to be a principle of Hindu as it is of English law. SHAM KISSORE SHAW *v.* COWIE . **2 Ind. Jur., O. S., 7**

15. ——————— *Fraudulent assignment.—Stat. 13 Eliz., c. 5.—Hibba.—Equity and good conscience.*—Whether or not the statute 13 Elizabeth, cap. 5 (which may or may not extend to or operate in the "mofussil") is more than declaratory of the common law, so far as it avoids transactions intended to defraud creditors, its principles, and those of the common law for avoiding fraudulent conveyances, have received effect in the Indian Courts, and have properly guided the decisions of the Courts in administering law according to justice, equity, and good conscience. A hibba having been found on the evidence to have been made not *bonâ fide*, nor on any good consideration, and by it creditors being delayed in their just rights, the maker having intended to protect his property thereby from those who at the time were his creditors,—*Held* that the hibba was void according to equity and good conscience. ABDUL HYE *v.* MAHOMED MOZAFFAR HOSSEIN **[I. L. R., 10 Calc., 616: L. R., 11 I. A., 10**

16. ——————— **Debtor giving priority to one creditor before attachment.**—A debtor may, prior to attachment, give priority to one creditor over another, notwithstanding judgment may have been obtained against him. DOORGA TEWAREE *v.* NAIPAL AHEER . . . **2 N. W., 224**

17. ——————— **Assignment to one creditor in preference to others.**—*Bankruptcy laws.*—It is not illegal for a debtor to execute a security, or make an assignment in favour of one creditor over others. The provisions of the bankrupt laws, made to promote the equal distribution of the trader's assets among all his creditors, are not in force in these provinces. BULDEO DASS *v.* NOONNA LALL **[1 N. W., 23: Ed. 1873, 21**

18. ——————— **Deposit with creditor by debtor when in insolvent circumstances to protect his property.**—*Sale in execution under decree by creditor.—Purchaser, Right of.*—A member of a firm of native bankers which had become insolvent, with a view to protect his property from the general body of his creditors, in March 1870, deposited property to the value of R30,000 with the appellants, another firm of bankers, to whom he owed R1,500. In April 1871, the appellants brought an action against him for R500, the balance of that debt, and obtained a decree, in execution of which the property was put up for sale and purchased by the respondent.—*Held* by the Privy Council (affirming the decision of the High Court of the North-Western Provinces) that the respondent was entitled to the property. DWARKA DASS *v.* RAI SITA RAM . . . **5 C. L. R., 430**

19. ——————— **Equitable assignment prior to attachment of debt.**—*Assignee for value without notice.*—A creditor, who attaches a debt due to his judgment-debtor, is not in the same position as an assignee for value of such debt without notice of a prior assignment, but in respect to prior assignments stands in no better position than his judgment-debtor. An assignment prior to attachment that is good against the judgment-debtor is also, as a general rule, good against his attaching creditor. Notice to the holder of funds is not necessary to complete, as against the assignor, an equitable assignment of such funds. In August 1870, *R. J.* signed and gave to

DEBTOR, DISCHARGE OF.—Equitable assignment prior to attachment of debt —*continued.*

F. S. & Co. a letter addressed to *E. L. & Co.* by which he "requested them to pay over to *F. S. & Co.* any surplus proceeds of his consignment of one hundred bales per *Aurora*, after recovery from the under-writers of the amount due under a policy of insurance" (which had been effected on the hundred bales), after making certain deductions. This letter was given to *F. S. & Co.* in consideration of a pre-existing debt. On the 8th of August 1870, *F. S. & Co.* sent the letter to *E. L. & Co.* with a request that they should act upon it. The surplus proceeds of the insurance of the one hundred bales reached *E. L. & Co.* on the 26th of June 1871, and were attached in their hands by a judgment-creditor of *R. J.* before they were paid over to *F. S. & Co.* *Held* that *R. J.* had validly assigned the surplus proceeds of the hundred bales to *F. S. & Co.*, and that such assignment was valid as against subsequent attaching creditors. *Semble*,—That an attachment upon such surplus proceeds before they reached the hands of *E. L. & Co.* from the under-writer would have been invalid. MEGJI HANSRAJ *v.* RAMJI JOITA . . . **8 Bom., O. C., 169**

20. ——— Assignment made with intention of defeating creditors.—*D.* executed a razinama in favour of plaintiff on the 20th August 1868, transferring certain lands to the latter. Plaintiff, after passing the usual kabuliat to the Collector, was put in possession of the lands in question. On the 7th April 1869, *T.* obtained a money decree against *D.*, and on the 3rd July 1869 attached the lands as belonging to *D.* *Held* that, if the razinama were a real transaction made for a valuable consideration, although entered into with the intention of defeating the execution of the money decree, the title of plaintiff under that razinama would prevail. A sale or mortgage, if real, though made for the purpose of defeating an intended or probable execution, is valid against the execution-creditor. But if it be only a colourable transaction, not intended to confer upon the vendee or mortgagee any beneficial interest in the property, but simply to substitute such vendee or mortgagee as a nominal owner in lieu of the real owner (the judgment-debtor), with the object of saving the property from execution, the vendee or mortgagee is a mere trustee and the judgment-creditor is entitled to attach and sell the property. TILLAKCHAND HINDUMAL *v.* JITAMAL SUDARAM **[10 Bom., 206**

21. ——— Fraudulent transfer.—*Burden of proof.—Mahomedan law.—Sale of immoveable property by Mahomedan in satisfaction of wife's dower.—Consideration.—Deferred debt.*—A genuine sale made for good and valid consideration to one creditor, even if effected to delay and defeat another, apart from cases in which either insolvency or bankruptcy is involved, is not void. If a man owes another a real debt, and in satisfaction thereof sells to his creditor an equivalent portion of his property, transferring it to the vendee, and thereby extinguishing the debt, the transaction cannot be assailed, though the effect of it is to give the selected

DEBTOR, DISCHARGE OF.—Fraudulent transfer—*continued.*

creditor a preference. *Wood* v. *Dixie*, *7 Q. B.*, *892*, *Chowne* v. *Baylis*, *31 L. J. Ch.*, *757*, and the authorities collected in the notes to *Twyne's case*, *1 Smith's L. C.*, *12*, referred to. Pending a suit for recovery of a debt, the defendant, who was a Mahomedan, executed a deed of sale dated in June 1882, of a four-annas zamindari share in favour of his wife, the consideration recited therein being the amount of the vendee's deferred dower-debt. Subsequently the creditor obtained a simple money decree against the defendant, and in execution thereof attached the four-annas share. The vendee objected to the attachment, on the basis of her sale-deed, but her objection was disallowed on the ground that the instrument was collusive. She thereupon brought a suit against the judgment-creditor for a declaration of her right, and to set aside the attachment order. *Held* that, if there was in fact a subsisting debt due for dower from the husband to the wife, and he transferred and she accepted the four-annas share in satisfaction of it, the transaction was a perfectly legitimate one, and no Court had any power to disturb it. It was for the defendant, the judgment-creditor, to establish either that the deferred dower-debt did not constitute such a present consideration as would support the sale, or that the transaction was merely colourable and a fictitious one, which was never intended to have operation or effect, either as a transfer of the property or an extinguishment of the dower-debt; and that, despite what appeared in the sale-deed, the parties remained in precisely the same position as before it was executed—the four-annas still remaining the property of the vendor, and as such liable to the attachment. *Held*, applying the general principles of the Mahomedan law as to deferred debts, that there was good consideration for the sale of June 1882, and that, in the absence of proof of fraud of the kind above indicated, the vendee was entitled to maintain it, and to succeed in the suit. SUBA BIBI *v.* BALGOBIND DASS **[I. L. R., 8 All., 178**

22. ——— Assignment in fraud of creditors.—*Deed of trust.—Voluntary conveyance.*—*A.* by a deed of trust charged real estate to secure, among other things, a debt alleged to be due by him to his grandfather's estate on account of sums received by him from a debtor to that estate. *A.* at that time was in a state of indebtedness which occasioned his afterwards becoming an insolvent. Such deed in the circumstances held, so far as related to *A.'s* alleged debt, fraudulent and void as against his creditors. TARRENY CHURN BONNERJEE *v.* MAITLAND . . . . **11 Moore's I. A., 317**

23. ——— Assignment to trustees for benefit of creditors.—*Power of insolvent-debtor.—Insolvency.—Retirement of trustees.*—*P.*, a trader in insolvent circumstances, on the 1st December 1866, executed two deeds conveying his moveable and immoveable property to trustees to hold on certain trusts in favour of such of his creditors as should assent to the said deeds within three calendar months. The deeds contained powers directing the trustees, after dividing the trust-monies rateably among the assenting creditors, to pay "the residue, if any, after an-

DEBTOR, DISCHARGE OF.—Assignment to trustees for benefit of creditors —*continued.*

swering the several purposes aforesaid and also the debts or dividends upon the debts of all such creditors as shall decline to come in and execute or assent" to the said *P.*; powers authorising them to return to the debtor or permit him to retain such part of his household furniture, linen, and china as they might think fit; and powers authorising them to carry on the debtor's business and employ him therein and in winding up his affairs,—*Held*, in the Lower Court (TURNER, *J.*), that an insolvent-debtor in the mofussil may assign all his property to trustees for the benefit of the creditors who may assent to the conditions of the assignment; and such an assignment will be valid, although it may operate to defeat an expected execution, if it be the intention of the assignor to confer on the assenting creditors a substantial interest in the property assigned, and not merely to defeat or hinder a judgment-creditor. Such an assignment may be made to trustees, but it is not requisite that it should be made to trustees; and it is not requisite that it should be made directly to the assenting creditors. It will confer on the trustees a title to the property assigned superior to that of a judgment-creditor, who has obtained an order for attachment subsequently to the assignment. It is not invalid if made subject to a condition requiring assenting creditors to execute a release of the debtor, nor is it invalid if it declares a resulting trust in favour of the debtor; but *semble*,—that the Court might order such resulting trust to be executed for the benefit of judgment-creditors who decline to assent to the assignment. Nor is it invalid if it empowers the trustees to permit the debtor to retain such portion of his furniture, linen, &c., as they may think fit; but this power should be exercised only when the other assets are insufficient to discharge the primary objects of the trust. Nor is it invalid if it contain a power for the trustees to continue the business, if the power so given is ancillary to winding-up the business and realising the assets of the estate; nor is it invalid if executed only by a minority of the creditors. Nor can it be invalidated by subsequent negligence on the part of trustees. The question as to the intention of the debtor, in executing such an assignment, is a question of fact rather than of law; and in determinnig this question the conditions and trust subject to which the assignment is made may be considered. *Held* on appeal (*per* ROBERTS and PEARSON, *JJ.*, MORGAN, *C. J.*, dissenting) that the deeds were good deeds. A trader in the mofussil in failing circumstances may, in the absence of any statutory provision and of a bankrupt law, make a valid assignment of his property, before liens have attached upon it, or afterwards subject to such liens, to trustees simply for the purpose of having it distributed fairly among all his creditors, although it may defeat particular decree-holders and deprive them of their execution. *Semble*,—Such a trust does not become inoperative by reason of the retirement of two out of three trustees and of the inability of the third to charge his duties properly. STEPHENSON *v.* BAUMGARTNER. BAUMGARTNER *v.* STEPHENSON . . **3 Agra, 104: 3 Agra, 321**

DEBTOR, DISCHARGE OF.—Assignment to trustees for benefit of creditors —*continued.*

24. ——————— *Protection of assets.*—The assignment in a trust deed by which a person assigns all his property to trustees for the benefit of his creditors protects the assets so assigned from all creditors. BAPAJ AUDITRAM *v.* UMEDBHAI HATHESING . . . **8 Bom., A. C., 245**

25. ——————— *Attachment.*—A *bonâ fide* assignment by a debtor of his entire property to trustees for the benefit of his creditors divests him of any interest which can be the subject of attachment subsequently issued in execution of a decree against such debtor, until the trusts of the deed of assignment have been carried out. BAMANJI MANIKJI *v.* NAORAJI PALANJI . **1 Bom., 233**

26. ——————— *Voluntary conveyance.—Construction.—Trustee for creditors.—Circuity of actions.—Administration suit.*—*K.*, who was a relation of the plaintiff, executed a deed of conveyance by which he conveyed all his estate to the plaintiff, in consideration of his undertaking to pay all *K.'s* debts. The deed stated that it was *K.'s* desire that the estate should remain in his family. After *K.'s* death the plaintiff sued for an account and for redemption of some of *K.'s* land which had been originally mortgaged by *K.* to the defendant. It was contended in defence that the deed created a trust for the payment of *K.'s* debts, and that the defendant was entitled to tack on to the mortgage debt a simple contract debt which *K.* owed to him. It was found that the defendant was the only unpaid creditor, and that the property was more than sufficient to pay the debt. *Held* that the deed did not create a trust for *K.'s* creditors,—the object, on the contrary, being the preservation of the family property.—*Held* further, that due effect could not be given to the whole of the instrument, unless construed as a conveyance to the plaintiff, charged as between himself and *K.* with the payment of *K.'s* debts. *Held* also, that during *K.'s* life his creditors could not claim to be paid under this instrument, in the absence of any communication between them and the plaintiff, capable of being construed as an admission by him that he held the property as trustee for them, although they might possibly impeach it. On *K.'s* death, however, his creditors would be entitled in an administration suit to have the charge of his debts enforced in their favour. RAGHO GOVIND *v.* BALVANT AMRIT . . **I. L. R., 7 Bom., 101**

27. ——— **Arrangements made between creditor and debtor.**—*Proof of advances.—Razinamas not made decrees of Court, Effect of.*—Razinama arrangements not made decrees of Court but irregularly acted upon as if they had been so made do not substantiate advances alleged to have been made by creditors. PUREYASAMI *alias* KOTTAI TEVAR *v.* SALUCKAI TEVAR *alias* OYYA TEVAR **[8 Mad., 157**

KOSALA RAMA PILLAI *v.* SALUCKAI TEVAR *alias* OYYA TEVAR . . . **8 Mad., 189**

See VENKATURAMANA HODAI *v.* BAPANNA RAI **[7 Mad., 103**

DEBTOR, DISCHARGE OF—*continued.*

28. ——— Drawing hundi.—*Right to credit item in account.*—The drawing of a hundi on one's own factory, and the delivery of it to another, may be evidence of indebtedness to the amount of the hundi, but it is not an item for which the drawer of a hundi is entitled to credit. SHIB RAM MUNDUL *v.* MAKHUN LALL BISWAS **7 W. R., 179**

29. ——— Sale of goods.—*Arrangement to pay for goods sold.*—Where a debtor sells goods to his creditor and requests that a portion only of the price should be appropriated to part payment of existing debts, and the remainder held against the price of goods to be afterwards purchased by the debtor from the creditor, such request is not binding on the creditor without his consent. AGUILAR *v.* WOOMESH CHUNDER SHAW . **22 W. R., 209**

30. ——— Assignment of debt.—*Release of debtor.—Failure to prove assignment against third parties.*—When a creditor accepts the assignment of a debt due by third parties to his debtor, and releases the latter, he has no action against him. BISHEN CHUNDER SAELAH *v.* GOKOOL CHUNDER LAHATA . . . . . **5 W. R., 171**

31. ——— Release, Construction of deed of.—Construction of document holding that it could not have been intended by the parties to be a general release. MALICK BAPOO MEYAN *v.* HARI WALUB NAGURDAS . . **5 W. R., P. C., 112**

32. ——— Arrangement between decree-holder and one of several judgment-debtors.—*Effect of, as against co-debtors.—Held* that no arrangement between the decree-holder and one of the judgment-debtors would affect the interest of a co-judgment-debtor unless by express consent. BHAIRABCHANDRA MADAK *v.* NADYAR CHAND PAL . . **3 B. L. R., A. C., 357 [12 W. R., 291**

33. ——— Adjustment of claims.—*Composition payment.*—The plaintiff, a creditor of the late Rajah Chatpal Sing, accepted, from the Collector in charge of the estate, a composition payment in adjustment of his claims. *Held* that he could not sue the Ranis, nor the infant son of the Rajah, on a contract or bond for payment of the balance. JAYRAM GIR *v.* SHIURAJ KOER **[2 B. L. R., P. C., 98 S. C. 11 W. R., P. C., 41**

34. ——— Co-contractors.—*Liability of the others on death of one.*—The defendants entered into a contract with the plaintiff by which, in consideration of the trouble taken and money advanced by the plaintiff on behalf of the defendants, the defendants promised to pay to the plaintiff from generation to generation R100 a year out of a specified fund. —*Held* that, on the death of one of the co-contractors, the whole liability to the plaintiff attached to the surviving co-contractors. CHETU NARAYANA PILLAY *v.* AYAMPERUMAL AMBALOM . . **4 Mad., 447**

35. ——— Substitution of liability.—The defendant being indebted to the plaintiff in the sum of R574-4-0, the amount of the plaintiff's bill against the ship *Campta*, of which the defendant was master, they both went to the office of the ship's dubash in Bombay, where the defendant signed the bill as correct, and ordered the dubash to pay the amount. The dubash gave the plaintiff R500 in cash, saying he would pay the balance next day. The plaintiff said he would prefer a receipt for his bill, and returned the R500. An acknowledgment was then given to him by which the dubash promised to pay the bill for R574-5-0 immediately on the money being received from Mr. *S.* On the day following the plaintiff took out a summons in the Small Cause Court against the defendant, whom he arrested, on making an affidavit that he was about to leave Bombay; and the Court held that "there was no valid substitution of the liability of any person or fund in place of the original liability of the defendant," and gave judgment for the plaintiff for R574-5-0, and costs, which judgment, as to the principal sum, was affirmed by the High Court, but costs on the sum of R500, originally paid to and returned by the plaintiff, were disallowed. ALLARAKIA ALI *v.* GEACH . . . . **3 Bom., O. C., 150**

36. ——— Arbitration.—*Award not signed by all the creditors.—Suit by signing creditor for his debt.—Act IX of 1872, s. 65.*—*K.*, on the one part, and his creditors including *C.*, on the other part, agreed in writing to refer to arbitration the differences between them regarding the payment of his debts by *K.* The award compounded *K.'s* debts, and assigned his property to his creditors, and directed that *K.* should dispose of such property for their benefit, and that, if he misappropriated any of the property, he should be personally liable for the loss sustained by the creditors on account of such misappropriation. *C.* signed the award amongst other creditors, but the award was not signed by all the creditors. *C.* received a dividend under the award. *Held* in a suit by *C.* against *K.* to recover a debt which had been compounded under the award, in which suit *C.* alleged that several creditors had not signed the award; that some of them had sued *K.* and recovered debts in spite of the award; that *K.* had misappropriated some of the property; and that, if the plaintiff did not sue, there would be no assets left to satisfy his debt, that such suit was not maintainable. KHETA MAL *v.* CHUNI LAL **[I. L. R., 2 All., 173**

37. ——— Agreement by creditors to give time.—*Failure of consideration.—Mortgage to creditors as security for payment of debts.—Construction of instrument.—Suit by creditor before expiration of time.—Separate suits by creditors.*—A certain firm gave its creditors jointly, and not severally, a mortgage on certain immoveable property as security for the payment of the debts due to them by the firm, the consideration for such mortgage being a promise by all the creditors not to sue the firm for their debts for a certain time. Before the expiration of such time several of the creditors sued for their debts. Subsequently several of the creditors brought separate suits against the firm to enforce the mortgage in respect of their debts. *Held* that

DEBTOR, DISCHARGE OF.—Agreement by creditors to give time—*continued.*

the consideration for the contract of mortgage, *viz.*, the forbearance of all the creditors not to sue for their debts for a fixed time, having failed, the firm was discharged from liability on the mortgage. *Held* also that, had the contract of mortgage remained in force, it would not have been competent for individual creditors to come into Court and enforce the contract in respect of their separate debts. SIDH GOPAL *v.* AJUDHIA PRASAD . I. L. R., 5 All., 392

38. ——— Sale to defeat execution of decree.—*Creditor without specific lien.*—A creditor without a specific lien (*e.g.*, a mortgage or other direct charge or incumbrance) has not any *à priori* right to debar his debtor from parting with his immoveable property until it is attached in due course of law. RAJAN HARJI *v.* ARDESHIR HORMASJI WADIA . . . I. L. R., 4 Bom., 70

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See CASES UNDER HINDU LAW—DEBTS.

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See CASES UNDER HINDU LAW—JOINT FAMILY—DEBTS AND JOINT FAMILY BUSINESS.

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DECLARATORY DECREE, SUIT FOR —*continued.*

1. REQUISITES FOR EXISTENCE OF RIGHT.

1. ——— **Existence of relief which can be granted.**—*Civil Procedure Code, s. 15.*—No declaration of right can be made in a suit under section 15, Act VIII of 1859, unless the plaintiff can show that there is some relief which the Court can give. BAIJ NATH CHATTERJEE *v.* LAKHI MANI DEBI [5 B. L. R., 514, note

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2. ——— **Existence of right to consequential relief.**—*Declaration of right for relief in other suit.*—A declaratory decree ought not to be made unless there is shown to be a right to some consequential relief which, if asked for, might have been given by the Court, or unless a declaration of right is required as a step to relief in some other Court. *Kattama Natchiar* v. *Dorasinga Taver, 15 B. L. R., 83,* approved. SEO SINGH RAI *v.* DAKHO [I. L. R., 1 All., 68

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3. ——— **Hostility of defendant.**—*Suit for declaration of title.—Held,* by JACKSON, *J.,* that in a suit for declaration of title, defendants must have given a cause of action by impugning it antecedently to plaint filed, even though their written statement be hostile. COLVIN COWIE *v.* ELIAS [2 B. L. R., A. C., 212 : 11 W. R., 40

4. ——— A party is not entitled to ask for a declaration of right except as against a defendant in some degree hostile to him in respect of that right. PROMOTHO NATH GHOSE *v.* JODOO NATH SEN . 1 Ind. Jur., N. S., 293

5. ——— **Suits for declarations of abstract rights.**—*Civil Procedure Code, 1859, s. 15.*—Section 15 of Act VIII of 1859 refers to declarations which are binding relatively to the parties before the Court, not to declarations of abstract right, or bare declarations of trust, exclusive of any practical equity. MUZHUR HOSSEIN *v.* DINOBUNDOO SEN. [Bourke, O. C., 8 : Cor., 94

6. ——— **Right to consequential relief.**—*Question relating to third persons not parties to suit.*—The question proposed for adjudication in the suit, in which a declaratory decree was sought, being in effect one not between the plaintiff and the defendant, but between the plaintiff and third persons not parties to the suit, the suit was dismissed in reference to the ruling of the Privy Council in *Vijia Ragunadah Rani Kolandapuri Natchiar* v. *Dorasingah Taver, 15 B. L. R., 83,* dated the 10th of February 1875, that a declaratory decree is not to be made, unless there is a right to consequential relief which, although not asked for, might, if asked for, have been given. RAM BHAROSE LAL *v.* GOPI BIBI [7 N. W., 300

7. ——— **Hostile act entitling plaintiff to substantial remedy.**—A hostile act which

DECLARATORY DECREE, SUIT FOR —*continued.*

1. REQUISITES FOR EXISTENCE OF RIGHT —*continued.*

Hostile act entitling plaintiff to substantial remedy—*continued.*

would justify a declaration of right under Act VIII of 1859, section 15, must be such an act as would entitle the plaintiff to some substantial remedy in the way of injunction or otherwise. RAM KHELAWAN SINGH *v.* OUDH KOORE . . 21 W. R., 101

8. ——— **Intricate questions of law.**—*Principles on which Court grants relief.*—The Court will not, in a declaratory suit, decide intricate questions of law, where no immediate effect, and possibly no future effect, can be given to its decision, and when the postponement of the decision, to a time when there may be before the Court some person entitled to immediate relief, will not prejudice a plaintiff's right in any way. HUNSBUTTI KERAIN *v.* ISHRI DUTT KOER [I. L. R., 5 Calc., 512 : 4 C. L. R., 511

9. ——— **Remand entailing delay and expense.**—*Further enquiry.*—Since a declaratory decree is a matter of discretion, a claim for a declaration ought not to be remanded by an Appellate Court for further enquiry which is likely to entail delay and expense, where the plaintiff's claim is contingent on his surviving the defendant, and where the declaration will not be binding on parties with possibly preferential titles who have not been joined in the suit. DOORGA PERSHAD SINGH *v.* DOORGA KOONWARI . . I. L. R., 4 Calc., 190 : 3 C. L. R., 31

10. ——— **Suit before Specific Relief Act, 1877.**—A declaratory suit instituted before the Specific Relief Act came into force must, in regard to the right to a declaration, be governed by the law as laid down by the Privy Council in *Doraningah Taver's* case, *15 B. L. R., 83.* PURASARA BHATTAR *v.* RANGA BHATTAR . . . [I. L. R., 2 Mad., 202

2. SUITS CONCERNING DOCUMENTS.

11. ——— **Hostile document affecting title.**—*Right to sue to have it declared invalid.*—When a person in possession finds that a document has been set up and registered which affects his title, and which every day's delay is likely to render him less able to disprove, he is justified in coming before the Court and asking that such a deed may be declared inoperative. NUFISA BANOO *v.* MAHOMED SUFDAR [24 W. R., 336

12. ——— **Suit to set aside mortgage.**—*Civil Procedure Code, 1859, s. 15.—Injury not admitting specific relief.*—Act VIII of 1859, section 15, did not give power to the Court to give a declaratory decree, unless the position of the parties is one of hostility to one another. The plaintiff must come into Court with some definite complaint against the defendant, which is such as admits of specific relief being afforded by the Court with regard to it. He cannot, irrespective of all behaviour on the part of the person whom he makes defendant, bring that per-

DECLARATORY DECREE, SUIT FOR —*continued.*

2. SUITS CONCERNING DOCUMENTS —*continued.*

Suit to set aside mortgage—*continued.*

son into Court merely for the purpose of getting the Court to clear up difficulties, whether of fact or law, which may have arisen between himself and the defendant. He must generally allege and rely upon some cause of action against the defendant, except in that class of cases in which the Court gives its aids towards the fulfilment of trusts, and this principle is not affected by section 15 of Act VIII of 1859. Therefore, where a plaintiff bought, at a sale in execution of a decree, the right, title, and interest of one defendant, a judgment-debtor, in a ship, and by his plaint sought to discover the *bonâ fides* of certain transactions by way of mortgage between the judgment-debtor and the other defendants, and asked a declaration that he, as purchaser, was entitled to the right, title, and interest of the judgment-debtor; or in case it should appear that, at the time of the attachment in execution, the ship was the property of the judgment-debtor, subject to any valid lien or charge in the hands of the other defendants or either of them affecting the same, then that the amount of such lien or charge might be ascertained, and the plaintiff as such purchaser might be declared entitled to redeem the same. *Held* that the plaint was bad upon the face of it. But as it appeared, taking the plaint and evidence together, that there was some substantial dispute between the parties relative to the defendant's mortgage, the Court, to prevent further litigation, construed the plaint as having asked that the alleged mortgage might be set aside. LALLAH BHUGWAN DOSS *v.* AKBAR

[1 Ind. Jur., N. S., 390

13. ——— **Suit to set aside, Effect of recital in bond.**—*Nature of consideration.*—A declaratory decree will not be given to show that a bond was not executed as recited in the bond, for money borrowed by the widow for the performance of the husband's sradh, such recital being no evidence against the heirs of the husband in a suit to charge the estate. SUNKER LALL *v.* JUDOOBUNS SUHAYE

[9 W. R., 285

14. ——— **Suit by son to have deeds by father declared void.**—*Unauthorized alienation.*—A son may sue to obtain a declaration that sales by his father, without his consent, are, as against him, void and inoperative to pass or to affect any rights possessed by him in the property, and also that property still in his father's hands is ancestral, and cannot be alienated, except under circumstances recognised by the Mitakshara law as justifying alienation, and with the consent of those whose consent is by that law requisite. KANTH NARAIN SINGH *v.* PREM LALL PAUREY . . . 3 W. R., 102

15. ——— **Suit to declare deed is valid.**—*Failure to prove case.—Form of decree.*—When a plaintiff sues to declare that a deed is valid, and to confirm his possession under it, and fails to show sufficient cause for the Court's interference under section 15, Act VIII of 1859, the Court ought simply

DECLARATORY DECREE, SUIT FOR —*continued.*

2. SUITS CONCERNING DOCUMENTS —*continued.*

Suit to declare deed is valid—*continued.*

to declare to that effect, and not to determine that the plaintiff has no right, and that the deed is void. PHOOLCHUNDER LALL *v.* SHEORANEE KOONWAR

[9 W. R., 104

16. ——— **Suit to declare deed forged.**—*Unused documents.*—In a suit to obtain a declaration that two pottahs and a chitta which had been put forward in a butwarra were forgeries, it was held that, as no action had been taken on the documents in question, and plaintiff's rights were in no way prejudiced, the Court could not make any binding declaration of right. SHEO LALL CHOWDHUR *v.* CHUNDER BENODE OOPADHYA . 9 W. R., 586

17. ——— *Cause of action.*—*Registered deed.*—A suit will lie to set aside a registered deed on the mere allegation that it is a forgery. FAKIR CHAND *v.* THAKUR SINGH

[7 B. L. R., 614: 15 W. R., 421

18. ——— *Lease set up by intervenor in rent suit.*—The defendant had unsuccessfully intervened in a suit between landlord and tenant, setting up a lease as middleman. *Held* that the landlord was entitled to sue in the Civil Court to have such lease declared fictitious. RAGHUBAR CHOWDRY *v.* BHAIKDHARI SINGH

[3 B. L. R., Ap. 48: 11 W. R., 455

19. ——— *Cause of action.*—*Guardian, Suit by, for minor.*—In a suit for a declaratory decree that certain pottas put forward by the defendants in a suit for enhancement were forged, and calculated to injure the interests of a minor, whom the plaintiff as guardian represented,—*Held* there was no cause of action. OOMAR SALMIA BIBI *v.* LAKHI PRYA DEBI

[7 B. L. R., 617, note: 10 W. R., 47

20. ——— **Suit to have will set aside.**—*Consequential relief.—Obstruction to title.—Nuncupative Will.*—A right to come to the Court to have a document or act which obstructs the title or enjoyment of property cancelled or set aside, or for an injunction against such obstruction, would be sufficient to sustain a declaratory decree.—*Semble.*—Where a defendant sets up a nuncupative will as entitling him to property in respect of which the plaintiff asks for a declaration of his right, a right to have such will declared null and void arises in cases where property legally passes by a will of that nature, since a claim under such a will is not a bare assertion of title, but the setting up of a specific act by which title to property may be conferred. SHEO SINGH RAI *v.* DAKHO . I. L. R., 1 All., 688

[2 C. L. R., 193: L. R., 5 I. A., 87

21. ——— **Suit to set aside lease.**—*Consequential relief.—Act VIII of 1859, s. 15.—Jurisdiction of Civil Courts.*—*A.* granted a lease of his entire property to the plaintiff for a term of years, with power to enhance the rents and make settle-

DECLARATORY DECREE, SUIT FOR —*continued.*

2. SUITS CONCERNING DOCUMENTS —*continued.*

Suit to set aside lease—*continued.*

ments. Immediately after, *A.* executed a pottah in favour of *B.*, covering a portion of the same estate, whereby *B.'s* rent was to remain unchanged for a period conterminous with the plaintiff's lease. In a suit by the plaintiff against *B.* and *A.'s* representative to have the pottah set aside, it was objected that, inasmuch as the deed had not been as yet set up against the plaintiff, nor any injury shown to have been occasioned to him thereby, he had no cause of action: *Held* that the suit was maintainable. In laying down the rule that "a declaratory decree cannot be made, unless there be a right to consequential relief," the Privy Council did not intend to deny to the Courts of this country the power to grant decrees in any case in which, independently of the provisions of Act VIII of 1859, section 15, they had the power to grant a decree. This power is generally the same as that of the Court of Chancery in England. RAM NEEDHEE KOONDOO *v.* RUGHOO NATH NARAIN MULLO

[I. L. R., 1 Calc., 456: 25 W. R., 516

22. ——— **Suit to declare registered document forged.**—*Jurisdiction of Civil Court.*—Under section 84 of Act XX of 1866, the District Judge ordered, without taking evidence, the registration of a document which had been opposed on the ground that the execution of it had been obtained fraudulently and by putting the executant under duress. The executant brought a civil suit against the party in favour of whom the document had been drawn, for a declaration that the document was not genuine, and was invalid and inoperative.—*Held* that the Civil Court had jurisdiction to try the genuineness of a registered document: that the registration of a document, the execution of which was obtained by improper means, affecting the property of the executant, is a good cause of action on which to ask for a declaratory decree. PRASANNA KUMAR SANDYAL *v.* MATHURANATH BANERJEE

[8 B. L. R., Ap., 26: 15 W. R., 487

23. ——— **Suit to contest the genuineness and validity of a registered document.**—*Registration Act (III of 1877), ss. 74, 75.—Specific Relief Act (I of 1877), s. 39.*—Under the special procedure provided in the Registration Act (III of 1877), the defendant, in whose favour a document was said to have been executed, succeeded in obtaining an order from the District Registrar for the registration of the same, although the plaintiff, who was alleged to have executed it, appeared before the Sub-Registrar, and subsequently before the Registrar, and denied executing it, and alleged it to be a forgery. In a suit brought under the above circumstances to have the document declared void, and to have it cancelled,—*Held* that the proceedings of the Registrar, when he enquired whether the document had been duly executed or not, were in no sense those of a "competent court," but only those of an executive officer invested with *quasi*-judicial functions, and that, consequently, such a suit was maintainable. *Held* also, that the Specific Relief Act (I of 1877) applied, section 39 evidently contemplating and providing for such a suit.—*Ram Chundra Pal* v. *Becharam Dey, 8 B. L. R., Ap., 28: 10 W. R., 329,* dissented from. *Prasunna Kumar Sandyal* v. *Mathuranath Banerjee, 8 B. L. R., Ap., 26,* followed. MOHIMA CHUNDER DHUR *v.* JUGUL KISHORE BHUTTACHARJI

[I. L. R., 7 Calc., 736: 9 C. L. R., 471

24. ——— **Suit to set aside fraudulent deeds.**—*Absence of any attempt to disturb possession.*—In a suit for declaration of right of possession to certain lands and to set aside alleged fraudulent pottas, which the plaintiff alleged had been executed by the defendant with a view to put an obstacle in the way of his attaining his right, but it was not shown that they had made any actual attempt to disturb the right of occupancy which it was found the plaintiff had,—*Held* that the plaint did not disclose a sufficient cause of action to enable the Court to make a declaratory decree in favour of the plaintiff. UDAI CHANDRA MANDAL *v.* AHMEDULLA

[7 B. L. R., 616, note

S. C. WOODOY CHUNDER MUNDUL *v.* AHMEDOOLLA. . . . [12 W. R., 467

25. ——— *No use of deed to plaintiff's injury.*—Where a petition was presented by *A.* under section 84, Act X of 1866, for registration of a deed, and the deed was duly registered, a plaint filed against *A.* in which the plaintiff simply complained that *A.* had executed the deed fraudulently, and obtained registration of it, was *held* to show no cause of action, no act of *A.* having been shown to use the deed to the plaintiff's injury. RAM CHANDRA PAL *v.* BECHARAM DEY

[8 B. L. R., Ap., 28, note: 10 W. R., 329

26. ——— **Suit for declaration that document is forged.**—*Apprehension of injury.—Cancellation of Document.*—Where a void or a voidable document cannot legally be used for the purpose which is apprehended, there is no such reasonable apprehension that such document, if left outstanding, will cause injury as will entitle the person claiming the cancellation of such document to relief. SHIB LAL *v.* HIRA LAL

[I. L. R., 1 All., 622

3. ADOPTIONS.

27. ——— **Suit to set aside deeds giving and receiving in adoption.**—*Cause of action.*—A declaratory decree cannot be made, unless the plaintiff would be entitled to consequential relief if he asked for it. It is discretionary with a Court to grant a declaratory decree, and the Courts in India

DECLARATORY DECREE, SUIT FOR —*continued.*

3. ADOPTIONS—*continued.*

Suit to set aside deeds giving and receiving in adoption—*continued.*

ought to be most careful in exercising such discretion. *A.*, widow of a Hindu, sued *B.* as father and guardian of *C.*, to have it declared that the deeds executed by *A.* and *B.*, one of giving *C.* in adoption, the other of receiving him in adoption, were null and void, on the ground that they were agreements to give and take in adoption, and that *B.* did not give his son according to agreement. *Held* (reversing the decision of the Courts below) that such suit was not maintainable. SREENARAIN MITTER *v.* KISHEN SOONDERY DASSEE

[11 B. L. R., 171: L. R., I. A., Sup. Vol., 149

S. C. NUGGENDRO CHUNDRO MITTER *v.* KISHEN SOONDERY DASSEE . . **19 W. R., 133**

Reversing decision of High Court

[2 B. L. R., A. C., 279: 11 W. R., 196

28. ——— Suit by reversioner to have forged letter giving power to adopt set aside and to restrain adoption.—*Specific Relief Act, s. 42.*—Under Act VIII of 1859, section 15, a suit will not lie at the instance of the reversionary heir, for a declaration that a certain letter purporting to have been written by the husband of the defendant empowering his widow to adopt a son is a forgery, and to have the same cancelled; and for an injunction restraining the adoption of a child under the letter. *Raj Coomary Dassee* v. *Nobo Coomar Mullick, 1 Bom., 137,* followed. RUN BAHADOOR SINGH *v.* LUCHO COOWAR . . . **4 C. L. R., 270**

29. ——— Suit to set aside invalid adoption.—*Cause of action.*—A suit having been brought by a Hindu reversioner for a declaration that an adoption alleged to have been made by the mother of *K.*, the owner of the estate after the estate had vested in the widow of *K.*, was invalid,—*Held* that the alleged adoption afforded a cause of action for a declaratory suit. THAYAMMAL *v.* VENKATARAMA . . . . **I. L. R., 7 Mad., 401**

30. ——— Suit to set aside adoption.—*Civil Procedure Code, 1859, s. 15.—Right to declaratory decree.*—In a suit brought, on the ground of an existing right of inheritance, for immediate possession and mesne profits, by setting aside an adoption, the Court will not allow the form of action to be changed, and proceed to decide whether (the claim for possession on the ground of an existing right being abandoned) a declaratory order may not issue for setting aside the adoption, but will, on failure of right to immediate possession, dismiss the suit. According to section 15, Act VIII of 1859, declaratory orders can be issued only in suits brought to obtain such orders. RAJESSUREE KOONWAR *v.* INDERJEET KOONWAR . . . . **6 W. R., 1**

31. ——— Suit to restrain widow from adopting.—Where *B.* sued for a decree to declare that he should be heir to the property of the defendant, a Hindu widow, after her death, and for an injunction to restrain her from adopting any other than a member of his family, he being the nearest relative of her husband, and the fittest subject for adoption according to the Hindu law, it was held that the suit would not lie, as in the former case the right was contingent and defeasible by adoption, and in the latter the adoption of a stranger was not illegal. BABAJI JIVAJI *v.* BHAJIETHIBAI . **6 Bom., A. C., 70**

DECLARATORY DECREE, SUIT FOR —*continued.*

3. ADOPTIONS—*continued.*

Suit to restrain widow from adopting—*continued.*

32. ——— Suit to have adoption set aside.—*Onus of proof.*—A stranger having no interest in the matter, has no right, even with the consent of presumptive reversionary heirs, to sue for an order declaring an adoption to be valid. A plaintiff suing for a declaration that an adoption is invalid is bound to prove the invalidity. BROJO KISHOREE DOSSEE *v.* SREENATH BOSE . . . . **9 W. R., 463**

33. ——— Suit to have adoption declared invalid.—*Adoption by widow 35 years after death of her husband.*—The plaintiff was a son of a mother of the deceased husband of the first defendant. The first defendant adopted a son 35 years after the death of her husband, in pursuance, as she alleged, of an authority to adopt given by her husband. The suit was brought by the plaintiff to have the adoption declared invalid upon the ground that the adoption was made without the husband's authority. —*Held,* a fit case for a declaratory decree. KOTAMARTI SITARAMMAYYA *v.* KOTAMARTI VARDHANAMMA **[7 Mad., 351**

34. ——— Suit to aset side adoption.—*Court Fees Act, sch. II, art. 17, cl. 2.—Limitation Act IX of 1871, sch. II, art. 129.*—*B.* died, leaving him surviving two widows, *K.* and *R.* Some time after *B.'s* death, *P.*, a son, was born to *R.* on 15th September 1848. Some time before *P.'s* birth, a portion of *B.'s* watan lands had been made over to *K.* by the Revenue authorities. The remaining portion of *B.'s* watan lands was placed by Government under sequestration, which was not removed until 1865. Shortly after *P.'s* birth, *R.* petitioned the Revenue authorities, claiming the watan lands of *B.* for *P.* as *B.'s* son. On 15th February 1849, the Revenue authorities on enquiry held that *P.* was not the son of *B.* and decided that *K.* was entitled to retain the watan lands of *B.* On 16th March 1872, *K.* adopted a son *B.A.* In a suit brought by *P.* on 4th December 1872 for a declaration that *P.* was the son of *B.*, and for setting aside the adoption of *B.A.* by *K.*,—*Held* that, under the circumstances, a suit for a declaratory decree would lie; for the plaintiff, even if his claim to the property were barred as against *K.*, would yet be entitled to obtain an injunction against any intervention of *B.A.* in performing the *shraddh* or other ceremonies for the benefit of *B.*, or assuming the *status* of *B.'s* adopted son, and, moreover, the Legislature has, in Act VII of 1870 and Act IX of 1871, recognized the right of a person to bring a suit to set aside an adoption as a substantive proceeding, independent of any claim to property

DECLARATORY DECREE, SUIT FOR —*continued.*

3. ADOPTIONS—*continued.*

Suit to set aside adoption—*continued.*

KALOWA KOM BHUJANGRAV *v.* PADAPA VALAD BHUJANGRAV . . . **I. L. R., 1 Bom., 248**

35. ——— Suit by reversioner in lifetime of widow to set aside invalid adoption.—In a suit by the reversionary heir in the lifetime of the widow to have an alleged invalid adoption made by her set aside, and his right to certain property declared, the Court refused to make such a declaratory decree. BROMOMOYEE *v.* ANAND LALL ROY . **13 B. L. R., 225, note: 19 W. R., 419**

JODOO NUNDUN PERSHAD SINGH *v.* NUNDO KOOER . . . . . **1 W. R., 219**

JEONATH BHUGGUT *v.* ROOPA KOONWUR **[2 W. R., 273, note**

4. REVERSIONERS.

36. ——— Suit against tenant for life alleging waste.—*Consequential relief.—Civil Procedure Code, 1859, s. 15.*—The words of section 15, Act VIII of 1859, must be construed upon the principles and by the light of the decisions of the English Courts of Equity upon the 60th section of 15 and 16 Victoria, cap. 86, which is in similar terms. The effect of these decisions, taken in conjunction with the decisions of the Privy Council, in construing the provisions of the Indian Act, is, that a declaratory decree is not to be made unless there is a right on the part of the plaintiff to consequential relief, which, although not asked for, might, if asked for, have been given, or unless the declaration of right may be made the foundation of relief to be had in another Court. The plaintiff, purporting to be the next heir, brought a suit against the life-tenant of a zemindari, and made another claimant to the succession to the zemindari a defendant in the suit. The plaint prayed for a decree declaratory of the plaintiff's right to succeed on the death of the zemindar and made allegations of waste in respect of which he asked relief. *Held* that even if the plaintiff had proved the alleged acts of waste, which he had not done, there was not a right to consequential relief which would entitle him to a declaratory decree. STRIMATHOO MOOTHOO VIGIYA RAGHOONADAH RANEE KOLANDAPUREE NATCHIAR *alias* KATTAMA NATCHIAR *v.* DORASINGA TAVER . **15 B. L. R., 83 [23 W. R., 314: L. R., 2 I. A., 169**

reversing the decision of the Court below in **[S. C. 6 Mad., 310**

37. ——— Alienation of property in possession of widow by parties having no right to it.—Where property to the immediate possession of which a Hindu widow is entitled is conveyed away by parties having no right to it,—*Quære,*—Have not the reversionary heirs a right to ask for a declaratory decree to the effect that as against ultimate heirs the possession of the trespassers and others should be considered as the possession of the widow? JOY MOORUTH KOOER *v.* BALDEO SINGH **[21 W. R., 444**

DECLARATORY DECREE, SUIT FOR —*continued.*

4. REVERSIONERS—*continued.*

38. ——— Fraudulent transfer by widow.—*Right of reversioner.*—Where a transfer is made by a widow in fraud of the rights of the presumptive reversioner,—*Held* that he is entitled to a declaratory decree that the widow's act is null and void, as it may affect the interests of the reversioner, and for provision, if necessary, to prevent any waste of the estate by the appointment of a receiver, but not to a more extensive remedy. His reversionary interest is not accelerated by the transfer. JWALA NATH *v.* KULLO **[3 Agra, 55: S. C. Agra, F. B., Ed. 1874, 138**

SHIBO KOERER *v.* JOOGUN SINGH AND BOOLER SINGH *v.* BASUNT KOERER . **8 W. R., 155**

39. ——— Contingent right.—*Suit to declare right to succeed.—Civil Procedure Code, 1859, s. 15.*—A person cannot sue for a declaration of his right unless he has an existing right. A mere contingent right which may never have existence is not sufficient to ground an action under section 15 of Act VIII of 1859. Consequently a suit by a reversionary heir for the declaration of his right to succeed after the death of the tenant for life will not lie. PRANPUTTEE KOOER *v.* LALLA FUTTEH BAHADUR SINGH . . . . . **2 Hay, 608**

BRINDA DABEE CHOWDRAIN *v.* PEARY LALL CHOWDHRY . . . **9 W. R., 460**

40. ——— *Suit to declare right to succeed.—Civil Procedure Code, 1859, s. 15.—Consequential relief.*—It was held, where the plaintiff sought a decree establishing his reversionary right to property in the possession of his deceased brother's widow as her husband's heir, the alleged cause of action, as regards the defendants, being that, in a former suit in which he claimed to recover the property from the widow on the ground that she had no more than a right of maintenance, they asserted that he was entitled only to one-third of the property; that there was not a sufficient cause for bringing the suit before the widow's death; and that, if the plaintiff's sole right as reversioner were allowed, as he had not at the time any right to consequential relief of any kind, the Court was bound to dismiss the suit, under the ruling of the Privy Council in *Strimathu Muthu Vijia Ragunadah Rani Kolandapuri Natchiar* v. *Dorasinga Tever, 15 B. L. R., 83,* dated the 10th of February 1875, that a declaratory decree is not to be made unless there is a right to consequential relief, which, though not asked for, might, if asked for, have been given. SITAL PARSHAD *v.* JAGDAT MISSER . **7 N. W., 254**

41. ——— Suit by reversioner to set aside alienation.—Where the defendant alienated property in which he had merely a life-interest,—*Held* that the alienation was invalid as against the plaintiff, who was entitled as reversioner. *Held* also that the plaintiff was entitled to a decree declaratory of his title under section 15 of Act VIII of 1859. Although the words of that section are nearly identical with those of section 50 of the English

DECLARATORY DECREE, SUIT FOR —*continued.*

4. REVERSIONERS—*continued.*

Suit by reversioner to set aside alienation—*continued.*

Chancery Amendment Act, it does not follow that, in every case in which the latter section is held to be inapplicable by the Courts of Chancery in England, the former will be held to be equally inapplicable in India. The application of section 15 of Act VIII of 1859 must be viewed in connection with the system of procedure to which it belongs. TIRUMALATHAMAL *v.* VENKATARAMANAIYAN . **2 Mad., 378**

See PERIYA GAUNDAN *v.* TIRUMALA GAUNDAN **[1 Mad., 206**

42. ——— *Alienation by Hindu widow.—Rights in widow's life-time.*—Though a reversioner cannot obtain possession during the life-time of a Hindu widow, yet he may be entitled to a declaration whether the alienations made by the widow are or are not valid and binding on the absolute heir. If the reversioner can prove that wilful default is about to take place, he will be entitled to such relief from the Court as will prevent the apprehended occurrence of a sale for arrears. SHURUT CHUNDRA SEIN *v.* MUTHOORA NATH PUDATICK . . . . . **7 W. R., 303**

43. ——— *Alienation by Hindu widow.—Reversioner.*—A suit lies by a reversioner to declare that an alienation by a Hindu widow will not be binding upon him after her death. A suit is not to be dismissed on the ground that the plaintiff seeks to set aside such alienation, but the Court will grant him such relief as he is entitled to. SHEWAK RAM ROY *v.* MOHAMMED SHAMSUL HODA **[3 B. L. R., A. C., 196: 12 W. R., 26**

OODOY CHAND JHA *v.* DHUN MONEE DEBIA **[3 W. R., 183**

HARADHUN NAG *v.* ISSUR CHUNDER BOSE **[6 W. R., 222**

BYKUNT NATH ROY *v.* GRISH CHUNDER MOOKERJEE . . . . . **15 W. R., 96**

44. ——— *Cause of action.*—*A.* brought a suit against *C.* and *D.*, alleging that he was an heir-expectant upon the death of *B.*, a Hindu widow in possession of an estate, and as such sought for a declaration of title, and to have a certain conveyance of this estate, said to have been executed by *C.* in favour of *D.*, set aside as affecting *A.'s* future interest, without charging any act of waste or injury to the property which might affect his rights as reversioner. *Held* that *A.* had disclosed no cause of action against *C.* and *D.* SURAJ BANSI KUNWAR *v.* MAHIPAT SINGH **[7 B. L. R., 669: 16 W. R., 18**

45. ——— **Suit by reversioner for declaration of right.**—*Cause of action.*—*A.*, a Hindu infant, disappeared and had not since been heard of. In a suit brought within twelve years from the date of his disappearance by the next kin for a declaration of right, and alleging waste by those in possession, and an apprehension that if the infant should not return within twelve years he the plaintiff would be barred by limitation,—*Held*, there was no cause of action. GURU DAS NAG *v.* MATILAL NAG . **6 B. L. R., Ap., 16: 14 W. R., 468**

46. ——— **Waste by Hindu widow.**—*Declaratory suit, Ground of.—Adverse possession.*—It is open to a Hindu widow to give over possession to a stranger to the extent of her interest in the estate; but, actually to favour the claims of the latter, and allow him to enter his name in the landlord's sherista, would have the effect of setting up an adverse title as against the reversionary heirs, upon which a declaratory suit would lie. RAM PERSHAD CHOWDHRY *v.* JOKHOO ROY **[I. L. R., 10 Calc., 1003**

47. ——— **Suit by reversioner in life-time of Hindu widow.**—*Civil Procedure Code, 1859, s. 15.*—A suit brought during the life of a Hindu widow by the presumptive heir, entitled on her death to the possession of the property in which she held her limited estate, to have an alienation by her declared to operate only for her life, is among the exceptions to the general rule established by decision upon Act VIII of 1859, section 15, *viz.*, that, except in certain cases, a declaratory decree is not to be made unless the plaintiff shows a title to, though he does not ask for, consequential relief.—*Kattama Natchiar* v. *Dora Singa Tever, L. R., 2 I. A., 169; S. C. 15 B. L. R., 88. Held* that, although to grant a declaratory decree under the above section, was discretionary with a Court, yet in a suit of this class, known to the law, and in many cases the only practical mode of enforcing the presumptive heir's right to interfere with the widow's alienation, the grounds for the discretionary refusal of the decree should be strong. In this case, the difficulty of the question raised, and the expense of the litigation, which had been referred to as grounds for refusing it, were insufficient reasons. ISRI DUT KOER *v.* HANSBUTTI KOERAIN **[I. L. R., 10 Calc., 324: 13 C. L. R., 418 L. R., 10 I. A., 150**

48. ——— *Hindu law.*—*Alienation by Hindu widow.—Parties.—Vested and contingent interest.—Specific Relief Act (I of 1877), s. 42.*—The plaintiff claiming to be entitled in reversion to certain property on the death of his grandfather's widow, sued for a declaration that certain alienations made by the widow were void as against him. To this suit the widow and her alienee were defendants. The defence was, that the plaintiff was not the reversioner, and certain parties, who claimed to be the real reversioners, intervened, and were made defendants by order of the Court. The plaintiff obtained a declaration of his reversionary right, and the deeds of sale were, on certain conditions, declared void as against him. The intervenors appealed to the High Court. *Held* on appeal that, notwithstanding the provisions of section 42 of the

DECLARATORY DECREE, SUIT FOR —*continued.*

4. REVERSIONERS—*continued.*

Suit by reversioner in life-time of Hindu widow—*continued.*

Specific Relief Act (I of 1877), the plaintiff was not entitled to the relief sought, and that the defendants, who claimed as reversioners, should not have been made parties to the suit. Section 42 of the Specific Relief Act refers only to existing and vested rights, and not to contingent rights. GREEMAN SINGH *v.* WAHARI LALL SINGH

[I. L. R., 8 Calc., 12: 9 C. L. R., 249

49. ——— Suit by reversioner on death of Hindu widow.—*Right to sue.—Cause of action.—Specific Relief Act, 1877, s. 42.*—On the death of *P.*, a Hindu widow, who had been in possession of the estate of her deceased husband, *D.'s* daughter *B.* was entitled to succeed to the estate, if it were *D.'s* separate property. *S.*, however, alleging that the estate was ancestral property, to which he was entitled to succeed, took possession of it. Thereupon the sons of another daughter of *D.*, alleging that the estate of *D.* was his separate property, that *B.* was entitled to succeed to it, that they were the next reversioners, and that *B.* was acquiescing in a possession on the part of *S.* which was adverse to her and to them as next reversioners, sued *B.* and *S.* for a declaration of their reversionary right, and for possession of *D.'s* estate or such relief in this respect as the Court might think fit to give. *Held* that the plaint disclosed a right to sue on the part of the plaintiffs and a cause of action. *Nobin Chunder Chuckerbutty* v. *Guru Persad Doss, B. L. R., Sup. Vol., 1008; Radha Mohan Dhar* v. *Ram Das Dey, 3 B. L. R., A. C., 362; Gunesh Dutt* v. *Lall Muttee Kooer, 17 W. R., 11;* and section 42 of the Specific Relief Act referred to. It being decided that *B.* was entitled to the estate of *D.* and that she should be in possession of it, the Court, having regard to *B.'s* conduct, gave the plaintiffs a declaration of their reversionary right to *D.'s* estate and directed that possession of it should be given to *B.*, and, if she declined to accept possession, then that *A.*, one of the plaintiffs, should be put in possession for her as manager on her behalf, and he should act under the orders and directions of the lower Court, filing accounts in, and paying the income to her through, such Court, whose receipts should be a sufficient discharge. ADI DEO NARAIN SINGH *v.* DUKHARAN SINGH

[I. L. R., 5 All., 532

50. ——— Suit by reversioners to declare purchase by ancestor benami.—*Ground for declaratory decree.*—In a suit by reversionary heirs to declare that the property standing in the name of defendant had been purchased by the ancestor in his name benami, it was held that there was no ground for a declaratory decree. RAJBUNSEE LALL *v.* JUDOOBUNS SUHAYE . 9 W. R., 285

51. ——— Suit for declaration of right to succeed.—*Alienation by Hindu widow.*—The plaintiff's mother was entitled to certain property for her life under an award, under which the plaintiff was entitled to succeed to the property after her mother's death. The plaintiff sued her mother and the holder of a decree in execution of which the property had been sold, praying for a declaration of her right to succeed to the property and that the said decree and sale might be declared void against her, alleging that the decree had been obtained and executed by collusion between the defendants. *Held* that the suit could be maintained under the exception in the judgment of the Privy Council in *Kattama Natchiar* v. *Dorasinga Tevar, 15 B. L. R., 83.* JAGESBI KUAR *v.* RAM NATH BHAGAT

[I. L. R., 1 All., 371

52. ——— *Suit by daughter in life-time of mother.*—*Held* that a daughter can claim a declaration of her rights in paternal estates during the life-time of her mother. JEEWAN RAM *v.* ROONTA . . . . . 1 Agra, 240

53. ——— Suit by remote reversioner.—*Specific Relief Act, 1877, s. 42.*—An Oudh talookdar, deceased, before annexation, provided by his will for the succession of his five widows, one at a time, to his estate, with remainder to a son of his nephew. Settlement was made with the senior widow after the mutiny and a sanad granted to her as talookdar with full power of alienation, and her name was afterwards entered in the lists prepared under section 8 of the Oudh Estates Act, 1869. Certain of her acts were not explicable except on the understanding that she was abiding by the will. *Held*, in a suit by the remainder man for a declaration of the invalidity of a deed of gift made by the widow as against him, that although declaratory relief might have been, at the Court's discretion, refused to him, on the ground of his remoteness in remainder, and the identity of the object of his suit with that of the other, yet he was entitled on this appeal to the decree which he sought, because his suit had been wrongly decided against him on the merits. RAMANAND KUAR *v.* RAGHUNATH KUAR. ANANT BAHADUR SINGH *v.* RAGHUNATH KUAR

[I. L. R., 8 Calc., 769: 11 C. L. R., 149
L. R., 9 I. A., 41

54. ——— Suit to set aside will for invalidity.—*Hostile will.*—A party who, subject to the life-interest of his mother, has a real and vested interest in remainder such as a Hindu has the power of creating, has a right to sue to obtain a declaration of the invalidity of a will set up to his prejudice, which purports to take away altogether his future right and interest in the property. ANUND MOHUN MULLICK *v.* INDRO MONEE CHOWDRAIN

[16 W. R., 214

55. ——— Suit to avoid effect of nuncupative will.—*Cause of action.—Hindu widow.—Testamentary declaration.*—A sonless Hindu widow, in possession of her deceased husband's estate as such, made a statement before a revenue official, which was recorded by him, to the effect that she

DECLARATORY DECREE, SUIT FOR —*continued.*

4. REVERSIONERS—*continued.*

Suit to avoid effect of non-cupative will —*continued.*

wished the property to go after her death to her nephew, and that *S.*, the person entitled to succeed her, had no right to the property. *Held* that such statement, as it was intended to operate, and would have operated, as a will in respect of the property, gave *S.* a right to sue for a declaration that it should not have any effect as against him. KALIAN SINGH *v.* SANWAL SINGH . . . I. L. R., 7 All., 168

56. ——— Suit by reversioner to set aside deed.—A Hindu died, leaving a widow, two daughters *R.* and *P.*, and a grandson *B.* by his daughter *R.* The widow took possession of the estate and executed an ikrarnama, wherein, after reciting that she was in possession "without the coparcenary of any one," she declared that "*B.*, the grandson of me, the declarant, is the heir of my late husband and of me the declarant," and that all the property was "the right of *B.* as aforesaid," and continued:—"During the life of me, the declarant, I am in possession without the co-shareship of any one, and will continue to be so; after my death *B.* will get possession of the whole of the moveable and immoveable properties appertaining to the estate of my late husband. No one else has the right or demand to the same; therefore, these words have been written and given as an ikrarnama that it may be of use when occasion arises." Under the ikrarnama proceedings were completed for mutation of names in favour of *B.* Subsequently to the execution of the ikrarnama *P.* gave birth to the plaintiff, and shortly afterwards died. The plaintiff, on attaining his majority, and during the life of the widow and *R.*, brought a suit against *B.* to have the ikrarnama set aside and declared void as against him, and for a declaration of his right to a moiety of the estate of his grandfather on the death of the widow. *Held* that he had no cause of action. BEHARY LALL MOHURWAR *v.* MADHO LALL SHIR GYAWAL [13 B. L. R., 222: 21 W. R., 430

57. ——— *Discretion of Court to grant declaratory decree.*—A suit by a reversioner to set aside a zur-i-peshgi lease executed more than nine years previously having failed, by reason of the inability of the plaintiff to establish the claim set up in it, the High Court was asked to continue it by remanding it to the lower Court in order that a declaratory decree might finally be passed. *Held* that it was not a case in which it would be right for the Court to exercise its discretion. DOOLMUN JANKEE KOOER *v.* LALL BEHAREE ROY [19 W. R., 32

58. ——— Mortgage by Hindu widow in possession of property in lieu of maintenance.—*Specific Relief Act, s. 42.—Hindu widow.*—The name of the widow of a member of a joint Hindu family was allowed by the other members to be recorded in her husband's place in respect of his rights and interests in the family property by way of compliment to her, and they consented that, in lieu of

DECLARATORY DECREE, SUIT FOR —*continued.*

4. REVERSIONERS—*continued.*

Mortgage by Hindu widow in possession of property in lieu of maintenance—*continued.*

maintenance, she should receive the profits of the property during her lifetime. The widow executed a deed of mortgage of the property, which did not specifically state the amount of the estate mortgaged, and also a bond, upon which the obligee obtained a decree, in execution whereof he attached part of the property recorded in the name of the obligor. The members of the family brought a suit in which they prayed for a declaration that the mortgage executed by the widow was invalid, and that the property was not liable for the amount due thereunder, or to attachment in execution of the decree obtained upon the bond. *Held* that if the widow's possession were only a possession by the plaintiffs' consent entitling her merely to receive the profits for her maintenance, the plaintiffs might eject her from the property, and that before they could obtain a declaration under section 42 of the Specific Relief Act, they must seek their relief by ejectment, that being the substantial and real relief appropriate to the cause of action. On the other hand, if the widow had an estate in possession, given to her in exchange for her maintenance, she had an interest which she was competent to alienate. *Held* also that, inasmuch as the deed of mortgage contained no description of the amount of the estate mortgaged by the widow, and upon its face, mortgaged her share of the property only, it could have no operation beyond her share, and the Court would not be justified in granting a declaration under section 42 of the Specific Relief Act, merely because the plaintiffs apprehended some possible future claim based upon the allegation that the transfer comprised the entire estate. BHOLAI *v.* KALI [I. L. R., 8 All., 70

59. ——— Suit by reversioner for possession.—*Specific Relief Act I of 1877, s. 42.—Civil Procedure Code, s. 578.*—A suit brought against *K.*, the widow of *R.*, a Hindu, by the representatives of *R.*'s brothers, *H.* and *P.*, for possession of his estate, ended in a compromise by which the defendant recognized the plaintiffs' rights, and conceded that the family was joint. After *K.*'s death, *M.*, a daughter of *R.*, brought a suit on her own behalf against the above-mentioned plaintiffs for possession of her father's estate, but afterwards withdrew her claim. Subsequently *S.*, *M.*'s son, who had been born after *K.*'s compromise, brought a suit agaist *M.* and the representatives of *H.* and *P.* to recover possession of the estate, on the allegation that the family, being a divided one, he was entitled, under the Hindu law, to succeed to such estate, and that both the compromise entered into by *K.* and the withdrawal of the former suit by *M.* were in fraud of his succession, and did not affect his rights. The Court of first instance found that the plaintiff was entitled to succeed to the estate, but that his mother being still alive, he was entitled to possession after her death only, and, upon these findings, gave him a decree declaring his right to possession on *M.*'s death.

DECLARATORY DECREE, SUIT FOR —*continued.*

4. REVERSIONERS—*continued.*

Suit by reversioner for possession—*continued.*

The lower Appellate Court reversed the decree, holding that the compromise entered into by *K.* was conclusive against the plaintiff's claim, and also that, during his mother's lifetime, he had no *locus standi* to maintain the suit. *Held* that the prayer in the plaint was wide enough to include a prayer for declaratory relief such as the first Court had given. Also that it could not be said that a daughter's son was not, under any condition, competent to maintain a declaratory suit of this nature during the lifetime of his mother or maternal aunt, in respect of his maternal grandfather's property, to the full ownership of which he had a reversionary right. Also that the awarding of declaratory relief, as regulated by section 42 of the Specific Relief Act, is a discretionary power which Courts of Equity are empowered to exercise with reference to the circumstances of each case and the nature of the facts stated in the plaint, and the prayer of the plaintiff; that so long as a Court of first instance possesses jurisdiction to entertain a declaratory suit, and, entering into the merits of the case, arrives at right conclusions and awards a declaratory decree, such a decree cannot be reversed in appeal simply because the discretion has been improperly exercised; and that such improper exercise of discretion under section 42 of the Specific Relief Act has no higher footing than that of an error, defect or irregularity, not affecting the merits of the case or the jurisdiction of the Court, within the meaning of section 578 of the Civil Procedure Code. This does not imply that, even in cases where the discretionary power to award declaratory relief has been exercised wholly arbitrarily, and in a manner grossly inconsistent with judicial principles, the Court of appeal would have no power to interfere. *Ram Kanaye Chuckerbutty* v. *Prosunno Coomar Sein, 13 W. R., 175; Sadut Ali Khan* v. *Khajeh Abdool Gunnee, 11 B. L. R., 203; Sheo Singh Rai* v. *Dakho, I. L. R., 1 All., 688, L. R., 6 I. A., 87;* and *Damoodur Surmah* v. *Mohee Kant Surmah, 21 W. R., 54,* referred to. SANT KUMAR *v.* DEO SARAN

[I. L. R., 8 All., 365

60. ——— Decree against widow.—*Fraud.—Reversioner.*—Upon the death of *R.*, a Hindu, who was separate from his brother *S.*, his widow *G.* became life-tenant of his estate, and his daughter *B.* became entitled to succeed after *G.*'s death. In 1882, a suit was brought by *S.* and *G.* against *V.* to recover the value of a branch of a mangoe tree wrongfully taken by the defendant, and for maintenance of possession over the grove in which the tree was situate. The suit was dismissed, and it was decided that *R.* was not the owner of the grove, nor was *G.* the owner. In 1885, *B.* brought a suit against *G.*, *S.*, *V.*, and *A.*, to whom *V.* had sold some of the trees, claiming a declaration of her right and possession of the grove, upon the allegation that the proceedings of 1882 were carried on in collusion between *S.* and *G.* on the one hand and *V.* on the other, for the purpose of improperly preventing her

DECLARATORY DECREE, SUIT FOR —*continued.*

4. REVERSIONERS—*continued.*

Decree against widow—*continued.*

from asserting her rights. *Held* also that, if it should turn out that there was fraud and collusion in the proceedings of 1882, and an attempt to interfere with the plaintiff's right as reversioner to the grove on the death of her mother, she would be entitled in the present suit to claim not only a declaration of her right, but also to have the grove reduced into the possession of the life-tenant; and that such relief could be given upon this form of plaint. *Katama Natchiar's Case, 9 Moore's I. A., 543; Adi Deo Narain Singh* v. *Dukharam Singh, I. L. R., 5 All., 532,* and *Sant Kumar* v. *Deo Saran, I. L. R., 8 All., 365,* referred to. SACHIT *v.* BUDHUA KUAR

[I. L. R., 8 All., 429

5. DECLARATION OF TITLE.

61. ——— Intention to interfere with rights.—To entitle a plaintiff to a declaratory decree, he must show some cause of suit, something more than a wish to interfere with his rights. Intention to interfere with such rights should be held to constitute a cause of action, if at all, only when it is clearly shown. JESMANEE KOOER *v.* DEBEE DYAL RAE . . . . . 3 N. W., 137

62. ——— Obligation to show title.—*Discretion of Court.*—In a suit for a declaration of right, a plaintiff ought on the face of his plaint to show not merely that he has a title, but that circumstances exist which necessitate his application to the Court for a declaratory decree. It is discretionary with the Court to make a declaratory decree. KHADIM ALI *v.* NAZIR BEGUM . . 3 N. W., 262

63. ——— Hostile Act.—*Invasion of right.*—In order to entitle a plaintiff to a bare declaration of right under section 15, Act VIII of 1859, he must make out, to the satisfaction of the Court, some act done by the defendant which is hostile to and invades that right, and which would justify an injunction or a decree for damages, or a decree for delivery of possession being passed against the defendant, if the Court had so thought fit to exercise its discretion. KENARAM CHUCKERBUTTY *v.* DENONATH PANDA . . . . 9 W. R., 325

GOBINDONATH ROY CHOWDHRY *v.* KISHEN KANT ROY . . . . . 10 W. R., 254

64. ——— Inability to make binding decree.—*One-sided cases.*—Declaratory orders ought not, as a general rule, to be made in cases which are wholly one-sided, and in which the decrees would not be binding upon the parties really interested, if the defendant should succeed in establishing his right. BROJO KISHOREE DASSEE *v.* SREENATH BOSE

[9 W. R., 463

65. ——— Probable and inevitable injury.—A declaratory decree ought only to be passed where some injury appears so probable as to lead to the conclusion that, unless stayed by the declaratory

DECLARATORY DECREE, SUIT FOR —*continued.*

5. DECLARATION OF TITLE—*continued.*

Probable and inevitable injury—*continued.*

decree, the inchoate or threatened injury is inevitable. PUREEJAN KHATOON *v.* BYKUNT CHUNDER CHUCKERBUTTY . . . . . 7 W. R., 96

66. ——— **Prospective injury.**—*Suit to declare user.*—In a suit to establish plaintiff's right to the reasonable use, for the purpose of irrigation, of water, the flow of which had been impeded by a bund erected by defendants,—*Held* that even though plaintiffs had not yet been endamaged by the acts of the defendants, it was in the discretion of the Court, if they proved their right, to give them a declaratory decree recognising that right, seeing that serious consequences might otherwise result. WUZEEROODDEEN *v.* SHEO BUND LALL [11 W. R., 285

67. ——— **Anticipation of injury.**—*Annoyance.*—Courts cannot by anticipation grant a decree prohibiting a defendant from annoying a plaintiff. It must be shown that some substantial annoyance or injury which the Court can recognize has been actually committed before the Courts will interfere. KASIM ALI KHAN *v.* BIRJ KISHORE [2 N. W., 182

68. ——— *Cause of action.*—A suit was brought against the plaintiff by his tenants, for an illegal distress in attaching crops raised by them on the land let to them by him. The present defendant, in the course of that suit, presented a petition to the Court, in which he stated that he was the owner of the land on which the crops attached had been raised. The plaintiff brought the present suit for a declaration of his title and confirmation of possession, alleging that the defendants' statement affected his (plaintiff's) title by throwing a cloud over it. *Held* there was no cause of action. *Per* PAUL, *J.*—A suit merely in anticipation of a threatened ejectment will not lie. There must be something in the case either in the nature of an invasion of some right, or in the shape of an impediment or obstacle in the way of full enjoyment of proprietary right, to found a claim to a declaratory relief; but a mere allegation, or a mere threat without action taken or founded upon it, will not be sufficient to entitle a party to a declaration of his title. JAN ALI *v.* KHONDKAR ABDUR KHUMA [6 B. L. R., 154 : 14 W. R., 420

69. ——— **Allegation injurious to plaintiff.**—*Consequential relief.*—The words of section 15, Act VIII of 1859, are to be interpreted as giving a right to obtain a declaration of title only in those cases in which the Court could have granted relief if relief had been prayed for. A suit by a party in possession for a declaration of title and to set aside, not any deed nor any act of the defendant, but a mere allegation on his part that he holds under a certain tenure, is not maintainable. NILMONY SINGH DEO *v.* KALEE CHURN BHUTTACHARJEE [14 B. L. R., 382 23 W. R., 150 : L. R., 2 I. A., 83

DECLARATORY DECREE, SUIT FOR —*continued.*

5. DECLARATION OF TITLE—*continued.*

70. ——— **Suit by person in possession.**—*Unnecessary suit.*—A suit ought not to be entertained where the plaintiff, who merely seeks for a declaration of title, is in possession of all his alleged rights, and is not in a position to bring an action. PADAGALIGUM PILLAI *v.* SHANMUGHAM PILLAI [2 Mad., 333

BACHUN ALI *v.* DEWAN ALI . 11 W. R., 376

71. ——— *Confirmation of title.*—Where the plaintiff in a suit for confirmation of his title being (though illegally) in possession, it was held that his not suing for possession was no bar to his obtaining a decree declaratory of his title. SHIBOO SOONDUREE DABI *v.* BECKWITH [9 W. R., 580

72. ——— **Order under Land Registration Act (Beng. Act VII of 1876), s. 59.**—*Specific Relief Act, 1877, s. 42.—Possession.*—The effect of an order under section 59 of the Land Registration Act being to "settle the actual possession," the person against whom such an order is made is precluded by section 42 of the Specific Relief Act from bringing a suit merely for a declaration of his title without seeking to recover possession also. RAM MUNDUR *v.* JANKI PERSHAD . . . 12 C. L. R., 139

73. ——— **Declaration of title as owners.**—Parties not proving possession, and not entitled to consequential relief, may yet, under section 15, Code of Civil Procedure, obtain a decree declaring them rightful owners. THAKOORDEEN TEWAREE *v.* ALI HOSSEIN KHAN . 8 W. R., 341

On appeal to the Privy Council, however, it was found that the plaintiffs had asked for and were entitled to consequential relief.

See S. C.

[13 B. L. R., 427 : 21 W. R., 340 L. R., 1 I. A., 192

74. ——— **Right ceasing to exist pending suit.**—*Declaratory decree where right to possession is barred.*—In a suit for declaration of right which existed at the time the suit was commenced, but which had ceased to exist pending the suit before decree, plaintiff is not entitled to a decree, and a declaratory decree of title will not be given when the plaintiff's claim would have been barred by limitation had he sued for possession. NOBOKISHORE DEY *v.* RAMKISHEN . . . . 9 W. R., 131

75. ——— **Suit by person out of possession.**—*Omission to ask for possession.—Refusal to recognise proprietary right.*—In a suit in which the plaintiffs stated that they had already obtained a decree for possession of certain land, and had received formal possession, and stated their cause of action to be "the defendants' act of not recognising us as their landlords and thereby preventing us exercising our proprietary rights in respect of the land in suit, and not allowing us to make a measurement of that land, and also withholding payment of rent" praying for a decree establishing their proprietary right and

DECLARATORY DECREE, SUIT FOR —*continued.*

5. DECLARATION OF TITLE—*continued.*

Suit by person out of possession—*continued.*

declaring the defendants to be their tenants,—*Held* that the declaratory decree prayed for could be made notwithstanding the plaintiffs might have asked for possession of the lands. LOKENATH SURMA *v.* KESHAB RAM DOSS . I. L. R., 13 Calc., 147

76. ——— **Denial of title without injurious act.**—*Annoyance.*—In suits for a declaration of title to a divided share of ancestral property, the ground alleged in each case for seeking the declaration was that the representatives of the brothers of the plaintiff's father had refused to be parties to the registering of the property in plaintiff's name, and had executed a deed of sale of it to a third party (third defendant), and registered him as the purchaser. The Court of first instance in each case decreed for the plaintiff. The Appellate Court, following *Padagaligum Pillai* v. *Shanmugham Pillai, 2 Mad., 333,* dismissed the suits, on the ground that the plaintiffs were not in a position to maintain them. On special appeal,—*Held* that the suits should be remanded for a declaration of the plaintiff's title, if established. To maintain a suit for a declaration of title, some adverse act, intended and calculated to be prejudicial to the title which the plaintiff seeks a declaration of, must appear to have been done by the defendant. The mere denial of the title, or doing an act which causes annoyance, cannot imperil the plaintiff's title, nor have any serious effect on the quiet enjoyment of his proprietary right, and is not sufficient to support such a suit. The principle upon which the decision in *Padagaligum Pillai* v. *Shanmugham Pillai* proceeds, is inapplicable to suits under section 15 of the Civil Procedure Code. KARYAN *v.* PERIA SIDDEN. KARYAN *v.* LINGA GAUNDAN. KARYAN *v.* DODDALI [6 Mad., 307

77. ——— **Failure of previous suit for possession of land.**—*Res judicata, Plea of.*—Suit brought by plaintiff against the first three defendants as his tenants on kanam, and the fourth, the representative of a rival jenmi, to obtain a declaration of title as jenmi. Plaintiff had previously sued the first three defendants to establish the relation of jenmi and kanamkar, and to recover the land. He failed, and then brought the present suit. *Held* that this was a case of the employment of the device of a suit for a declaration of title in order to get back land by a crooked and not legal process, after failure to recover by proper legal means, the intention being to cut off the defendants (the tenants) from the plea of *res judicata.* The Court, which had a discretion as to whether such a suit should be permitted, ought at once to have said that it should not. Where there are no interests to be protected, there is no foundation for a suit for a declaratory decree. SHUNGUNY MENON *v.* KALAMPULLY VALIA NAIR . . 6 Mad., 117

78. ——— **Injury or hostile act giving cause of action.**—*Fraud.*—In a suit for a declaration of the plaintiff's title to, and confirmation of his possession of, certain lands which he alleged had first been sold to him by one of the defendants and then sold

DECLARATORY DECREE, SUIT FOR —*continued.*

5. DECLARATION OF TITLE—*continued.*

Injury or hostile act giving cause of action—*continued.*

by his vendor to the other defendant,—*Held* that, in the absence of proof of fraud in the later sale, there was no cause of action. ABDOOL AZIM CHOWDHRY *v.* MAHOMED KABEE . . . 11 W. R., 281

79. ——— **Suit for ejectment.**—*Intention to evade stamp laws.*—The provision as to declaratory suits requires great care and circumspection in its application. A declaratory decree should not be made where the object of the plaintiff is to evade the stamp laws, or to eject under colour of a mere declaration of title. CHOKALINGAPESHANA NAIKER *v.* ACHIYAR [I. L. R., 1 Mad., 40

See GANPUTGIR BHOLAGIR *v.* GANPATGIR [I. L. R., 3 Bom., 230

80. ——— **Improper execution of decree by Ameen.**—*Omission to give possession of land correctly.*—In a suit for declaration of right and confirmation of possession by setting aside certain improper chittahs prepared by a Civil Court Ameen while deputed to deliver possession in execution of a decree,—*Held* that, when in execution the Ameen measured a portion of plaintiff's land as covered by defendant's decree, and delivered over possession to defendant, taking receipts and issuing proclamations as required by section 324, Act VIII of 1859, a cause of action arose to plaintiff under the circumstances against defendant and the suit would lie. GOUR PERSHAD DOSS *v.* SOOKDEB RAM DEB [12 W. R., 279

81. ——— **Tenant setting up larger interest than he is entitled to.**—*Specific Relief Act (I of 1877), s. 42.—Discretion of Court to give a declaratory decree.—Landlord and tenant.—Notice to quit.*—A plaintiff, admitting a defendant's right to a kursa-jumma tenure in certain lands, but denying a permanent malguzari tenure set up by him, sought to eject the defendant from the kursa-jumma holding, and for a declaration that the defendant was not entitled to the permanent malguzari tenure,—*Held* that the plaintiff was entitled to the declaration asked for, notwithstanding that, in consequence of his failure to prove a reasonable notice to quit, he was unable to obtain a decree for ejectment. A Judge, interfering with the discretion exercised by a lower Court in granting a declaratory decree, should state his reasons for so doing. KALI KISHEN TAGORE *v.* GOLAM ALI . . . I. L. R., 13 Calc., 3

82. ——— **Third person compelling payment of rent to him.**—*Cause of action.*—When a person obliges the tenants of an estate to pay rent to him, his act may be treated as a dispossession of the party wronged, sufficient to entitle the latter to sue for declaration of title. RADHA MADHUB PANDA *v.* JUGGERNATH DOOAB . 14 W. R., 183

See HOYMOBUTTY DASSEE *v.* SREEKISSEN NUNDEE . . . 14 W. R., 58

DECLARATORY DECREE, SUIT FOR —*continued.*

5. DECLARATION OF TITLE—*continued.*

83. ——— Unsuccessful intervention in rent suit.—*Cause of action.*—Unsuccessful intervention in a suit for rents against ryots, followed by no result operating injuriously on plaintiff's title or possession, can afford him no cause of action in a suit for declaration of right and confirmation of possession. JUGGUT CHUNDER ROY *v.* MOHIMA CHUNDER PAUL . . . . . **11 W. R., 331**

84. ——— Slander of title.—*Civil Procedure Code, 1859, s. 15.*—The issuing of proclamations and orders by *B.* to the ryots of an estate to pay rent to him as rightful owner of the estate, application by him to the Collector to be registered as the owner, and other like acts of pretension to the title, and threats on *B.'s* part are not, in themselves, sufficient to entitle *A.*, who is in possession and enjoyment of the estate as rightful owner, to a decree declaring him to be the rightful owner. THIRUVENGADATHIENGAR *v.* SANGILIVERAPPA PANDYA CHINNATHUMBIAR . . . . **I. L. R., 1 Mad., 65**

85. ——— Suit for ejectment of one defendant and declaration against others.—*Suit before Act VIII of 1859.*—Before the enactment of Act VIII of 1859, section 15, a suit could not have been brought for a mere declaration of title without consequential relief. A suit cannot be brought against several defendants to eject one, and to obtain a declaration of title against the rest. NAAN MANI *v.* GODA SHANGARA . **1 Mad., 252**

86. ——— Suit for confirmation of title by purchaser at sale in execution.—*Confirmation of possession.*—The purchaser of property from a judgment-debtor, whose right, title, and interest have been subsequently sold to another party who desires to take possession, has a right to sue for a declaration of title and confirmation of possession for the purpose of clearing his title from the suspicion of its being founded on a collusive sale. GOBURDHUN DASS *v.* MUNNOO LALL . . **15 W. R., 95**

87. ——— Suit by first mortgagee against subsequent mortgagee as purchaser affecting his title.—*B.* having executed two mortgages of the same share, his mortgagees obtained against him separate decrees, in each of which the property was declared liable to sale in satisfaction of the debt. Plaintiff first purchased under the decree obtained on the earlier mortgage, and defendant (who was the second mortgagee) himself purchased the same right, title, and interest at the second sale. The suit was brought for confirmation of plaintiff's possession of the estate, on the ground that his title was affected by the subsequent purchase of the defendant. *Held* that plaintiff had no cause of action, as his rights had not been disturbed by any act of the defendant. BUDDRENATH JHA *v.* AMRIT SAHOO **[10 W. R., 126**

88. ——— Suit for declaration of title as mortgagee.—*Rejection of claim to attached property.*—On attachment of certain property in execution of a decree, *A.* preferred his claim under section 246, Act VIII of 1859, on the ground that he held a mortgage thereof from the judgment-debtor. Thereupon an order was passed for sale of the property subject to the mortgage. *B.* afterwards claimed the same property as his absolute estate, and his claim was allowed, and the property released from attachment. *A.* was not a party to these proceedings. *Held* that *A.* could maintain a suit against *B.* for a declaration of his title as mortgagee. GABIND PRASAD TEWARI *v.* UDAI CHAND RANA **6 B. L. R., 320**

89. ——— Interference with plaintiff's right.—*Cause of action.*—A Government ijaradar's covenant with Government that he will not object to the use of the tanks, roads, cow-path, &c., within his ijara, does not prevent him from making settlements for those tanks, roads, &c.; and the mere fact of his giving a lease to one party cannot interfere with another party's right to use such road, or the waters of such tank, or give that other party cause to sue for a declaration of title. WOOSUM ALI *v.* JAN ALI **[11 W. R., 394**

90. ——— Suit to declare estate forfeited.—*Specific Relief Act (I of 1877), s. 42.*—Certain trusts of a house were declared in favour of *A.* and *B.* for life, subject to forfeiture upon the happening of particular events; and further trusts in favour of the issue of *A.* and *B.* were also declared. The settlor died leaving a will under which *C.* took an estate for his life with remainder to the settlor's son *E.* absolutely. *E.* assigned his interest in the trust premises to the plaintiff, who now sued the *cestui que trustent* and *C.*, praying that, in the events which had happened, it might be declared that the life-estates of *A.* and *B.* had been forfeited. He also asked for various declarations as to his rights. *Held* that no declaratory decree could be made. BHUJENDRO BHUSAN CHATTERJEE *v.* TRIGUNANATH MOOKERJEE . . . . **I. L. R., 8 Calc., 761**

91. ——— Suit by landlord during continuance of tenancy.—*Specific Relief Act, s. 42.*—It is open to a landlord, where his title is in jeopardy from the aggressions of a neighbouring zemindar, and where his title may be damaged by a denial of his rights over his land, to bring a suit for the purpose of having his rights declared as against such wrong-doers and for the purpose of being put into possession of the land as against them. *Woomesh Chunder Goopto* v. *Raj Narain Roy, 10 W. R., 15,* explained. BISSESSURI DABEEA *v.* BARODA KANTA ROY CHOWDRY **[I. L. R., 10 Calc., 1076**

92. ——— Suit to establish title to property on the ground of trespass by defendant to particular part of it.—*Decree confined to that portion.*—He who seeks a declaration of matters not necessary to the immediate relief sought must sustain the burden of making out the abstract proposition which he has volunteered to support, and

DECLARATORY DECREE, SUIT FOR —*continued.*

5. DECLARATION OF TITLE—*continued.*

Suit to establish title to property on the ground of trespass by defendant to particular part of it—*continued.*

it will even then be a matter for the discretion of the Court, not to be lightly exercised, whether it will undertake the solution of the problem. Suit brought for a declaration of title to a considerable tract of country on account of a trespass committed by defendant on a particular hill. *Held* that as to that particular hill, the plaintiff's claim was sustainable, and that disposed of the only question which it was necessary to decide. KALLAVETTI KURUJAL KUMHOLEN KUTTY *v.* NILAMBUR THACKAVAKAVIL MANA VIKARAMEN *alias* THIRUMULPAD . **8 Mad., 17**

93. ——— Suit for declaration of title after defendant has obtained order for certificate under Act XXVII of 1860.—A suit may be maintained for a declaration of title which may be used as a means for the withdrawal of a certificate under Act XXVII of 1860 though a suit will not lie to set it aside. RUSSICK CHUNDER *v.* RAM LALL SHAHA . . . . **22 W. R., 301**

94. ——— Suit against holder of certificate under Act XXVII of 1860.—Where a certificate had been granted to the personal representative of a deceased shebait of debuttur property, who set up no claim to the property, and the manager of the debuttur property on behalf of the surviving shebait, brought a suit against the certificate-holder for a declaration under Act VIII of 1859, section 15, the District Judge was held to have done right in refusing the declaration. RUGHOOBUR DYAL SINGH *v.* RAM NARAIN KOLYA . . **22 W. R., 312**

95. ——— Refusal to register.—*Suit for declaration of title under unregistered deed.—Specific performance.—A.* brought a suit in the Munsif's Court against *B.* and *C.*, alleging that they had sold outright to him by saf-kobala certain landed property for R300, which was duly paid when the kobala was executed; that possession was given to him; that *B.* and *C.* set up before the Deputy Registrar fraudulent objections to the effect that a stipulation to return the property to the vendors on the repayment by them of the consideration-money had not been embodied in the deed, and that part of the consideration-money had not been paid; that therefore, the Registrar refused to register the deed; that in fact there was no such stipulation as alleged by *B.* and *C.*, and that the whole of the purchase-money was paid. It was stated in the plaint that the suit was brought to set aside the fraudulent objections, and to establish the full title of *A.* as purchaser. *Held* (MITTER, *J.*, dissenting) that the suit would not lie, the unregistered deed could not be admitted in evidence, nor parol evidence given of the contract under which *A.* alleged he acquired his title. RAHMATULLA *v.* SARIATULLA KAGCHI

[1 B. L. R., F. B., 58 : 10 W. R., F. B., 51

SEPAHEE SINGH *v.* CHUNDUN

[2 N. W., 160 : Agra, F. B., Ed. 1874, 213

DECLARATORY DECREE, SUIT FOR —*continued.*

5. DECLARATION OF TITLE—*continued.*

96. ——— Suit to ascertain shares in family property.—*Overt act of injury.*—Where there is a dispute as to the shares of the several members of a family in a family property, the possession of which is undisturbed, a suit will lie to ascertain the shares of the different members. In a suit for a declaratory decree, it is not necessary to allege any overt act which may give rise to relief in the shape of damages or a decree for possession. BHAGWAN SINGH *v.* MITARJIT SINGH

[8 B. L. R., 382 : 17 W. R., 169

97. ——— Suit by one member of joint Hindu family for declaration of right to receive share.—*Partition.*—A joint Hindu family, consisting of three brothers, enjoyed an undivided one-third share of certain lands. One member sued the others for partition of the family property, claiming to have his right declared to receive one-third of the share of the family in the profits of the said lands,—*Held* that the Court was not debarred from granting the relief prayed for by the provisions of section 42 of the Specific Relief Act. PANCHANADAYYAN *v.* NILAKANDAYYAN

[I. L. R., 7 Mad., 191

98. ——— Invasion of right.—*Cause of action.*—In a suit for establishment of lakhiraj title to, and confirmation of possession in, land which was alleged to have been brought to sale and purchased in execution by the principal defendant, who had then sued some of the plaintiffs for a kabuliat,—*Held* that there had been no invasion of plaintiffs' title even if they had a lakhiraj title, and that therefore they had no cause of action. RAMGOPAUL TEWAREE *v.* GOBA CHUND PORYAL . . . **15 W. R., 28**

99. ——— Dismissal of former suit for enhanced rent.—*Cause of action.*—A former suit in the Revenue Court for arrears of rent at enhanced rates, to which defendant set up a plea of lakhiraj was dismissed on the ground that the kabuliat propounded by plaintiff was not proved. *Held* that plaintiff was entitled to sue for a declaration of his title to the disputed lands as part and parcel of the mal lands of his zemindari. ISSUR CHUNDER ROY *v.* JUGGESSUR GHOSE . . . **17 W. R., 184**

100. ——— Suit by person in possession of land to establish title.—*Civil Procedure Code, 1859, s. 15.—Defendant claiming under decree of Small Cause Court.*—The plaintiff in a suit to establish her lakhiraj right to lakhiraj land, stated in her plaint that she was in possession of certain land by virtue of the will of her husband; that while in possession of the land, a suit was brought against her in the Small Cause Court for rent by the defendants, who obtained a decree; and that there being no appeal against the decision, the lakhiraj rights in respect of the lands were consequently injured; she therefore brought the present suit. *Held* that such a suit was not maintainable, as the claim which the defendants set up was no longer in the condition of a mere assertion or a claim for right, but had passed

DECLARATORY DECREE, SUIT FOR —*continued.*

5. DECLARATION OF TITLE—*continued.*

Suit by person in possession of land to establish title—*continued.*

into a decree. *Held* further, that in this case the plaintiff was not without a remedy, for if a further suit for rent be brought, she might file a suit and apply for an injunction to prevent the other party from proceeding so long as her suit was not disposed of and an absolute relief given her. PORAN SOOKH CHUNDER *v.* PARBUTTY DOSSEE

[I. L. R., 3 Calc., 612 : 1 C. L. R., 404

101. ——— **Suit to declare land lakhiraj.**—*Resumption decree declaring lands mal.—Specific Relief Act (I of 1877), s. 42.—Title, by possession.—Limitation Act (XV of 1877), s. 28, sched. II, art. 130.*—In a suit instituted in 1877, *A.* prayed for a declaration that he had a lakhiraj title to certain lands; the defendant stated that the lands for a declaration of a title to which *A.* now sued formed part of certain lands which had been the subject of resumption proceedings, which were terminated in 1863 by a decree declaring that the lands which were the subject of that suit, including the lands now claimed by *A.*, were not lakhiraj. It being found as a fact that *A.* had neither been a party to, nor been represented in, the resumption-proceedings, that he had been in quiet and undisturbed possession of the lands which he now claimed for more than twelve years before the institution of his suit, and that proceedings had been taken by the defendant calculated to disturb such possession,—*Held* that *A.* was entitled, under section 42 of Act I of 1877, to the declaration prayed for. ABHOY CHURN PAL *v.* KALLY PERSAD CHATTERJEE

[I. L. R., 5 Calc., 949: 6 C. L. R., 260

102. ——— **Suit to declare proprietary right.**—*Previous suit for rent dismissed.—Consequential relief.—Act I of 1877 (Specific Relief Act), s. 42.*—*S.* sued *B.* in a Court of Small Causes for arrears of ground-rent of a house. The latter denied *S.'s* proprietary right to the land and his liability to pay ground-rent, and *S.'s* suit was in consequence dismissed. Thereupon *S.* sued *B.* in the Civil Court for a declaration of proprietary right to the land and of his right to receive ground-rent. *Held* that the suit was not barred by the proviso to section 42 of the Specific Relief Act because it did not include a claim for arrears of ground-rent; and that the suit was one in which the specific relief claimed might properly be granted. The principle laid down in *Sadut Ali Khan* v. *Khajeh Abdool Gunnee, 11 B. L. R., 203,* applied. SOMKALI *v.* BHAIRO

[I. L. R., 5 All., 55

6. ERRORS IN DEMARCATION AND SURVEY OF LANDS.

103. ——— **Alteration of boundary line.**—*Civil Procedure Code, 1859, s. 15.—Discretion of Court.*—Under section 15 of Act VIII of 1859, it is discretionary with the Court whether it will make a declaratory decree or not. In a suit brought for confirmation of possession by a declaration

DECLARATORY DECREE, SUIT FOR —*continued.*

6. ERRORS IN DEMARCATION AND SURVEY OF LANDS—*continued.*

Alteration of boundary line—*continued.*

of right and determination of boundaries in respect of certain land of which the plaintiff was in possession, by setting aside a new thakbust map, prepared by the Deputy Collector, and a proceeding before that officer to which the plaintiff was no party, the plaintiff not having gone before the Deputy Collector and pointed out to him the grounds upon which he contended the map was not correct,—*Held* that the plaintiff ought not to have a declaratory decree. MOTEE LALL *v.* BHOOP SINGH BAHADOOR

[2 Ind. Jur., N. S., 245: 8 W. R., 64

104. ——— *Discretion of Court.—Hostile acts.*—In suits for declaratory decrees under section 15, Act VIII of 1859, it is entirely in the discretion of the Court to grant or to withhold relief, and each case must be judged by its own particular circumstances. Where parties in possession of certain lands sued for a declaration of title, not only on the allegation that defendant had caused a demarcation to be made behind their backs, annexing a slice of their lands to defendant's estate, but had also, under colour of this proceeding, sued plaintiff's tenants for rent under Act X, and proceeded against them to enforce a measurement under Act VI (Bengal) of 1862, it was held that acts had been done hostile and obviously injurious to the plaintiffs, and that the suit would lie. PUREE JAN KHATOON *v.* BYKUNT CHUNDER CHUCKERBUTTY

[9 W. R., 380

105. ——— *Suit to declare boundary line arbitrary.—Prohibition by Government of zemindari rights.—Held* (by PHEAR, *J.*) that where Government wrongfully draws a boundary line, cutting off a portion of an estate settled with a zemindar's ancestors, and forbids his enjoyment of zemindari rights beyond such line, a cause of action is constituted upon which the zemindar can sue for a declaration of right under section 15, Act VIII of 1859. GOVERNMENT *v.* RAJKISHEN SINGH

[9 W. R., 426

106. ——— **Fraudulent and collusive survey proceedings.**—*Cause of action.*—The plaint in this case having disclosed that certain thakbust proceedings were carried on by defendants in collusion with their co-sharer, and in fraud of the plaintiff,—*Held* that the plaintiff had made out a sufficient cause of action for a declaratory decree under section 15, Act VIII of 1859. BROMMO MOYEE DEBIA CHOWDHRAIN *v.* KOOMODINEE KANT BANERJEE. BURODA KANT BANERJEE *v.* KOOMODINEE KANT BANERJEE . . 17 W. R., 467

107. ——— **Allegation of error in survey map.**—*Cause of action.—Suit to set aside survey proceedings.*—Plaintiff having sued as the shebait of certain lands in defendant's talook, alleging that they belonged to his lakhiraj debuttur, and asking to have a thak demarcation amended and his right declared, it was held that, as plaintiff had been

DECLARATORY DECREE, SUIT FOR —*continued.*

6. ERRORS IN DEMARCATION AND SURVEY OF LANDS—*continued.*

Allegation of error in survey map—*continued.*

present at the survey proceedings which were his own act, he had no cause of action. SOODUKHINA CHOWDHRAIN *v.* ISSUR CHUNDER MOJOOMDAR . [12 W. R., 25

108. ——— *Suit for lands wrongly marked on survey map.*—A suit will lie for a declaration of title to certain lands which have been erroneously marked on the survey map as belonging to the defendant. SHIB JATON ROY *v.* PANCHANAN BOSE [3 B. L. R., Ap., 55 : 11 W. R., 466

109. ——— *Thakbust map.—Omission of allegation of injury or loss.*—Where a plaint in a suit for declaration of title merely alleged that a certain thakbust map was erroneous, and did not state that any injury had occurred to the plaintiff in consequence of the error, the plaint was held to disclose no cause of action. PRAN BANDHU CHATTERJEE *v.* MADHUSUDAN PATRA [13 B. L. R., Ap., 12

S. C. RAM BUNDHOO CHATTERJEE *v.* MUDHOO SOODUN PATRA . . . 21 W. R., 134

110. ——— **Alteration in survey map.**—*Cause of action.*—A suit for a declaration of title to certain lands which the defendants had caused to be demarcated in the survey maps as a part of their talooks without the knowledge, and in fraud of the plaintiff, was held to disclose a sufficient cause of action. PROMOTHONATH ROY *v.* POORNO CHUNDER BANERJEE . . . . 11 W. R., 543

111. ——— *Causing alteration in maps.—Hostile act.—Cause of action.*—Where, on the occasion of the butwarrah of a zemindari, the proprietors of an outside talook interfered and caused the Collector to exclude certain land of an ousut talook from the maps and records then made, without opposition from the shikmi talookdars, it was held that their conduct amounted to making evidence which might eventually be used adversely to the rights of the ousut talookdars, who, therefore, had a cause of action against them justifying a suit for a declaratory title. OBHOYA CHURN SIMLYE *v.* MOHESH CHUNDER DASS . . . 23 W. R., 22

112. ——— *Suit to declare survey maps incorrect.—Alteration by misrepresentation of defendant.*—In a suit for a decree declaring certain survey maps to be incorrect on the ground of their having been altered on an incorrect representation by the defendants of their boundaries, where it was found that plaintiff had always been in possession, and no infringement of her right had taken place. *Held* that there was no cause of action. JARDINE, SKINNER AND COMPANY *v.* SHURNO MOYEE [24 W. R., 215

DECLARATORY DECREE, SUIT FOR —*continued.*

7. REGISTRATION OF NAMES BY COLLECTOR.

113. ——— **Joint property standing in one name in Collector's register.**—*Cause of action.*—The fact of joint property standing on the Collector's register in the name of the elder brother is no slur on the younger, and no ground for a suit on the part of the latter for declaration of title. GOPEE LALL *v.* BHUGWAN DOSS . 12 W. R., 7

114. ——— **Decision of Collector declaring right in partition proceedings.**—*Cause of action.*—A Collector's declaration of the title of a party to an entire share of an estate and his action in dividing the share for such party, are an injury to and a slur upon another party claiming a fraction of the share, and give him a sufficient cause of action. SHEO PERSHAD SOOKOOL *v.* SHUNKUR SAHOY . . . . . 16 W. R., 190

115. ——— *Estates with same name.—Cause of action.*—Defendant having obtained from the Collector an order for a batwarra of his share in a mouzah in the vicinity of plaintiff's estate, the latter, after applying in vain to the revenue authorities for a declaration that his own estate (Sheopore) had nothing to do with defendant's mouzah, which was found to be recorded on the towzi with an *alias* of Sheopore, brought a civil suit for a declaration of his own right to Sheopore. *Held* that, as the two estates were separately recorded in the towzi with distinct areas and sudder jummas, and as plaintiff's ownership of Sheopore was not disputed, and there was no allegation of his lands being incorporated by the partition in the defendant's estate, plaintiff had no cause of action. FOOLBASHEE KOWAR *v.* ARZUN SAHOO . . 12 W. R., 134

116. ——— **Obtaining hostile registration of name.**—*Suit for declaration of title and to have name registered.*—Immediately before the British entered Bhootan, the Soobah of Mynagorie gave plaintiff a mourasi pottah of some jotes of land, and shortly after ran away. After the British entered, the defendants gave him kabuliats and paid him rent. The British authorities also recognised his rights and received rents from him. Subsequently the defendants disputed plaintiff's rights, and applied to the Collector to have their own names registered as jotedars. Their applications having been successful, plaintiff sued for a declaration of his title under the pottah. *Held* that, as plaintiff's title had been acknowledged by the defendants and recognised by the British authorities, he was entitled to the declaration sought. SREE KANT SHAHA *v.* KALTOO DOSS . . . . . 10 W. R., 135

117. ——— **Successful opposition to entry of names in Collector's register.**—*Cause of action.*—Where parties relying on their title to certain property apply to have their names put into the Collectorate books, and their application is successfully opposed by other parties claiming the same property on the ground of a conveyance made to themselves, such opposition constitutes a

DECLARATORY DECREE, SUIT FOR —*continued.*

7. REGISTRATION OF NAMES BY COLLECTOR—*continued.*

Successful opposition to entry of names in Collector's register—*continued.*

good cause of action to the parties first mentioned if they have the right alleged. REWAL MAHTON *v.* PENAM MUNDAR . . . . . 22 W. R., 9

118. ——— Co-sharer recorded as entitled to larger share than he was entitled to.—*Act XI of 1859, s. 11.—Suit to declare rights.*—In a suit for a declaration of plaintiff's title, on the allegation that defendant, one of the sharers with him in a joint estate, had been recorded under Act XI of 1859, section 11, separately in respect of a larger share than that to which he was entitled, it was pleaded that the suit would not lie, because plaintiff had not appeared before the Collector and objected to defendant's being registered. *Held* that, by such omission, plaintiff had not forfeited his right to the share of which he was in possession, and that the suit was one in which it would be proper to make a declaratory decree. GOLUCK CHUNDER *v.* RAM HUREE . . . . . 23 W. R., 104

119. ——— Injury to title.—Causing wrongful entry of name as proprietor.—*Cause of action.*—In 1832 *B.* and *M.* granted a zur-i-peshgi lease of a mouzah to *T.* Subsequently *M.* mortgaged his share to *D.*, *L.*, and *S.* After this (in 1855) the defendant's wife purchased *M.'s* rights and interests under a decree of Court. A suit for foreclosure was then brought by the three mortgagees who obtained a decree in 1856. Prior to the decree one *J. S.*, who had purchased the interest of *S.*, was made a party to the suit, and he sold his interest to the plaintiffs' father in 1861. The defendant having failed in a suit to recover possession of *M.'s* share on the strength of his wife's auction purchase, obtained an ikrarnamah from *M.'s* sons relinquishing in his favour the rights they had inherited from their father. He then applied to the Collector, and, in spite of the plaintiff's objection, had his name recorded in the towzi as proprietor in succession to *M.* To cancel the effect of this proceeding the plaintiff sued for a declaration of title and confirmation of possession,—*Held* that, as the plaintiff was in possession and had been so from the time of the conveyance by *J. S.*, there was no necessity for his taking out execution of the foreclosure decree, the expiry of which therefore could not deprive him of his title to the declaratory decree now sought, the defendant's conduct in the mutation proceeding being sufficient cause of action. ABLAK RAM *v.* MOHENDRO PERSHAD TEWAREE [20 W. R., 365

120. ——— Suit for declaration of title to land and to have the revenue register transferred to plaintiff's name.—Suit to obtain a declaration that the lands mentioned in the plaint formed the common property of the tarwad of which the plaintiff was karnavan and to have the revenue register of those lands transferred to the plaintiff's name. The plaint alleged that the lands in question were the private acquisitions of three of the deceased

DECLARATORY DECREE, SUIT FOR —*continued.*

7. REGISTRATION OF NAMES BY COLLECTOR—*continued.*

Suit for declaration of title to land and to have the revenue register transferred to plaintiff's name—*continued.*

members of the tarwad, of whom the last, in whose name the lands were last assessed, on becoming karnavan of the tarwad, applied to the Collector to have the registry of those lands transferred to the names of his own nephews, the first and second defendants; that plaintiff protested and was referred to a civil suit to obtain a declaration that the registry could not be so transferred. *Held*, on special appeal, affirming the decree of the lower Appellate Court, that the plaintiff was entitled to the declaration sued for, as it would enable him to go to the Collector for substantial relief in the shape of the transfer of registry to his name, but that the relief sought for could not be granted by the Court as the revenue authority was not a party to the suit. CHANDU *v.* CHATHU NAMBIAR [I. L. R., 1 Mad., 381

8. REMOVAL OF LIEN OR ATTACHMENT.

121. ——— Mortgage lien not enforced.—*Civil Procedure Code, 1859, s. 15.—Suit to avoid lien.*—*B.* mortgaged by deed certain premises to *J. D.*, and at the same time delivered to him title deeds comprising the said premises and also other immoveable property of *B.* *B.* subsequently became embarrassed and assigned all his immoveable estate to trustees for his creditors. In a suit by the trustees against *J. D.*, alleging that he had refused to permit the sale by them of the immoveable property, including the mortgaged premises (they offering to apply the proceeds of the latter in satisfaction of his claim) and to hand over to them the said title deeds, and praying for a declaration that the immoveable property other than the mortgaged premises was vested in them free of any lien of the defendant.—*Held* that *J. D.*, not having made any attempt or taken any active measures to enforce his lien and no foundation having been laid by the plaintiffs upon which any consequential relief could be granted by the Court, the plaintiffs were not, under section 15 of the Civil Procedure Code, 1859, entitled to a declaratory decree. BEATTIE *v.* JETHA DUNGARSI [5 Bom., O. C., 152

122. ——— Claim to attached property.—*Suit for declaration of rights in attached property.*—An unsuccessful claimant to property about to be sold in execution of decree is entitled, in a suit brought for the purpose, to a declaratory decree to the extent of his rights and interest in the property, notwithstanding it may be joint family property, and that he asks for more than he is entitled to. GOLAM MAHOMED SHAHA *v.* MOOKTA KESHEE DEBEE . . . . . 7 W. R., 161

123. ——— *Suit for declaration of right in attached property.—Consequential relief.*—The plaint in a suit for a declaration that the

DECLARATORY DECREE, SUIT FOR —*continued.*

8. REMOVAL OF LIEN OR ATTACHMENT—*continued.*

Claim to attached property—*continued.*

plaintiff had a right of property and possession in a certain house under attachment, having for its object the relief of the house from attachment does seek consequential relief. MOTICHAND JAICHAND *v.* DADABHAI PESTANJI . . . **11 Bom., 186**

124. ——— *Suit for declaration that property is not liable to attachment.—Consequential relief.*—Where a claimant to property attached in execution of a decree intervenes, but fails to get the order of attachment set aside and is compelled to bring a suit to establish his right, the discharge of the order of attachment cannot properly be asked for in such suit. The intervenor having established his title by declaratory decree or otherwise, should then carry the decree to the Court by which the order of attachment was issued, and such Court is bound to recognise the adjudication and govern itself accordingly. *Narayanrav Damodar Dabholkar* v. *Balkrishna Mahadav Gadre, I. L. R., 4 Bom., 529,* followed. KOLASHERRI ILLATH NARAINAN *v.* KOLASHERRI ILLATH NILAKANDAN NAMBUDRI **[I. L. R., 4 Mad., 131**

125. ——— *Consequential relief.—The Specific Relief Act (I of 1877), s. 42.—Court Fees Act (VII of 1870), s. 7, cl. VIII.*—The defendant obtained a decree against *D.*, father of the plaintiffs, for satisfaction of his debt by the sale of a moiety of a village mortgaged to him by *D.* In execution of it *B.* attached the mortgaged property, the attachment being made under section 274 of the Civil Procedure Code (Act X of 1877), by an order prohibiting *D.* from transferring or charging the property in any way, and all persons from receiving it from him by purchase, gift, or otherwise. The plaintiffs thereupon applied for the removal of the attachment, but their application was rejected. They then sued for a declaration of their right to two-thirds of the property. The District Judge who tried the suit rejected it on the ground that it was barred by section 42 of the Specific Relief Act (I of 1877), because the plaintiffs might have sought further relief than a mere declaration of title, and omitted to do so. He was of opinion that the attachment constituted a dispossession, and that the plaintiffs might have asked to be replaced in possession, or, at any rate, for the removal of the attachment. *Held,* by the High Court on appeal, that the plaint was not open to objection on the ground that it only asked for a declaratory decree without any consequential relief. *Held* that the prohibitory order to *D.* did not constitute a dispossession of *D.* and still less of the plaintiffs, and that they could not have properly asked for removal of the attachment by a cancellation of the prohibitory order to *D.* so long as they admitted that *D.* had an interest in the attached property. *Held* also, that the plaintiffs could not have properly asked for any consequential relief in their suit, but that when they instituted it they were entitled, and indeed bound, to ask for a declaration of their right, if only to prevent a purchaser at the sale, under the defendants' decree against *D.* from afterwards alleging that he had purchased without notice of the plaintiffs' claim. NARAYANRAV DAMODAR *v.* BALKRISHNA MAHADEV . . . **I. L. R., 4 Bom., 529**

9. RENT AND ENHANCEMENT OF RENT.

126. ——— **Decree as to rate of rent.**—*Consequential relief.—Decree before rent is due.*—A decree that the defendant is liable to pay rent at a certain rate before any rent is due, being a mere declaratory decree without any consequential relief, ought not to be made. *Per* PEACOCK, *C. J.* BOYDONATH *v.* RAMJOY DEY . . **9 W. R., 292**

127. ——— **Right to enhance on future service of notice.**—*Enhancement of rent.—Reg. V. of 1812.—Notice.*—A decree declaratory of the plaintiff's general right to enhance on future service of notice may be passed in a suit under Regulation V of 1812, where the plaint was for enhancement at a certain specified rate, and in which service of notice was held to be not proved. ISHUR CHUNDER MUNDUL *v.* SHAM CHUNDER DOSS **[W. R., 1864, 312**

128. ——— **Suit for enhancement without notice.**—*Declaration of right.*—Plaintiff sued for arrears of rent at enhanced rates without notice. *Held* that the plaintiff was not entitled to recover rent at the enhanced rate, but the question as to the liability of the tenure having been fully tried, he was entitled to a decree declaratory of his right to enhancement. The Court had no power in this suit to try the validity of the lakhiraj tenure set up by defendant as to some of the land; plaintiff should have proved that it was his mal land, and that the defendant had paid rent for it. He had failed to do so, and the Court refused, therefore, to declare his right to enhance the rent of such land. GUMANI KAZI *v.* HARIHAR MOOKERJEE **[B. L. R., Sup. Vol., 15: Marsh., 523 W. R., F. B., 115**

129. ——— *Declaration of right.*—The plaintiff filed a suit for rent at an enhanced rate under Act X of 1859. The Court of first instance dismissed the case on the ground that the defendants had shown that the tenure was not liable to enhancement. On appeal to the Judge, the plaintiff's suit was dismissed on the ground that he had not proved service of notice, but a declaratory decree was given that the tenure was liable to enhancement. *Held* that the Judge should simply have dismissed the suit; Act X of 1859 gives him no power to make such a declaratory decree. NARAKANT MAZUMDAR *v.* RAJA BARADAKANT ROY . **3 B. L. R., Ap., 31**

ANUNDMOYEE CHOWDHRAIN *v.* CHUNDER MONEE DOSSIA . . . **3 W. R., Act X, 139**

DECLARATORY DECREE, SUIT FOR —*continued.*

9. RENT AND ENHANCEMENT OF RENT —*continued.*

Suit for enhancement without notice—*continued.*

KRISTOMONEE DEBIA *v.* FAKEER CHAND KHAN [3 W. R., Act X, 140

RADHAMONEE DOSSIA *v.* SHIBESSUREE DEBIA [6 W. R., Act X, 25

NILMONEE SINGH DEO *v.* HEERA LALL CHOWDHRY . . . . . 23 W. R., 442

130. ——— Suit for declaration of title to land with a view to enhance the rent. —*Discretion of Court.*—A declaratory decree may be made only where the declaration of right may be the foundation of relief to be got somewhere. Thus, a suit to establish a title to land, with a view to taking proceedings in the Collector's Court under Act X of 1859 to enhance the rent, is one in which a declaratory decree may be made. The Judicial Committee will not on light grounds interfere with the exercise by a High Court of its discretion in granting a declaratory decree, the suit being one in which a declaratory decree may be made. SADUT ALI KHAN *v.* ABDOOL GUNNEY, and ABDOOL GUNNEY *v.* ZAMOORUDOONISSA KHANUM [11 B. L. R., 203 : 19 W. R., 171 L. R., I. A., Sup. Vol., 165

BEPIN BEHAREE ROY *v.* ISSUR CHUNDER SEN [24 W. R., 13

131. ——— Failure to prove notice of enhancement.—*Discretion of Court.*—If, in a suit for enhancement, the plaintiff fails to prove that he has served the defendant with a proper notice, the Court is not bound to make a declaratory decree, but whether it shall do so or not lies entirely in its discretion. GUNNES CHUNDER HAZRA *v.* RAMPRIA DEBEA . . . . . [I. L. R., 5 Calc., 53

10. ORDERS OF CRIMINAL COURT.

132. ——— Order convicting of mischief.—*Civil Procedure Code, 1859, s. 15.—Suit after criminal proceedings under ss. 430, 432, Penal Code.*—Certain criminal proceedings having been successfully taken against the plaintiff's tenants for mischief done in respect to a nullah, coming under either section 430 or 432 (injury or obstruction to flow of water) of the Penal Code, the plaintiff brought a suit in the Civil Court for a declaration that the nullah was his own exclusive property, and therefore not such a stream as could come under either of those sections. *Held* that it was within the discretion of the Court under section 15 of the Civil Procedure Code to allow such a suit to be brought. KARTICK PARAMANICK *v.* KISHEN MOHUN MITTER. [22 W. R., 329

133. ——— Order as to nuisance.—*Suit to set aside order of Magistrate under Act XXV of 1861, ss. 308 to 315.—Jurisdiction of Civil Court.*—The plaintiff built a bridge over a certain khal (canal), which was removed by order of the Magistrate under Chapter XX of the Criminal Procedure Code; the defendant, it was alleged, set the Magistrate in motion. The plaintiff now sued the defendant for a declaration of his right to erect the bridge in question, and to have the order of the Magistrate set aside. *Held* that no such suit would lie. The Judge in the Court below held that the suit would lie to try the plaintiff's right to erect a bridge over the khal. *Held*, on appeal, the suit ought to have been dismissed. MADHAB CHANDRA GUHO *v.* KAMALA KANT CHUCKERBUTTY [6 B. L. R., 643 : 15 W. R., 293

134. ——— Order on dispute as to possession.—*Suit to set aside Magistrate's order under s. 321, Criminal Procedure Code, 1861.—Order not put in force.*—Plaintiff's right to a declaratory decree as to the erroneousness of the Magistrate's order, passed under section 321, Code of Criminal Procedure, permitting defendant to erect a drain-pipe to take water from plaintiff's reservoir, was held to be not affected by the fact that the Magistrate's order had not been put in force. MEGHRAJ SINGH *v.* RASHDHAREE SINGH . . 17 W. R., 281

135. ——— *Trespass to land.*—*Order under Chap. XL, Criminal Procedure Code.—Right to suit for declaratory decree.*—A person, whose right to land has been disputed, and who has obtained an order under Chapter XL of the Code of Criminal Procedure, 1872, from a Magistrate, declaring him entitled to retain possession, is entitled to sue for a declaration of his right to the land. NARASIMMA CHARYA *v.* ROGHUPATTY CHARYA [I. L. R., 6 Mad., 176

136. ——— Order as to rival hats.—*Cause of action.—Consequential relief.*—When a plaintiff alleged that he had held a hât on his own land for many years on Tuesdays and Fridays; that the defendant had set up a rival hât on these days and prevented persons from attending the plaintiff's hât; that this led to disturbance which ended in an order being made by the Magistrate prohibiting the plaintiff from holding his hât on the said days, and that the plaintiff suffered loss and damage in consequence,—*Held* that, assuming these facts to be true, the plaintiff was entitled to a decree, declaring, as against the defendant, that the plaintiff had a right to hold his hât on Tuesdays and Fridays. GOPI MOHUN MULLICK *v.* TARAMONI CHOWDHRANI [I. L. R., 5 Calc., 7 : 4 C. L. R., 309

11. MISCELLANEOUS SUITS.

137. ——— Suit to have status as tenure-holder declared.—*Civil Procedure Code, 1859, s. 15.—Consequential relief.*—A suit in which the plaintiff prayed for a decree declaring that the defendant was not, as had been fraudulently recorded in the revenue registers, a perpetual lessee, but only tenant-at-will of certain villages, of which the plain-

DECLARATORY DECREE, SUIT FOR —*continued.*

11. MISCELLANEOUS SUITS—*continued.*

Suit to have status as tenure-holder declared—*continued.*

tiff was proprietor, held to be maintainable. MAHOMED *v.* KANIZUK FATIMA . **6 N. W., 231**

138. ——— Suit for declaration of right as vadil.—*Consequential relief.—Act XI of 1843.*—A suit to be declared vadil, or elder, among the holders of a patilkiwatan will not lie, as upon such declaration no consequential relief can be given.—*See* Act XI of 1843. YESAJI APAJI PATIL *v.* YESAJI RHALOJI . . . **[8 Bom., A. C., 35**

139. ——— Denial of plaintiff's right as audhikari.—*Cause of action.*—In a suit for declaration or confirmation of the plaintiff's title to the office of audhikari of the Difloo Sastur, alleged to be situate at Nowgong, where the defendant in his written statement claimed to be the audhikari, and alleged that the headship was situated elsewhere, the defendant was held to be asserting a title adverse to the plaintiff sufficient to justify a declaratory decree. KOONDO NATH SURMA GOSSAMEE *v.* DHEER CHUNDER SURMA ADHIKARI GOSSAMEE . **20 W. R., 345**

140. ——— Suit for declaration on low stamp duty to obtain relief for which a higher stamp is chargeable.—*Specific Relief Act (I of 1877), s. 42.*—The defendant was in possession of the estate of a deceased *gosavi* as his *shishya* (spiritual son). The plaintiff sued upon a stamp of R10 for a declaration that he was the true *shishya* of the said *gosavi* by a previous adoption, his real object being to establish a title to the estate in the hands of the defendant,—*Held* that, under the circumstances, the Court would not exercise, in the plaintiff's favour, the discretionary power to grant a declaratory decree vested in it by section 42 of the Specific Relief Act (I of 1877), inasmuch as to do so would enable the plaintiff to obtain a relief on a stamp of R10 which the Legislature intended should be chargeable with a higher fee, and thus would have the effect of giving countenance to an evasion of the stamp law. GANPATGIR BHOLAGIR *v.* GANPATGIR . . . . **I. L. R., 3 Bom., 230**

141. ——— Suit to declare illegal proceedings removing person from office.—*Want of actual ouster.—Specific Relief Act, s. 42.*—Suit by six plaintiffs praying for a declaration that certain proceedings of a District Temple Committee removing them from office as trustees of a temple were illegal. Defendants pleaded that the suit would not lie because further relief might have been sought,—*Held* that, unless there had been an actual ouster from office, a declaratory suit would lie. RAMANUJA *v.* DEVANAYAKA **[I. L. R., 8 Mad., 361**

142. ——— Right to appoint ghatwal.—*Infringement of right of Government.*—In a suit by the Government in which the plaint claimed the right "to reinstate a ghatwal in possession of a certain estate as being a ghatwali tenure liable to be appropriated to the use of the ghatwal for the time being, by setting aside a putni talook collusively created by the defendants," it was found that no right of the Government had been infringed by the creation of such patni talook, which the defendant had a right to make, and the Government was held not to be entitled to a bare declaration of right. ANAND KUMARI *v.* GOVERNMENT **[9 B. L. R., 16, note : 11 W. R., 180**

143. ——— Suit for declaration of right to damages.—*Quære,*—Whether claim for declaration of right to damages is one that is maintainable. KESHAREE LALL *v.* GOBINDRAM **[4 N. W., 70**

144. ——— Suit for declaration of right to flow of water.—*Omission to specify damages.*—A suit for a declaration of prescriptive right to the use and enjoyment of the water of a watercourse can be maintained without the specification of any particular amount of damage sustained by the plaintiff. The general rule of law in a case of this description is that, although proprietors of an estate through which a watercourse passes have the right to make use of the water for irrigating purposes, they must do so only to such extent as will not interfere with similar rights possessed by parties holding land lower down on the same watercourse. SARDAWAN *v.* HURBUNS SINGH . **11 W. R., 254**

145. ——— Suit for declaration of right to maintenance.—*Raising issues not raised by pleadings.*—In a suit by a Hindu widow for a declaration of her right to maintenance out of her husband's estate which had been mortgaged to the defendant by the heir, the plaint prayed "that the rights of the plaintiff over the estate of her husband by way of maintenance, and for the expenses attendant on the marriage of her daughters, might be ascertained and declared; that it might be declared that the defendant took the mortgage subject to the plaintiff's right to maintenance and right to such expenses as aforesaid; that for such purpose all proper accounts might be taken; for an injunction; and such further or other relief as might be necessary. No specific sum was asked for maintenance, nor was it stated on what portion of the estate the maintenance was sought to be charged, nor that the defendant took with notice of the plaintiff's assertion of her rights. The lower Court held that the suit ought to be dismissed as praying only for a declaration of right. No alteration in the form of the suit or in the issues in this respect was proposed for the plaintiff. *Held* on appeal that the Judge ought not to have dismissed the suit, but to have framed issues for the purpose of determining what should be allowed for the maintenance of the plaintiff and the expenses of the marriages, if the plaintiff should be found entitled to them. NISTARINI DASI *v.* MAKHANLAL DUTT **[9 B. L. R., 11 : 17 W. R., 432**

DECLARATORY DECREE, SUIT FOR —*continued.*

11. MISCELLANEOUS SUITS—*continued.*

146. ——— Suit for declaration that decree is fraudulent and collusive.—*Specific Relief Act, 1877, s. 42.—Suit to set aside a decree on the ground of fraud.*—Subsequently to a decree for partition of an ancestral estate, the creditors of one of the parties thereto who, from the time of the suit, had borrowed money from them on the security of his rights and interests in the estate, brought a suit against their debtor, and obtained a decree for the moneys due to them. They then sued all the parties to the partition for a declaration that the decree then passed was, so far as it affected their (the plaintiffs') interests, fraudulent and collusive, and of no effect. *Held* that the suit was not maintainable. RAM SARUP *v.* RUKMIN KUAR . **I. L. R., 7 All., 884**

147. ——— Suit for declaration of right to an account.—*Specific Relief Act, s. 42.*—Where it is open to the plaintiff to ask for an account, against the defendant, of moneys received by him under a certificate of heirship, and for payment of moneys not properly accounted for, he is precluded by section 42 of the Specific Relief Act, I of 1877, from asking for a mere declaratory decree. BAI ANOPE *v.* MULCHAND GIRDHAR **[I. L. R., 9 Bom., 355**

148. ——— Suit by landholder for declaration of right to take land from occupancy-tenant for cultivation of indigo.—*Wajib-ul-arz.—Act I of 1877 (Specific Relief Act), s. 42.*—The zemindars of a village sued an occupancy-tenant for a declaration of their right to maintain a custom which was thus recorded in the wajib-ul-arz :—"when necessary, one or two bighas out of the tenants' lands are taken with their consent (ba khushi) for sowing indigo." Upon the basis of this entry, they claimed to be entitled to take a portion of the occupancy-holding at a certain period of the year, for the purpose of cultivating indigo. *Held* by the Full Bench that the word "khushi" used in the wajib-ul-arz indicated that the land was only to be taken with the occupancy-tenant's consent, and the document created no right of the nature alleged, namely, to take the land despite the tenant. *Per* TYRRELL, *J.*—That the suit was not maintainable under the special provisions of the Specific Relief Act (I of 1877). SHEOBARN *v.* BHAIRO PRASAD . . . . **I. L. R., 7 All., 880**

149. ——— Suit for declaration that property is wuqf.—*Act XX of 1863, ss. 14, 15, 18.—Civil Procedure Code, s. 539.—Act I of 1877 (Specific Relief Act), s. 42.*—A Mahomedan brought a suit against a person in possession of certain property, for a declaration that the property was wuqf. He did not allege himself to be interested in the property further or otherwise than as being a Mahomedan. He stated as his cause of action that the defendant had, in a former suit between the same parties, filed a written statement, in which he denied that the property now in question was wuqf. *Held* that the suit was not maintainable under the provisions of section 42 of Act I of 1877 (Specific Relief Act). *Held* further, that the relief contemplated by section 42 of the Specific Relief Act being always a matter of the Court's discretion, and inasmuch as the evidence adduced by the plaintiff himself showed that the defendant was using the property for charitable purposes, it would not be proper to make the declaration prayed for by the plaintiff, even if the suit were maintainable. WAJID ALI SHAH *v.* DIANAT-ULLAH BEG . . . . . **I. L. R., 8 All., 31**

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DECREE—*continued.*

1. FORM OF DECREE.

(*a*) GENERAL CASES.

1. ——— Necessity for a decree.—*Act XIX of 1873 (N.-W. P. Land Revenue Act), ss. 113, 114, 115.—Omission to frame decree in case in which a question of title is decided.—Second appeal.*—It is essential that in a suit under the Civil Procedure Code a decree should be drawn up. *Held* therefore that, in a proceeding under section 113 of the North-West Provinces Land Revenue Act, where the rights of the parties are decided, a decree should be drawn up giving effect to the decision. An Assistant Collector passed a decision under section 113 declaring the rights of the parties but did not draw up a decree giving effect to such decision. There was an appeal to the District Court from such decision, which made a decree affirming it. *Held*, by STUART, *C. J.*, on second appeal, that the defect arising from the want of a decree on the record of the Court of first instance was a bar to the hearing of the second appeal, and the proceedings of the District Court should be set aside, and the case should be sent back to the Assistant Collector in order that he might frame a decree. *Held*, by STRAIGHT, *J.*, that the decree of the District Court was appealable, such defect notwithstanding, and the appeal should be decreed and the decree of the District Court reversed, and the case be sent back to the Assistant Collector for the purpose aforesaid. Observations by STUART, *C. J.*, on the absence in the Code of Civil Procedure of any mandatory provisions in reference to the framing of decrees. RANJIT SINGH *v.* ILAHI BAKHSH [I. L. R., 5 All., 520

2. ——— Drawing up decrees.—*Duty of Judge.*—The duty of Judges in seeing that decrees are properly drawn up pointed out. RUSTOM ALLY *v.* AMEER ALLY SOUDAGUR . . 10 W. R., 487

3. ——— *Contents of decree.*—Decrees of Court should be drawn up by the Judge in such a way as to make them self-contained and capable of execution without referring to any other document. JOYTARA DASSEE *v.* MAHOMED MOBARUCK . I. L. R., 8 Calc., 975: 11 C. L. R., 399

DWARKANATH HALDAR *v.* KAMALA KANTH HALDAR . . . 3 B. L. R., Ap., 128 [12 W. R., 99

4. ——— *Duty of judgment-debtor and decree-holder.*—It is the duty of the judgment-debtor, as well as the decree-holder, to see that the decree is properly drawn up; and if he does not do so, the Court will execute it according to its terms. KRISHTOKISHORE DUTT *v.* ROOPLALL DASS [I. L. R., 8 Calc., 687: 10 C. L. R., 609

5. ——— *Distinctness and consistency with judgment requisite.*—The decree should not be vague, but explicit in its terms as well as in accordance with the judgment. CHUNDER MONEE DOSSEE *v.* DHURONEEDHUR LAHORY [7 W. R., 2

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DECREE—*continued.*

1. FORM OF DECREE—*continued.*

(*a*) GENERAL CASES—*continued.*

Drawing up decrees—*continued.*

NUTHOO SINGH *v.* RAM BUKSH SINGH [18 W. R., 34

6. ——— *Omission to specify boundaries in decree for land.—Vague decree.—Civil Procedure Code, 1859, s. 190.*—A decree which was passed for a specified quantity of land contiguous to the plaintiff's estate but which gave no boundaries of such land, was held, with reference to section 190, Act VIII of 1859, to be indefinite and incapable of execution. DWARKANATH ROY *v.* JANNOBEE CHOWDHRAIN . . . 19 W. R., 81

DARBAREE SAYAL *v.* FATU DHALEE [23 W. R., 285

The remedy is to apply to have the decree rectified.

DARBAREE SAYAL *v.* FATU DHALEE [23 W. R., 285

SRISTEEDHUR BHUTTACHARJEE *v.* KALEE DOSS DEY . . . . 24 W. R., 479

7. ——— *Omission to specify boundaries in decree for land.—Specific statement of relief granted by decree.*—*A.* claimed certain lands, claiming one portion of such lands under one title, and the remainder under another and separate title. In the schedule to his plaint he gave the boundaries of the entire lands claimed by him, but did not give any boundary between the lands claimed by him under one title and the lands claimed by him under the other title. The lower Court decreed the whole of the plaintiff's claim. The lower Appellate Court confirmed so much of the decree of the Court of first instance as declared the plaintiff's right to the first portion of the land, and dismissed his suit as to the remainder; and there being no evidence to show what lands in particular out of the whole claim were comprised in the first portion for which it gave him a decree, directed them to be ascertained in execution. *Held* that the decree was bad, as it should have specified the particular lands decreed. KANGAL CHANDRA RUJ *v.* KANYE LALL RUJ [I. L. R., 4 Calc., 69

8. ——— *Anticipated difficulty of executing decree.*—The Court will not be deterred from making a decree by the difficulties to be expected in carrying it out. PURAPPANVANALINGAM CHETTI *v.* NALLASIVAN CHETTI [1 Mad., 415

9. ——— *Decree not specifying relief granted.—Decree on appeal.*—A decree of an Appellate Court not specifying the relief granted but merely repeating the judgment "that the appeal be decreed" is not a sufficient compliance with the requirements of the law. HURSARUN SINGH *v.* PURSHUN SINGH . 2 N. W., 415

10. ——— *Refund of purchase-money.—Decree on appeal.*—In reversing a decree on appeal, the Court should state the relief which they consider the appellant entitled to. *A.* purchased a Government revenue-paying estate from *B.*, but on going to take possession he found *C.*, who claimed under a putni grant, also from *B.*, in possession. A case was therefore instituted by *B.* under Act IV of 1840, but it was ordered that *C.* should be retained in possession. *A.* then brought a suit against *B.* and *C.* to recover his purchase-money. No relief was asked against *C.*, nor had *C.* anything to do with the sale from *B.* to *A.* The suit was dismissed. On appeal, it was ordered merely "that the decree be reversed, and the appeal decreed with costs." Nothing was asked against *C.* in the grounds of appeal. In execution of this decree, *C.'s* property was seized and sold. *C.* petitioned the Principal Sudder Ameen, who held that he was not liable, but on appeal the Judge held that he was liable for the purchase-money, and his property had been rightly sold in execution for it. *Held*, on special appeal, that *C.* was not liable to refund the purchase-money. BELL *v.* GURUDAS ROY [1 B. L. R., A. C., 50

11. ——— *Decree on appeal.*—Distinction pointed out between a decree of an Appellate Court simply reversing the decree of the lower Court, and a decree which, reversing that decree, goes on to record judgment for the other party. HUREEKISHORE ROY *v.* KALEEKISHORE SEN [8 W. R., 114

12. ——— *Decree of High Court affirming decree of mofussil Court.*—The ruling in *Chowdhry Wahid Ali* v. *Mullick Inayet Ali* (*6 B. L. R., 52*), that, whether the decree of the lower Court is reversed, or modified, or affirmed, the decree passed by the Appellate Court is the final decree in the suit, and as such the only decree which is capable of being enforced by execution, not dissented from, except that it was suggested that in all cases it may be expedient expressly to embody in a decree of affirmance so much of the decree below as it is intended to affirm, and thus avoid the necessity of a reference to the superseded decree. *Quære,*—Can the ruling in *Anandmayi Dasi* v. *Purno Chandra Roy, B. L. R., Sup. Vol., 506,* be supported? KISTOKINKEE GHOSE ROY *v.* BURRODACAUNT SINGH ROY . . 10 B. L. R., 101: 17 W. R., 292 [14 Moore's I. A., 465

S. C. in lower Court.—KISHEN KISHORE GHOSE *v.* BURODA KANT ROY . . 8 W. R., 470

JOY NARAIN GIREE *v.* GOLUCK CHUNDER MYTEE [22 W. R., 102

13. ——— *Reversal of order under which land is taken in execution.—Mesne profits.*—For the restoration of possession with mesne profits of lands made over in execution of a decree subsequently reversed on appeal, a specific order is not necessary to be inserted in the decree of the Appellate Court. GOOROOCHURN BOSE *v.* BYKUNTNATH ACHARJEE 5 W. R., Mis., 38

DECREE—*continued.*

1. FORM OF DECREE—*continued.*

(*a*) GENERAL CASES—*continued.*

Drawing up decrees—*continued.*

14. ——————— *Decree to have a future operation.*—In a suit by a landlord to recover possession where defendant, who was a tenant-at-will, had received no notice to determine his tenancy, plaintiff obtained a decree to come into operation at the beginning of the next Amli year.—*Held* that there was nothing in the Civil Procedure Code to prevent a decree of this nature being passed. RAM NARAIN MANJHEE *v.* FUTEMA SOGRA

[23 W. R., 399

15. ——————— *Decree to have a future operation.*—A decree to have future operation was held not allowable; *e.g.*, to declare that the costs of a suit should be borne by the unsuccessful party in a suit to be hereafter brought. KASHEE CHUNDER DEY *v.* BUNGSHEE BUDDUN DEY

[23 W. R., 89

So, a prospective decree for contingent arrears of maintenance is irregular. JULEBIA CHITTA KOOER *v.* BHAGEE KOOER . . . **6 N. W., 41**

16. ——————— *Decree dealing only partly with case.—Allegation of fraud.*—The plaint alleged fraud in the defendants in that they represented themselves as agents, when in fact they were principals, in fifty-eight instances in which they had made contracts with the plaintiffs. The prayer of the plaint was "that the defendants may either be held personally responsible on the several said contracts as purchasers thereunder, or otherwise that they may be held personally liable for damages, for fraudulently representing that they were authorized to effect the contracts aforesaid;" and further asked for an account and for damages. It appeared clear to the Judge below, on the evidence, that the defendants acted as principals, and he treated the case on the issue of fraud alone. Ten cases only of the fifty-eight were selected by the plaintiffs, on which they gave evidence of the fraud; and the Judge found in their favour as to three, and held that the plaint charging fraud, the plaintiffs could not succeed on any cause of action incidentally disclosed. The decree was drawn up with reference only to the three cases on which the fraud was found, so far as finally to dispose of them, but ordered an enquiry as to the fraud in all the rest. *Held* that the case was appealable, and that the decision of the Court below was right. GHASSERAM MISSER *v.* WILLIAMSON . . **2 Ind. Jur., N. S., 205**

(*b*) ACCOUNT.

17. ——— **Account, Suit for.**—*Principal and agent.—Duty of Court as to decree.*—Where a plaint alleged a continued agency in the defendant and prayed for relief on the ground that there was a specific balance against him, and prayed for the recovery of such sum or any larger sum that might be proved to be payable,—*Held* that such suit was essentially one for an account, and that the Court following the general rule ought not to make a final decree at the hearing, but should order an account to be taken of such agent's dealings with the plaintiff's money. HURRONATH ROY *v.* KRISHNA COOMAR BUKSHEE

[L. R., 13 I. A., 123: I. L. R., 14 Calc., 147

(*c*) AGENT.

18. ——— **Agent, Suit in name of, for principal.**—*Description of plaintiff on decree.*—Where a plaintiff sues by his recognized agent and obtains a decree, the decree should stand in the name of the agent, not as for himself alone, but as agent and on behalf of the plaintiff. GOLAM JELANEE CHOWDHRY *v.* NULEET CHUNDER SINGH

[11 W. R., 503

(*d*) ARBITRATION.

19. ——— **Arbitration, Reference to.**—*Prohibition to proceed with award.*—The Court of first instance in its decree "prohibited the arbitrators from giving an award." As they were not parties to the suit, in substitution of that order, it was ordered that the defendants be enjoined from proceeding in the award before the arbitrators, and from collecting certain debts released in their favour from attachment. PARMESHAR DAT *v.* HARI NAIK

[7 N. W., 357

20. ——— **Arbitration, Reference to, when one party declines to consent.**—*Suit for share of land.*—In a suit in which plaintiffs claimed a 6-annas share of certain land belonging to a mouzah, it was found on measurement that 262 bighas of the land claimed belonged to that talook. Pending the suit, all the defendants except one (*O.*) agreed to a reference to arbitration, upon which it was found that 44 bighas, in addition to the 262, belonged to the plaintiffs. *Held* that the proper decree was, that the plaintiffs were entitled to recover, as against all the defendants, including *O.*, a 6-annas share in 262 bighas; and as against all, except *O.*, a 6-annas share in the 44 bighas awarded by the arbitrators. DOORGACHURN THAKOOR *v.* KALLY DOSS HAZRAH . . . **10 W. R., 463**

(*e*) CONSENT DECREE.

21. ——— **Decree by consent.**—*Minor.—Duty of Court.*—A Court ought not to make a decree by consent against an infant without ascertaining that it is for the benefit of the infant that such a decree should be pronounced. RAM CHURN RAHA BUKSHEE *v.* MUNGUL SIRCAR

[16 W. R., 232

(*f*) CONTRIBUTION.

22. ——— **Contribution, Suit for.**—*Specification of separate sums due.*—In a suit for con-

DECREE—*continued*

1. FORM OF DECREE—*continued.*

(*f*) CONTRIBUTION—*continued.*

Contribution, Suit for—*continued.*

tribution, a decree cannot pass jointly against all the defaulters. It should specify the particular sums to be paid by each. BAMA SOONDUREE DEBIA *v.* ANUNDMOYEE DEBIA . . **3 W. R., 170**

PITAMBUR CHUCKERBUTTY *v.* BHYRUBNATH PALEET . . . . . **15 W. R., 52**

MOHADEO MISSER *v.* LAHOREE MISSER **[24 W. R., 250**

23. ——— *Order for separate payment of share of debt.*—The decree in a suit by a debtor against his co-debtors for contribution, if in favour of plaintiff, should order payment separately by each defendant of the amount only of his just proportion of the debt. TAVASI TALAVAR *v.* PALANIANDI TALAVAR . . **3 Mad., 187**

RUJAPUT RAI *v.* MAHOMED ALI KHAN **[5 N. W., 215**

OTIOOLLA *v.* ASEERUN . . **7 W. R., 194**

KRISTO COOMAR CHOWDHRY *v.* ANUND MOYEE CHOWDHRAIN . . . **7 W. R., 300**

MOHESSUR BUKSH SINGH *v.* MUTHOORA PERSHAD **[8 W. R., 515**

NOBIN MOHUN GHOSSAL *v.* GOPAL CHUNDER MOOKERJEE . . . **11 W. R., 538**

RASH MUNJOOREE CHOWDHRAIN *v.* RADHA SOONDUREE DOSSEE . . . **23 W. R., 283**

BHURUT PANDEY *v.* MUNTHOORA KOER **[23 W. R., 421**

24. ——— *Suit against co-tenants to recover rent paid on their behalf.—Order for separate payments.*—In a suit against co-tenants to recover rent paid by plaintiff on their behalf, a joint decree declaring the defendants collectively liable ought not to be passed. The Court should determine what portion of the whole rent ought to be repaid by each one of the defendants, and whether each defendant is under any liability to pay the plaintiff at all. KRISTO MONEE DEBIA *v.* BURODA DOSSIA CHOWDHRAIN . . . **14 W. R., 143**

25. ——— *Proportionate liability of co-sharers.*—Parties liable for contribution held to be liable according to their respective shares in a property and not simply *per capita.* MURDAN ALI *v.* TUFUSSAL HOSSEIN . . **16 W. R., 78**

26. ——— *Principle in assessing share of co-sharer of revenue.*—Principle considered fair in assessing a co-sharer's share of the Government revenue paid for the whole estate to save it from sale. JUGGOBUNDOO ROY *v.* FYRZ BUKSH CHOWDHRY . . . . . **8 W. R., 166**

(*g*) COSTS.

27. ——— **Annexing amount of costs to decree.**—*Civil Procedure Code, 1859, s. 360.—Practice.*—It is a convenient practice for a Court

DECREE—*continued.*

1. FORM OF DECREE—*continued.*

(*g*) COSTS—*continued.*

Annexing amount of costs to decree—*continued.*

to annex to every decree the costs incurred by both parties. NOBO KRISTO MOOKERJEE *v.* PARBUTTY CHURN BHUTTACHARJEE . . **13 W. R., 23**

28. ——— **Specification of costs without allotment of responsibility.**—*Civil Procedure Code, 1859, s. 189.—Decree for costs.*—The mere specification of costs in a decree without an allotment of responsibility, is not a sufficient compliance with section 189, Act VIII of 1859. JANOKEE NATH MOOKERJEE *v.* JOYKISHEN MOOKERJEE . . . . . **15 W. R., 4**

29. ——— **Copy of judgment with schedule of costs annexed.**—*Civil Procedure Code, 1859, s. 189.*—A copy of the judgment, with the schedule of costs appended, does not constitute a proper decree such as is required under section 189, Code of Civil Procedure. PURMESSUREE DUTT JHA *v.* JOYNAUTH THAKOOR . . **15 W. R., 326**

30. ——— **Decree of Appellate Court.**—*Civil Procedure Code, 1859, s. 360.—Semble,*—When an Appellate Court decrees an appeal and gives costs of its own Court, the costs of the first Court should be included in the decree. MAHOMED BUSSEEROOLLAH CHOWDRY *v.* RAM KANT CHOWDRY . . . . . **16 W. R., 266**

31. ——— *Omission to specify costs.—Civil Procedure Code, 1859, s. 360.*—Section 360, Act VIII of 1859 only requires the Judge of an Appellate Court to state in his decision by what parties (and in what proportions if necessary) the costs of the original suit, which he must take for granted, are to be paid; but not to go into particulars, or append to his judgment a schedule setting forth the different items which make up the costs of the first Court. MOTHOORA MOHUN ROY *v.* HUREE KISHORE ROY . . **18 W. R., 286**

Reversing on review S. C. HUREE KISHORE ROY *v.* MUTHOORA MOHUN ROY . **17 W. R., 445**

32. ——— *Specification of proportionate share of cost.—Civil Procedure Code, 1859, s. 360.*—Where a decree of the High Court awards costs the order is not bad in law simply because it does not specify the exact amount to be paid as costs of the lower Court. Such specification is not rendered incumbent by Act VIII of 1859, section 360, which only requires a Court of Appeal to declare the proportions in which the costs are to be paid where more parties than one are made liable. RAJ KRISHNA SINGH *v.* PRONODA DABEE RAJ COOMAREE **[21 W. R., 74**

33. ——— *Specification of liability for costs.*—An Appellate Court finally determining a suit is bound to decide by which of the parties before it the costs shall be borne; it is not at liberty to declare that the costs shall be borne by the unsuccessful party in a suit to be hereafter

DECREE—*continued*

1. FORM OF DECREE—*continued.*

(*g*) COSTS—*continued.*

Decree of Appellate Court—*continued.*

brought. KASHEE CHUNDER DEY v. BUNGSHEE BUDDUN DEY . . . . **23 W. R., 89**

(*h*) DAMAGES.

34. ——— Damages, Suit for.—*Plaintiffs with separate interests.—Apportionment of damages.*—Where plaintiffs with separate interests sue for and obtain damages, the decree should not be a joint one for a lump sum, but should apportion the damages. TRILOKENATH JHA *v.* HUR DUTT KHURHUREE . . . . . **9 W. R., 299**

35. ——— *Assessment of damages.*—A decree for damages must assess them and not leave them to be ascertained in execution of the decree. MUNEERUN *v.* MUSEEHUN **[13 W. R., 139**

(*i*) DECLARATORY SUIT.

36. ——— Declaratory decree, Suit for.—*Suit by one of several brothers for declaratory decree as to mal land.*—Where property in dispute was found by the lower Court to be debuttur land belonging to plaintiff, one of four brothers of a joint family, and not mal land included in defendant's putni, it was held that plaintiff was entitled to a declaration that the whole land was mal land, and that he was entitled to a fourth share. GUNGA GOBIND SINGH *v.* JOY GOPAUL PANDA **[10 W. R., 105**

37. ——— *Suit for declaration of title and confirmation of possession.*—Plaintiff prayed for a declaration of title to, and confirmation of, his possession of 17 bighas, which he claimed through *J.* and five others. The lower Court found that of these persons, *J.* only ever had any interest in the 17 bighas, and gave plaintiff a decree declaring that he had purchased the rights and interests of *J.*, whatever they might be. *Held* that such a decree was bad, as not in any way declaring what interest the plaintiff had in the 17 bighas, or whether he had any right, and that the Court ought to have decided what *J.'s* precise rights were which had passed to the plaintiff. RAM PHUL AHIR *v.* BHUGWAN DUTT PAUREY . . . . **12 W. R., 326**

(*j*) DEED, SUIT TO SET ASIDE—

38. ——— Suit to set aside deed of sale.—*Legal necessity as to part of consideration-money.—Quære,*—Where it has been found that, as to a certain portion of the consideration-money of a deed of sale of joint ancestral property, there was a legal necessity, it is a correct principle to uphold the deed as to that portion of the land which bears the same proportion to the whole quantity conveyed, as the money borrowed for the discharge of the legal necessity bore to the whole amount of the consideration-money? RAJARAM TEWARI *v.* LUCHMUN PERSAD **[4 B. L. R., A. C., 118 : 12 W. R., 478**

DECREE—*continued.*

1. FORM OF DECREE—*continued.*

(*j*) DEED, SUIT TO SET ASIDE—*continued.*

39. ——— Pardanashin, Suit by, to set aside deed.—*Declaration of title.*—In a suit by the heirs of a Mahomedan *pardanashin* lady to set aside a deed of sale executed by her, whilst living apart from her relations, in the house of the purchaser, who had occasionally acted as her mukhtar,—*Held* that where the substantial relief prayed for is that the deeds should be set aside, the Court is not justified in substituting therefor a mere declaration of the plaintiff's title. THAKOOR DEEN TEWARRY *v.* ALI HOSSEIN KHAN **[13 B. L. R., P. C., 427 : 21 W. R., 340 L. R., 1 I. A., 192**

S. C. IN LOWER COURT . . **8 W. R., 341**

(*k*) EJECTMENT.

40. ——— Suit for arrears of rent.—*Order in default of payment.*—In suits for arrears of rent the decree ought not to direct in what mode execution should issue. SHYAM CHURN CHUCKERBUTTY *v.* HEERACHAND MOZOOMDAR **[Marsh., 48 : 1 Hay, 113**

41. ——— *Decree for ejectment.*—A decree for ejectment ought not in a suit for arrears of rent to be passed against the holder of a permanent transferable tenure. SREENIBASH LAEK *v.* PROSUNNO COOMAR MITTER . **25 W. R., 218**

42. ——— *Cancelment of tenure.—Act X of 1859, s. 78.*—The decretal order in a suit by a plaintiff, who, having given a lease on a zur-i-peshgi advance to the defendant, has been declared entitled to sue for the balance of rents after giving the defendant credit for the amount of his advance, should, after pronouncing the tenure liable on cancelment, go on to say, according to section 78, Act X of 1859, that it will be cancelled if the arrear be not paid within fifteen days. GIREE DHAREE SAHOO *v.* BUKSUN . . . **1 W. R., 361**

43. ——— Decree for unconditional re-entry.—*Farmer.—Act X of 1859, ss. 22, 78.*—With reference to sections 22 and 78 of Act X of 1859, a decree for an unconditional re-entry cannot be given against a farmer. BUKSH ALI *v.* RAMTONOO GUN . . . . **6 W. R., Act X, 64**

(*l*) ENDOWMENT.

44. ——— Suit to set aside sale of property belonging to religious endowment.—*Re-payment of money.*—In a suit to set aside the sale of property belonging to a religious endowment the Munsif gave the plaintiff a decree in favour of his reversionary rights, declaring that the conveyance should not operate adversely to him to the extent of such portion as was sold to meet pressing debts and necessities of the muth,—*Held* that such a decree was erroneous, as the transaction of sale was one and indivisible. If the sale was valid, the plaintiff was not entitled to have it set aside to any extent; but if

DECREE—*continued.*

1. FORM OF DECREE—*continued.*

(*l*) ENDOWMENT—*continued.*

Suit to set aside sale of property belonging to religious endowment—*continued.*

the conveyance was not operative against the plaintiff, it should have been set aside in its entirety, either absolutely or upon condition that the plaintiff should repay such portion of the consideration-money as had been rightly advanced. JOY LALL TEWAREE *v.* GOSSAIN BHOOBUN GEER . . . **21 W. R., 334**

(*m*) ENHANCEMENT OF RENT.

45. ——— Enhancement, Suit for.—*Enhancement, Grounds for.—Suit for enhancement on several grounds.*—In decreeing enhanced rent, it is necessary to specify distinctly on which of the grounds stated in the plaint enhancement is allowed. GANGA NARAYAN DAS *v.* SARODA MOHUN ROY CHOWDHRY

[3 B. L. R., A. C., 230: 12 W. R., 30

46. ——— *Act X of 1859, s. 13.*—*Defective decree.*—In a suit for a kabuliat at enhanced rates to correspond with the terms of a pottah which had been tendered at some date preceding the suit, where the lower Court decreed the plaintiff's appeal,—*Held* that the decree was defective, inasmuch as it did not declare what the kabuliat was to which the plaintiff was entitled, and that the claim of the plaintiff could not succeed, inasmuch as it demanded a higher rate for a period which had already elapsed when the suit was instituted, a right forbidden by section 13, Act X of 1859, without giving such notice as therein prescribed, which notice the plaintiff had failed to give in this case. ZINNUT BIBEE *v.* JAFFUR ALI . . . **14 W. R., 172**

47. ——— *Parties, Non-joinder of.*—*Suit barred as to added parties.*—In a suit for the recovery of rent at an enhanced rate, brought by two of four brothers, joint and undivided owners of the tenure, the other two brothers, on an objection taken by the defendant that they ought to have been parties to the suit, presented a petition signifying their assent to the institution of the suit, and were thereupon treated as parties to the suit. This application was, however, made after the period of limitation prescribed for such a suit had expired. *Held* by MARKBY, *J.*, that although the rights of such added parties were absolutely barred, yet the Court could proceed to adjudicate upon and declare the rights of the remaining plaintiffs who had originally filed the suit, and that, as the claim for rent was indivisible, the decree in their favour should be for the whole amount. BOIDONATH BAG *v.* GRISH CHUNDER ROY . . . **I. L. R., 3 Calc., 26**

(*n*) HEIRS.

48. ——— Heirs, Suit against.—*Joint decree.*—In a suit against heirs inheriting equally, a joint decree may be passed without determining the liability of each. BROJO MOHUN MOJOOMDAR *v.* ROODRONATH SURMAH . . **15 W. R., 192**

DECREE—*continued.*

1. FORM OF DECREE—*continued.*

(*n*) HEIRS—*continued.*

49. ——— Heir of deceased obligor, Suit on bond against.—*Specification of mode of realization.*—A decree in a suit upon a bond, against the heir of the deceased obligor, awarded to the plaintiff the amount of the bond from the property of the obligor, and directed that "the defendant be released from the claim in this suit." An order for execution of the decree was set aside by the Principal Sudder Ameen, on the ground that the decree did not warrant the issue of an attachment, since it was not against any person. *Held* that the decree was informal in not expressing that the debt was to be realised out of the assets of the deceased in the hands of the heir, or that should come to the hands of the heir, but that the Principal Sudder Ameen had jurisdiction to amend and ought to have amended the decree in this respect. ANUND ROY *v.* MUNORUT SINGH . . . . . **Marsh., 611**

(*o*) HINDU WIDOW.

50. ——— Hindu widow, Decree against.—*Specification of nature of decree.*—In a decree against a Hindu widow it should be stated whether the decree is a personal decree or one against her as representing her deceased husband. RAM KISHORE CHUCKERBUTTY *v.* KALLY KANT CHUCKERBUTTY . **I. L. R., 6 Calc., 479: 8 C. L. R., 1**

51. ——— Hindu widow, Suit against.—*Suit by reversioner to set aside sale.*—In a suit by a reversioner to set aside a sale of property made by a Hindu widow, the Court cannot direct possession to be given to the reversioner, but can only declare the sale to be invalid, and leave the widow or her vendees, as her tenants in possession. GOLUCK CHUNDER DASS *v.* GOPAL KISHEN SEN . **W. R., 1864, 250**

(*p*) IDOL.

52. ——— Suit respecting idol whose temple has been destroyed.—*Turn of worship.—Removal and re-conveyance of idol.*—In a suit respecting an idol which had been set up by the common ancestor of the parties but whose temple had been destroyed by the erosion of the river, the plaintiffs asked for a declaration of their right to remove the idol to their own house and to keep it there for the period of their turn of worship,—*Held* that, in giving the plaintiffs a declaratory decree, the Court should define the precise period for which the plaintiffs were entitled to worship the idol; deducting any period for which the defendants had a joint claim and should also make provision in the decree for the re-conveyance of the idol to the place where it was at the plaintiff's expense, and before the expiration of their turn of worship, so as to allow the other parties the full benefit of their turns. RAM SOONDAR THAKOOR *v.* TARUCK CHUNDER TURKORUTTUN . . . . . **19 W. R., 28**

DECREE—*continued.*

1. FORM OF DECREE—*continued.*

(q) IMPROVEMENTS.

53. ——— Improvements, Value of.—*Suit for possession.*—In a suit for the recovery of immoveable property inquiries as to the value of improvements must be held before decree and cannot legally be reserved, with or without the consent of the parties, for determination in the execution department. NELLAYA VARIYATH SILAPANI *v.* VADIKAPAT MANAKAEL ASHTAMURTI NAMBUDRI [I. L. R., 3 Mad., 382

(r) MAHOMEDAN WIDOW.

54. ——— Widow in possession of estate as security for dower.—*Suit by heir for possession.*—Where a woman is in possession of her husband's estate as security for unpaid dower, the proper decree in a suit against her for possession by the heir, is a decree for possession subject to the amount due with a direction for an account as to mesne profits received by her. MAHOMED AMEER-OODEEN KHAN *v.* MOZUFFER HOSSEIN KHAN [5 B. L. R., 570: 14 W. R., P. C., 5

(s) MAINTENANCE.

55. ——— Suit by Hindu widow for administration.—*Maintenance, Right to decree for.*—In a suit by a Hindu widow for administration under the will of her deceased husband, the Court will not give a decree for her general right to maintenance. BIZJIE BEBEE *v.* MONOHUR DOSS [2 Ind. Jur., N. S., 118

56. ——— Suit for recovery of possession of property on which Hindu widow has a claim for maintenance.—*Order as to maintenance.*—Where the nearest relative of a Hindu widow sued for recovery of property in her possession, and the lower Appellate Court awarded the claim without fixing the amount of maintenance to be given to the widow. The High Court remanded the suit in order that the amount of maintenance might be fixed, notwithstanding that the widow claimed maintenance in that Court for the first time. RAZABAI KOM RANGOJI *v.* SADU BIN BHAVANI [8 Bom., A. C., 98

57. ——— Decree for contingent arrears of maintenance.—*Non-payment of arrears.*—A prospective decree for contingent arrears of maintenance is quite irregular. The non-payment of any arrear due would be a fresh cause of action constituting a basis for a suit. JULEBIA CHITTA KOOER *v.* BHAGEE KOOER . . . 6 N. W., 41

58. ——— Decree declaring right to maintenance, and directing payment of arrears.—*Order for future payments.*—Where the Civil Court, upon the suit of a Hindu widow for maintenance, makes a decree containing an order in express terms to the defendant to pay to the plaintiff the amount claimed by her for maintenance during a past period, but as to the future merely declares her

DECREE—*continued.*

1. FORM OF DECREE—*continued.*

(s) MAINTENANCE—*continued.*

Decree declaring right to maintenance, and directing payment of arrears—*continued.*

right to receive maintenance at an annual rate from the defendant, the proper way of enforcing the right thus declared is not by executing the decree, but by bringing a fresh suit. Decrees declaring a right to maintenance and directing payment of arrears should contain an order directing payment of future maintenance. VISHNU SHAMBHOG *v.* MANJAMMA [I. L. R., 9 Bom., 108

59. ——— Declaration of mother's right to maintenance where whole estate goes to adopted son.—*Suit to establish adoption and cover property.*—The High Court being impressed with the propriety of not allowing the adopted son to recover the whole property from the widow—his adoptive mother—until proper provision had been made for her maintenance, added a declaration to the decree made in his favour, that he do take the property awarded to him subject to the obligation to provide a sufficient maintenance for the widow, and directed that the Court executing the decree should determine what was a proper and sufficient maintenance for the widow, and should secure the same, either by directing an investment of a sufficient part of the estate in trust for that purpose, or by such other means as it might deem sufficient. JAMNABAI *v.* RAYCHAND NAHALCHAND [I. L. R., 7 Bom., 225

60. ——— Maintenance of mother and marriageable daughters.—*Provision for maintenance of daughter ceasing on marriage.*—A Hindu widow, with her two daughters as co-plaintiffs, sued the son of her deceased husband by another wife alleging that he was in possession of his father's property, for maintenance and for the marriage expenses of the daughters, both of whom were of marriageable age. The Court of first instance gave the plaintiffs a decree for a monthly allowance, and R540 to the widow as arrears of maintenance and R1,000 for the marriage expenses of the daughters. *Held* that the Court of first instance should have separated the maintenance to which it considered the three plaintiffs respectively entitled, and that, as to the two minor plaintiffs, it should have declared that such maintenance should cease upon their marriage. TULSHA *v.* GOPAL RAI . I. L. R., 6 All., 632

(t) MESNE PROFITS.

61. ——— Mesne profits, Conditional decree for.—A decree awarding immediate mesne profits at the rate admitted by defendants, and larger mesne profits contingently on a higher rate being proved at the time of execution, is altogether irregular. LOTFOOLLAH *v.* NUSSEEBUN . 10 W. R., 24

62. ——— Mesne profits, Decree for, after partition of zemindari.—A question of the partibility of a zemindari disputed in a family of six

DECREE—*continued.*

1. FORM OF DECREE—*continued.*

(*t*) MESNE PROFITS—*continued.*

Mesne profits, Decree for, after partition of zemindari—*continued.*

brothers having been decided in favour of three who sued for their shares,—*Held* that the decree should be that the plaintiffs were entitled to recover one-half of the zemindari, together with the mesne profits thereon, from the time of their dispossession; provided that they should recover such mesne profits for a period of no more than three years next before the commencement of the suit, subject to an allowance to the defendants for all or any portion of such mesne profits which the latter might prove to have been duly applied for the benefit of the joint family. APPA RAO *v.* COURT OF WARDS

[I. L. R., 5 Mad., 236

(*u*) MORTGAGE.

63. ——— Suit on money-bond.—*Charge on land.—Specification of property from which money may be realised.*—In decreeing a claim founded on a simple money-bond, a Court has no authority to direct the realisation of the money out of any named property, and thus make it a charge upon such property. In such a case, if the decree does this, and the property is sold before attachment, the title conveyed by the sale is not affected (as there is no charge upon this property before it is attached) and the decree-holder's remedy lies against the judgment-debtor. OMRITO LALL SIRCAR *v.* RAMDHUN CHAKER . . . . . **18 W. R., 503**

64. ——— Decree against mortgagor.—*Mode of execution.*—Where a decree is against the mortgagor generally, coupled with a declaration of the lien, the decree-holder may proceed either against the person and his property or against the mortgaged property, though whether such a course will be allowed in any particular case is a matter for the discretion of the Court executing the decree. LUCHMI DAI KOORI *v.* ASMAN SING

[I. L. R., 2 Calc., 213: 25 W. R., 421

65. ——— ——— *Money-decree in suit for foreclosure or sale.*—A mortgagee sued for foreclosure or sale in the usual form. The suit was undefended. The plaintiff elected to take a simple money-decree against the mortgagor. The following words were appended to the decree: "*Note.*—The equity of redemption in the property comprised in the mortgage is not liable to attachment and sale under this decree." After ineffectual attempts to realise his debt, the plaintiff applied to the Court for liberty to sell the mortgaged premises. *Held* that the Court had a discretionary power to grant or refuse the sale. The note at the end of the decree did not amount to an absolute prohibition against the sale, but was merely meant as a guide to the Court which should have to execute the decree, and to show that execution should not issue against the equity of redemption, except by special leave of the Court. The Court made an order as if there had been a decree for sale in the first instance, except that the

DECREE—*continued.*

1. FORM OF DECREE—*continued.*

(*u*) MORTGAGE—*continued.*

Decree against mortgagor—*continued.*

account was to be treated as a final account at the date of the decree. NEERUNJUN MOOKERJEE *v.* OOPENDRO NARAIN DEB . . **10 B. L. R., 57**

66. ——— Foreclosure, Suit for.—*Mortgage in English form.*—Form of decree in a suit for foreclosure or sale in the mofussil, where the mortgage is in the English form, and all parties concerned are English. MANLY *v.* PATTERSON

[I. L. R., 7 Calc., 394

67. ——— Suit by purchaser at sale in execution of decree on mortgage against assignee of mortgagor.—Form of decree discussed where a person who at a sale in execution of a mortgage-decree has purchased a portion of the mortgaged property, brings a suit for that portion against the assignee in possession as a mortgagor. BEPIN BEHARI BUNDOPADHYA *v.* BROJO NATH MOOKHOPADHYA . . **I. L. R., 8 Calc., 357**

68. ——— Suit by mortgagee against the mortgagor and purchasers of the mortgaged property.—In execution of a decree, the right, title, and interest in two parcels of property of a judgment-debtor, who had previous to the attachment executed a simple mortgage thereof to *A.*, was sold; and *B.* and *C.* respectively purchased them at different prices. *A.* sued the mortgagor and the purchasers *B.* and *C.* for enforcing his lien on the two parcels of property. The suit was dismissed by the first Court; but on appeal, the order was "appeal decreed." *A.* entered into a compromise with *B.*, and entered satisfaction of a moiety of the decree. He afterwards issued execution of the other moiety against *C.* and compelled him to pay. *C.* now sued *B.* for recovery of the proportion of the amount paid by him to *A.*, but which, according to the valuation of the respective properties, should have fallen into the share of *B.* *Held*, that the proper decree in the suit of *A.* against the mortgagor and *B.* and *C.* would have been a money-decree against the mortgagor only, with a declaration that the two properties were liable to be sold, clear of subsequent incumbrances, in satisfaction of the mortgage-bond debt. BHAIRAB CHANDRA MADAK *v.* NADYAR CHAND PAL

[3 B. L. R., A. C., 357: 12 W. R., 291

69. ——— Suit for redemption.—*Rights and liabilities of prior and subsequent mortgagees.—Suit by second mortgagee.—Right of redemption.*—*S.* mortgaged a house and site to *R.* on the 4th January 1870, and on the 21st February 1870 he (*S.*) mortgaged the same property to *D.* On the 3rd January 1874 *R.* brought a suit against *S.* on the mortgage and obtained a decree, which directed the satisfaction of the mortgage-debt by the sale of the mortgaged property *R.* did not make *D.* a party to that suit. The property was sold by the Court and purchased by *N.* in his own name, but as trustee for *R.* At the Court sale, *D.*, the puisne

DECREE—*continued.*

1. FORM OF DECREE—*continued.*

(*u*) MORTGAGE—*continued.*

Suit for redemption—*continued.*

mortgagee, gave notice of his claim to *R.* and *N.* *D.* sued *N.*, *R.*, and *S.* for the amount due on his mortgage. In his evidence *R.* admitted that he, subsequently to the sale to *N.*, pulled down the house and sold portion of the materials. The lower Courts dismissed the suit, holding that *N.* (defendant No. 1), the purchaser at the auction sale, was not liable for the plaintiff's claim. On appeal to the High Court,—*Held* that *D.* being puisne mortgagee, and, as such, representing the equity of redemption to the extent of his mortgage, should have had an opportunity of redeeming the mortgaged premises from *R.'s* mortgage, and should have been made a party to *R.'s* suit. He could not be deprived of his right by proceedings to which he was not a party, and was therefore entitled to a decree framed on the basis of such right of redemption. DAMODAR DEVCHAND *v.* NARO MAHADEV . . . . I. L. R., 7 Bom., 11

70. ——————— *Unnecessary declaration.—Costs.*—A mortgagee holding two mortgages of the same property sold, under the second mortgage, to the plaintiff, and subsequently under the first mortgage to his son, benami for himself,—*Held*, in a suit against the mortgagee and the benamidars, that the plaintiff was entitled to set aside this second sale and to redeem, but that the mortgagor not being a party the Court was wrong in introducing into the decree a declaration to the effect that the plaintiff was entitled "as second mortgagee" and had not acquired the equity of redemption belonging to the mortgagor. Such a declaration should in appeal be struck out as embarrassing to the plaintiff's title at the expense of the respondent who resisted. CHOOBAMUN SINGH *v.* MAHOMED ALI [L. R., 9 I. A., 21

71. ——————— *Condition in decree.*—In a suit for redemption of a mortgage,—*Held*, with reference to the last paragraph of section 51 of the Transfer of Property Act, that the Courts below were wrong in subjecting their decrees in favour of the plaintiff to the condition that the defendant should not be evicted till the crops he had sown were cut. DEO DAT *v.* RAM AUTAR [I. L. R., 8 All., 502

72. ——————— *Redemption of usufructuary mortgage.—Conditional decree for possession.*—In a suit to recover possession of certain lands founded on the allegation that the defendants had obtained possession of them from the plaintiffs as usufructuary mortgagees, and that the mortgage-debt had been satisfied from the usufruct of the lands, the lower Court, although it found that the mortgage-debt had not been satisfied as alleged, gave the plaintiffs a decree for possession conditional on the payment of the balance of the mortgage-debt. *Held* that, inasmuch as the defendants never rendered any accounts, and inasmuch as no agreement had been made between the parties as to the amount at which the profits of the land should be estimated, it was impossible for the plaintiffs to have ascertained before suit what sum, if any, was due by them, and seeing that, whether such decree was altered or not, the plaintiffs might immediately pay the balance of the mortgage-debt and demand possession, it was unnecessary to interfere with such decree. ZADAH *v.* PARMESHAR DAS . . I. L. R., 1 All., 524

73. ——————— *Conditional decree for redemption.*—A conditional decree fixing a period for payment of money found to be due on mortgage-bonds entitling the mortgagor to redemption, though not claimable as of right by the mortgagor, who ordinarily should be ready at once with his money, is a proper and judicious order passed by an Appellate Court, where the Court of first instance determined the amount payable under the mortgage but failed to fix any time in its decree for the payment of such amount. BARDA KANT RAI *v.* BHAGWAN DAS . . . I. L. R., 1 All., 344

(*v*). PAPERS AND ACCOUNTS, SUITS FOR—

74. ——— **Suit for delivery of papers.**—*Specific decree.*—In decreeing a suit for the delivering up of certain nekasi papers, it is not sufficient for the Court to order that the claim be allowed. The decree ought to contain a specific order upon the defendant to deliver up the papers. RAM COOMAR SIRCAR *v.* KALEE COOMAR DUTT 10 W. R., 279

75. ——— **Suit to recover accounts and papers.**—*Inquiry in execution.*—In a suit to recover accounts and papers, instead of giving plaintiff a decree with a direction that it should be ascertained in execution what accounts and papers, if any, were in the hands of the defendant, the lower Appellate Court ought to have remanded the case to the first Court with instructions to frame a new issue to try what papers and accounts, if any, were in the hands of the defendant, and whether he had wrongfully refused or omitted to deliver them to plaintiff, and, if so, decide the case accordingly. JUGGER NATH PANEE *v.* CHUTTUR NARAIN DEB . 17 W. R., 410

(*w*). PARTITION.

76. ——— **Partition, Suit for.**—*Objection to list of moveable property.*—Objection was taken to the accuracy of a list of moveable property of which the plaintiff claimed partition. The lower Appellate Court, without determining whether the list was correct or not, gave the plaintiff a decree for the whole of the articles mentioned in the list, declaring that particular excuses with regard to individual articles might fitly be determined in execution of decree. The lower Appellate Court was bound to have ascertained whether any, and, if any, which of the articles were liable to partition before it pronounced a decree. SHEO GOBIND *v.* SHAM NARAIN SINGH . . . . . 7 N. W., 75

DECREE—*continued.*

1. FORM OF DECREE—*continued.*

(*w*) PARTITION—*continued.*

Partition, Suit for—*continued.*

77. ——————— *Decree for moveables in suit for partition of land.*—Where the claim in a suit was for the partition of certain immoveable property, and for the profits of the property, and defendant in his account took credit for a sum expended in certain jewels, &c., it was held that the things so purchased being charged against the plaintiff, belonged to the plaintiff, and a decree declaring his right to obtain them might be supported, although the claim did not refer to moveables. BULDEO SEHAI *v.* CHADEE LALL . **2 N. W., 95**

78. ——————— *Suit for possession by partition of nij-jote land and for mesne profits.*—Where a suit for possession by partition of kamut (nij-jote) lands and for wasilat is decreed, it is the duty of the Judge, in drawing up the final decree after the Ameen's report, to state the boundaries of the shares of the parties, the interest of each share, and the exact amount due as wasilat. CHOWDRY IMDAD ALI *v.* BOONYAD ALI . . **14 W. R., 92**

79. ——————— *Death of one of sharers pending appeal.—Alteration of decree on appeal.—Death of a coparcener pendente lite.*—The plaintiff obtained a decree in a partition suit in the Subordinate Judge's Court for his share in certain joint family property in the possession of the defendants (his coparceners). The decree was affirmed on appeal. The defendants filed a second appeal in the High Court; but, before it was decided, one of the defendants died. The plaintiff at the hearing of the second appeal claimed a larger share in the family property than he had been awarded by the decree of the Courts below. *Held*, that he (plaintiff) was entitled to a share in that of the coparcener who died *pendente lite*, and that the decree appealed from ought to be varied accordingly. SAKHARAM MAHADEV DANGE *v.* HARI KRISHNA DANGE **[I. L. R., 6 Bom., 113**

80. ——————— *Deshgat vatan held by desai.*—Where the defendant in a suit for the partition of a deshgat vatan held the hereditary office of desai, and the vatan was property appertaining to the office, the decree for partition was accompanied by a declaration that it was made without prejudice to the right of the desai to any income, payable out of it, for the performance of his duties, to which he might be entitled under any law in force. ADRISHAPPA *v.* GURUSHIDAPPA **[I. L. R., 4 Bom., 494**

(*x*) PARTNERSHIP.

81. ——— **Suit for dissolution of partnership.**—In a suit of the nature of one for dissolution of partnership, it is incorrect to make an absolute decree for a specific sum of outstanding balances without anything to guide the Court in fixing that amount. No amount ought to be decreed without satisfactory proof of its having been realised and misappropriated. MUN MOHINEE DASSEE *v.* ICHAMOYE DASSEE . . . . . **15 W. R., 352**

DECREE—*continued.*

1. FORM OF DECREE—*continued.*

(*x*) PARTNERSHIP—*continued.*

Suit for dissolution of partnership—*continued.*

(*y*) POSSESSION.

82. ——— **Possession, Suit for.**—*Declaration of proprietary right.*—In a suit for recovery of possession of land, it was declared that the plaintiff was entitled to possession as owner, and ordered that the defendants should deliver to him possession as such. *Held*, on appeal, that the decree should have simply declared that the plaintiff was entitled to possession without any declaration of right as owner. RADHAKRISHNA SETT *v.* HARAKRISHNA DAS **[1 B. L. R., O. C., 1**

83. ——————— *Co-sharers.—Intervenors added as parties.*—In a suit to recover possession of a certain mouzah, claimed by the plaintiff as a portion of his dar-patni talook, which was brought against several defendants, four other persons applied to be made defendants, on the ground that they were co-sharers with the defendants on the record in the property in dispute. The application was granted; the added defendants were found to be possessed of the share which they claimed; and on the proofs which they adduced the plaintiff's claim was dismissed. The plaintiff's claim as against the original defendants who made no opposition was decreed in special appeal, on the ground that they should not have been made defendants, and that the plaintiff was not bound to prove his case against anybody else but the person against whom he had brought the suit. *Held* that, upon the one issue common to all the defendants,—*viz.*, whether the property claimed was in the plaintiff's talook or in that of the defendants, the Court could only come to one consistent finding; and that on the finding of the facts in the Court below the suit should be dismissed against all the defendants. KALIPRASAD SINGH *v.* JAINARAYAN ROY . **[3 B. L. R., A. C., 24: 11 W. R., 361**

84. ——————— *Suit by tenant for possession of julkurs.—Expiry of lease before decree.*—Where a plaintiff sued, while his lease was still running, to recover possession of certain julkurs, and the lease expired after action brought, but before decree,—*Held* that the decree, instead of directing actual possession to be given, should have merely declared his right to possession up to the date on which his lease expired. UMANUND ROY *v.* SREEKISHEN BANERJEE . . . **7 W. R., 248**

85. ——— **Decree in suit for possession after void sale for arrears of revenue.**—*Act XI of 1859, s. 34.*—Where the original owner sues to recover possession when a sale for arrears of revenue is found to be null and void, and obtains a decree, the decree is sufficient for the purposes of section 34, Act XI of 1859, without any special declaration that the sale is annulled: and the order for

DECREE—*continued.*

1. FORM OF DECREE—*continued.*

(*y*) POSSESSION—*continued.*

Decree in suit for possession after void sale for arrears of revenue—*continued.*

refund of the purchase-money should be made in execution of the decree. SREEMUNT LALL GHOSE *v.* SHAMA SOONDUREE DOSSEE. . 12 W. R., 276

86. ——— Suit for possession of share where co-sharer is in collusion with other defendants.—In a suit to recover possession of a specified share of land, the plaintiff charged the defendant No. 1, who was jointly interested with him in the land, with being in collusion with the other defendant, and complained that they had ousted him from his share, and asked for partition of the land and possession of his share. It having been found that the plaintiff was entitled to a small portion only of the share he claimed, it was held that he was not entitled in this suit to have a partition at all, but that as his co-sharer was in collusion with the other defendant, the plaintiff was entitled to relief, by a decree awarding him joint possession with defendant No. 1 of the portion to which they were entitled. RUSTUM ALLY *v.* AMEER ALLY SOUDAGUR [10 W. R., 487

87. ——— Suit for possession under purchase which turns out to be tainted with fraud on the part of one vendor.—Where a plaintiff sued for recovery of possession of property which he said he purchased from two defendants, and it was found as a fact that one of the defendants did not sell, but that the other used fraud in effecting the sale, it was held that the decision below which gave plaintiff a decree for the entire property against the defendant who acted fraudulently was erroneous, and that the decree should have absolved from liability the share of the defendant who did not join in or know anything of the sale. KALEEDASS MOZOOMDAR *v.* MEHEROONISSA KHATOON [8 W. R., 482

88. ——— Suit by purchaser to have sale in execution of decree confirmed and for possession.—*Right to possession.*—After a sale in execution of decree the sale was set aside. In a suit to have the order set aside to have the sale confirmed and for possession of the property, the Lower Court having made a decree awarding possession of the property, as well as a declaration of right to have the sale confirmed, the High Court set aside so much of that decree as awarded possession of the property. SANGAM RAM *v.* SHEOBART BHAGAT [I. L. R., 3 All., 112

89. ——— Suit by purchaser for possession of share of ancestral estate.—In a suit for possession of lands under purchase of a share in an ancestral estate, the Judge, in pronouncing a decree for the plaintiff, ought to declare specifically whether the plaintiff is entitled to recover the share in an undivided estate, or specific lands as representing that share. RAMLOCHAN DAS *v.* MANSUR ALI 1 B. L. R., A. C., 65 : 10 W. R., 96

DECREE—*continued.*

1. FORM OF DECREE—*continued.*

(*y*) POSSESSION—*continued.*

90. ——— Suit by purchaser of share in undivided property.—*Right to possession.*—A purchaser at a Court-sale ought not to be put in exclusive possession of the whole undivided land by virtue of a decree against one co-parcener only. KALLAPA *v.* VENKATESH VINAYAK [I. L. R., 2 Bom., 676

91. ——— ——— *Sale in execution of decree of joint family property.—Right of purchaser.—Suit to cancel sale.*—*G.*, the brother of the plaintiff, executed a mortgage to the defendant during the plaintiff's minority. The deed recited that the money was borrowed to pay off a family debt, and to defray family expenses. The defendant sued *G.* on the mortgage, and obtained a decree. A house, which was part of the family property, was sold in execution and was purchased by the defendant himself. The plaintiff sued to have the sale set aside, and to recover his half share in the house. *Held* that the plaintiff was entitled to be put into possession of the whole house, the defendant being left to his remedy by a suit for partition. The plaintiff, however, having claimed only the restoration of his half share, the decree was limited accordingly. *Held* also, that it was not competent for the Court in this suit to go into the question whether the mortgage by *G.* was binding on the minor plaintiff. MARUTI NARAYAN *v.* LILACHAND . . . I. L. R., 6 Bom., 564

92. ——— Suit by purchaser for share of undivided property.—*Sale of joint family property in execution of decree.*—A judgment-creditor attached in execution and caused to be sold the judgment-debtor's alleged one-twelfth share as a member of an undivided Hindu family, in seven parcels of land of which the applicant was in possession as manager. At the sale *Y.* became the purchaser; and subsequently, and without having himself entered into possession, *Y.* assigned his interest in the purchase to *G.* *G.* claimed to be put into possession, and obtained a Court's order directing that possession should be given to him. The applicant, however, obstructed the execution of the said order, and applied to the High Court to declare *G.* not entitled to the possession he sought. No division of the property in question, by metes or bounds or otherwise, between the members of the undivided family had ever been made, nor had the judgment-debtor ever had separate occupancy of any definite share of the same. *Held* that *G.*'s proper remedy was by a suit for partition, and that he could not claim to be put into joint possession, with the applicant and the other members of the undivided Hindu family, of the family property. BALAJI ANANT RAJADIKSHA *v.* GANESH JANARDAN KAMATI [I. L. R., 5 Bom., 499

Contra INDRASA *v.* SADU [I. L. R., 5 Bom., 505, note

93. ——— Suit for possession of family property alienated for unjustifiable purposes.—*Alienation by life-tenant.*—*A.*

DECREE—*continued.*

1. FORM OF DECREE—*continued*

(*y*) POSSESSION—*continued.*

Suit for possession of family property alienated for unjustifiable purposes— *continued*

and *B.* sued *D.* and *E.* for the estate of a relative, *C.*, the deceased husband of *D.*, on the ground that the family to which *A.*, *B.*, and *C.* belonged was undivided. *D.* (who was a Hindu widow without surviving issue) and *E.* pleaded division, and that *D.* had sold and assigned the estate to *E.* This alienation was not shown to have been made for purposes recognised by Hindu law. *Held* that the District Munsif, in disallowing the plaintiff's claim to immediate possession, should not have provided for the re-assignment of the estate from *E.* to *D.* for *D.'s* life, but that he was right in declaring that after *D.'s* death the property should revert to the plaintiffs as heirs of *C.* PERIYA GAUNDAN *v.* TIRUMALA GAUNDAN

[1 Mad., 206

94. ——— Suit by member of undivided family against manager.—*Decree on partition.*— A member of an undivided family brought a suit for partition against his father, the managing member, and eight others, of whom the second, third, and fourth defendants were plaintiff's infant brothers, and obtained a decree. The Judge proceeded to ascertain the amount of the plaintiff's share in the following manner. He assessed what he considered to be the sum received by the first defendant from the estate, deducted from that sum what he considered should have been the gross expenditure of the defendant, and decreed delivery by the defendant of one-fifth of the remainder. *Held* that such a decree was erroneous. TARA CHAND *v.* REEB RAM

[3 Mad., 177

95. ——— Suit by son to set aside sale by father of ancestral property.—*Right of purchaser.*—Where ancestral property is sold by the father, the son is entitled to sue for cancelment of such sale, and the decree should not be that the property is ancestral and will pass to the father's heirs on his death, but a decree cancelling the sale so far as it obstructs him in asserting his right and in effect declaring the sale to be invalid, without interfering with actual possession, that may have been obtained by the purchaser. BABOO RAM *v.* GAJADHUR SINGH

[Agra, F. B., 86 : Ed. 1874, 65

96. ——— Suit by member of undivided Hindu family for declaration of his right to a portion of the joint estate sold in execution of decree against another member.—In a suit by a member of an undivided Hindu family to have his right declared to a portion of the joint estate which had been sold by the Civil Court in execution of a decree against his co-parcener alone—*Held* that the plaintiff should have a decree declaring that he was entitled to joint possession along with the execution purchaser as tenant in common. But that, if a division in specie were desired, a suit should be brought for that purpose. *Mahabalay* v. *Timaya, 12 Bom., Rep., 138,* followed. BABAJI LAKSHMAN *v.* VASUDEV VINAYAK . . I. L. R., 1 Bom., 95

DECREE—*continued.*

1. FORM OF DECREE—*continued.*

(*y*) POSSESSION—*continued.*

97. ——— Suit by member of joint undivided Hindu family to recover possession of property alienated by another member.—*Position of purchaser from one member of family.*—*A.* obtained a decree in a suit against *B.* and executed it by the sale of certain plots of land which *B.* alleged belonged to him—*A.* himself becoming the purchaser thereof. *A.* entered into possession of the plots of land under his purchase, and remained in possession thereof for a considerable time. As a matter of fact the plots of land belonged—part absolutely and part as to mortgagees in possession—not to *B.* solely but jointly to him and his father *C.* and others, the members of an undivided Hindu family. A suit having been brought by *C.* to recover possession of the said plots of land from *A.* and for mesne profits, and for payment over of a sum of R800 paid to *A.* by the mortgagor of the mortgaged property in redemption of his mortgage,—*Held* that *A.* was entitled to stand in *B.'s* place, and to retain possession in respect of *B.'s* share in the said land, but no further; and that he held the mesne profits and the said sum of R800 as trustee for the other members of the said undivided family to the extent of their shares in the family property. DUGAPPA SHETI *v.* VENKATRAMNAYA

[I. L. R., 5 Bom., 493

See also KRISHNAJI LAKSHMAN RAJVADE *v.* SITARAM MURARRAV JAKHI

[I. L. R., 5 Bom., 496

98. ——— Suit by co-sharers for recovery of possession.—*Sale in execution of decree of share of one co-sharer in undivided property.*—*K.* and *R.*, two out of five undivided Hindu brothers, sued *V.* (a purchaser at an execution-sale of the interest of one of the brothers, other than *K.* and *R.*) for the recovery of certain land of which *V.* had obtained possession under section 269 of Act VIII of 1859. The lower Courts awarded two-fifths of the land to *K.* and *R.* as being the amount of their share in the land. *Held* by the High Court that the decree could not be maintained, as *K.* and *R.*, being two of several co-parceners in undivided property, could not say that they were entitled to a specific share in any portion of that property. They might have sued for a general partition, or for a decree declaring them entitled to joint possession with *V.* KALLAPA BIN GIRMALLAPA *v.* VENKATESH VINAYAK

[I. L. R., 2 Bom., 676

99. ——— Suit for ejectment of trespassers.—*Co-sharers.*—Where a tenant has been put into possession of ijmali property with the consent of all the co-sharers, no one or more of the co-sharers can turn the tenant out without the consent of the others; but no person has a right to intrude upon ijmali property against the will of the co-sharers or any of them; if he does so, he may be ejected without notice, either altogether, if all the co-sharers join in the suit, or partially, if only some wish to eject him; and the legal means by which such a partial ejectment is effected, is by giving the plaintiffs possession of their shares jointly

DECREE—*continued.*

1. FORM OF DECREE—*continued.*

(y) POSSESSION—*continued.*

Suit for ejectment of trespassers—*continued.*

with the intruder, as explained in the case of *Hulodhur Sen* v. *Gooroodoss Roy, 20 W. R., 126.* RADHA PROSHAD WASTI *v.* ESUF

[I. L. R., 7 Calc., 414: 9 C. L. R., 76

100. ——— **Suit on agreement making sharers severally liable.**—*Decree causing joint liability.*—If a plaintiff sues upon an ikrar, he is not entitled to a decree contrary to its terms. Thus, if the ikrar makes each of several sharers severally liable, all the co-sharers cannot be made jointly liable. MIRZA NAWAB *v.* BAHADOOR ALI. SHAM LAL *v.* BAHADOOR ALI . . . 7 W. R., 156

(z) PRE-EMPTION.

101. ——— **Pre-emption, Suit for.**—*Decree, Conditional, on payment in specified time.*—In decreeing a right of pre-emption a Civil Court has no power to make the decree-holder's right depend on payment of the purchase-money within a specified time. AHSAN ALY *v.* SABOKHEE BIBEE

[10 W. R., 53

Contra, EWAZ *v.* MOKUNA BIBI

[I. L. R., 1 All., 132

where it was held the Court was competent to make such a condition, and that if the decree-holder fails to comply with such condition he loses the benefit of the decree.

102. ——— *Deposit of purchase-money.—Power of Court.*—A pre-emptor obtained a decree which provided a certain time within which the sum ascertained to be the purchase-money was to be deposited. He appealed against the amount fixed but failed in his appeal, and during his appeal the time fixed for the deposit expired, and the Judge refused to fix any further time. *Held* that the plaintiff, in appealing from the original decree, could not escape from the obligation which it imposed, and the lower Appellate Court was not bound by law to insert in its decree any special direction concerning such deposit, unless occasion called for it, although it was competent to have done so. SHEO PERSHAD LALL *v.* THAKOOR RAI

[3 Agra, 254: S. C. Agra, F. B., Ed. 1874, 153

103. ——— *Conditional decree.*—Where a share in a certain patti was sold by the holder of the share to a stranger, and three persons, holding equal shares in the patti, were equally entitled under the village administration paper to the right of pre-emption of the share, the decree of the High Court in the suit specified a time within which each party to the suit should pay into Court a proportion of the purchase-money, and declared that, if either failed to pay such proportion within time, the other of them making the further deposit within time should be entitled to the share of the defaulter. MAHABIR PARSHAD *v.* DEBI DIAL

[I. L. R., 1 All., 291

DECREE—*continued.*

1. FORM OF DECREE—*continued.*

(z) PRE-EMPTION—*continued.*

Pre-emption, Suit for—*continued.*

104. ——— *Deposit of purchase-money.—Appellate Court, Powers of.—Civil Procedure Code, 1877, s. 214.*—The decree of the Court of first instance, in a suit to enforce a right of pre-emption, directed that the sum which that Court had ascertained to be the purchase-money should be deposited within one month from the date of the decree. The plaintiff appealed, contending that such sum was not the purchase-money. While the appeal was pending the time fixed by the decree of the Court of first instance expired without any deposit having been made. The Appellate Court dismissed the appeal, fixing by its decree, of its own motion, a further time for the deposit. *Held,* following *Sheo Pershad Lall* v. *Thakoor Rai, 3 Agra, 254,* that the Appellate Court was competent to extend the time for making the deposit, and its action and order did not contravene the provisions of section 214 of Act X of 1877. PARSHADI LAL *v.* RAM DIAL

[I. L. R., 2 All., 744

105. ——— *Allegation by plaintiff that a certain sum is the actual price.—Omission to allege readiness and willingness to pay actual price.—Discretionary power of Court to grant decree.*—The Court of first instance dismissed a suit to enforce a right of pre-emption, although it found that the plaintiff had such right, on the ground that the actual price of the property was a larger amount than the amount which the plaintiff alleged it in his plaint to be, and the plaintiff had not in his plaint expressed his readiness and willingness to pay any amount which the Court might find to be the actual price. On appeal by the plaintiff the lower Appellate Court gave him a decree conditional on the payment of such larger amount within a fixed time. *Held* that it was not necessary to interfere with the exercise of the lower appellate Court's discretion in the matter, particularly as the defendant had not objected to such exercise in his memorandum of second appeal. *Durga Prasad* v. *Nawazish Ali, I. L. R., 1 All., 591,* distinguished. NAUBAT SINGH *v.* KISHAN SINGH . . . . I. L. R., 3 All., 753

106. ——— *Rival suits to enforce the right of pre-emption.—Civil Procedure Code, s. 214.*—*K.* and *R.,* two co-sharers of a village, instituted separate suits in which each claimed to enforce the right of pre-emption, based on the wajib-ul-urz, in respect of the same sale of a share in a village to a stranger. The Court of first instance made the plaintiff in one suit a defendant in the other. The suits were tried together, and *R.* being held to have a better right under the terms of the wajib-ul-urz than *K.,* his suit was decreed, contingent upon payment by him of the purchase-money within one month from the date of the decree. *K.'s* suit was dismissed absolutely. *Held,* that decrees in cases where two rival pre-emptors of the same degree seek to enforce pre-emption, as each necessarily must do, in respect of the whole property conveyed by one transfer, are defective if they dismiss the suit for any

DECREE—*continued.*

1. FORM OF DECREE—*continued.*

(z) PRE-EMPTION—*continued.*

Pre-emption, Suit for—*continued.*

proportion of the property without providing for the contingency of the rival pre-emptor decree-holder omitting to enforce his decree in respect of the share decreed to him. *A fortiori*, where the rival decree-holders possess different degrees of pre-emption, the decree, in at least one of the rival suits, must be essentially defective if no provision is made for the contingency of the superior pre-emptor never enforcing his right. The question what should be the form of the decree in such cases can be dealt with only by exercising the vast and flexible jurisdiction possessed by the Courts of Equity in adapting their decrees to the exigencies of each case, so as to grant the actual relief required by the parties. *Held*, applying the principles of equity to the present case, that the Court of first instance acted rightly in adding the name of each rival pre-emptor as party defendant in the suit of the other, and in decreeing the claim of the superior pre-emptor, but that the decree in *K.'s* suit was defective and inequitable, inasmuch as it dismissed the suit *in toto*, disallowing his pre-emptive claim wholly irrespective of the contingency of *H.'s* omission to enforce the pre-emption decreed to him by depositing the purchase-money within time. As *K.* admittedly had pre-emptive right as against the vendee, his suit should have been decreed against the latter in the terms of section 214 of the Civil Procedure Code; subject, however, to the condition that the decree should not take effect, so far as the enforcement of pre-emption was concerned, in the event of *R.'s* enforcing the superior pre-emptive right decreed to him. KASHI NATH v. MUKHTA PRASAD [I. L. R., 6 All., 370

See HULASI v. SHEO PROSAD [I. L. R., 6 All., 455

2. CONSTRUCTION OF DECREE.

(a) GENERAL CASES.

107. ——— Mode of construction.—*Execution of decree.*—In execution, a decree must be construed by its own terms, and not by the plaint. NUBO KISHORE MOJOOMDAR v. ANUND MOHUN MOJOOMDAR . . . . 17 W. R., 19

108. ——— Uncertainty in decree.—*Execution of decree.—Power of Court to take evidence to explain it.*—Where the terms of a decree are uncertain, it is not competent to the Court of execution to make any enquiries, by taking oral or documentary evidence, to ascertain the meaning of such terms. NUDDYAR CHAND SHAHA v. GOBIND CHUNDER GUHA . . . I. L. R., 10 Calc., 1092

See DWARKANATH HALDAR v. KAMALA KANTH HALDAR [3 B. L. R., Ap., 128: 12 W. R., 99

and KALEE DEBEE v. MUDOO SOODUN CHOWDHRY . . . . 16 W. R., 171

DECREE—*continued.*

2. CONSTRUCTION OF DECREE—*continued.*

(a) GENERAL CASES—*continued.*

109. ——— Difference between heading and body of decree.—*Description of person.*—Where a person was described in the heading as the purchaser of the decree-holder's rights and interests, but the ordering portion of the decree gave him nothing, he was held to have acquired no right under the decree. ZOYNUL ADBEEN v. PHOOLASH CHUNDER BOTHRAH . . . 15 W. R., 126

110. ——— Decree making further enquiry necessary.—*Court executing decree.*—Where a decree shows clearly the intention of the Court which makes it, but leaves something undetermined until further enquiry, such enquiry must be held as intended to be made by the Court to which the decree is sent to be carried into effect. HURUCK CHAND GOLECHA v. TILOCK CHAND SINGH [18 W. R., 512

111. ——— Evidence to explain decree.—*Registrar's note of judgment.*—A note of the judgment of the Court taken by a Deputy Registrar cannot be consulted for the purpose of explaining or aiding in the construction of a decree. Where, therefore, a decree was, on the face of it, an ordinary decree in a partnership suit, for the taking of the accounts between the partners in the usual way, the Court refused to allow the respondent to show, by reference to such a note, that what the decree meant was that he was to be credited and his partners debited with certain payments *in toto*, and not with their respective shares only. SUMAR AHMED v. HAJI ISMAIL HAJI HABIB . . . I. L. R., 1 Bom., 158

112. ——— Discrepancy between decree and judgment.—*Limitation of, by judgment.*—Where a decree of the Sudder Court was in general terms, *viz.*, "that the appeal be decreed with costs," though the judgment indicated a different intention,—*Held*, that the decree ought not to have been used to obtain execution for the whole of the claim, but restricted to that which it was the manifest intention of the Court to grant. MEHDEE BEY v. ZELLAL THAKOOR . . . 15 W. R., 530

113. ——— Ambiguous decree.—*Recital to decree.—Judgment.*—Where a case was "decreed with costs and damages," the decree not indicating what damages were to be paid or who were the persons made liable, the first Court was held to have dealt reasonably in construing it with the recital which preceded those words, and a portion of the judgment which was set out in the decree. CHUNDER MOHUN THAKOOR v. AMRITO CHUNDER THAKOOR . . . . 19 W. R., 343

114. ——— Decree of Appellate Court reversing summary order.—The reversal of a decree by an Appellate Court implies an order setting aside all that has been done under orders contradictory of the final order in the suit; but where a summary order, made in the course of execution proceedings, has been set aside in a separate suit brought

DECREE—*continued.*

2. CONSTRUCTION OF DECREE—*continued.*

(*a*) GENERAL CASES—*continued.*

Decree of Appellate Court reversing summary order—*continued.*

for that purpose, it cannot be necessarily implied that the intention of the Court was to cancel everything that had been done in the course of the summary proceedings. TOYBOON *v.* MAHOMED WAJID [2 C. L. R., 504

(*b*) ACCOUNT, DECREE FOR.

115. ——— Decree for account, Nature of.—*Rights of parties insufficiently defined.—Parties.*—A decree for an account is not a mere direction to enquire and report. It proceeds, and must always proceed, upon the assumption that the party calling for it is entitled to the sum found due. It is a decree affirming his rights only, leaving it to be enquired into how much is due to him from the party accounting. A decree for an account of dealings and trasactions of a deceased partner in a Hindu family bank and for a dissolution of the partnership, was in this case reversed on the ground that the respective rights of the parties were not sufficiently defined and declared, and that the proper parties were not before the Court. JANOKEY DOSS *v.* BINDABUN DOSS [3 Moore's I. A., 175

116. ——— Decree for account.—*Amendment of clerical error in decree by Appellate Court.*—The decree of the Court of first instance directed the Commissioner to take an account of the moneys paid by the plaintiff, during the period between 24th January 1865 and the date of the filing of the plaint, for the use and at the request of the defendants, and to allow credit to the defendants for the sums for which the plaintiff had given credit in his particulars of demand, and for all other sums for which the defendants should prove themselves entitled to credit, wherever the same might have become payable. The defendants, in their surcharge to the plaintiff's account, claimed credit for various payments made by them to the plaintiff between 25th January 1865 and 5th July 1865. The plaintiff claimed to appropriate these payments in satisfaction of his claim against the defendants prior to 24th January 1865. The Commissioner, by his construction of the terms of the decree, held the plaintiff entitled to make such appropriation. The Judge, in the Court of first instance, explained his decree to mean that the whole account, prior to 24th January 1865, was wiped out, and directed the Commissioner that the plaintiff was not entitled to make the appropriation he claimed. *Held* that the construction put by the Commissioner on the decree was right. Where the Court of first instance puts upon its own decree a construction which to the Appellate Court appears to render the decree erroneous, and the decree, on the face of it, admits of another construction, which to the Appellate Court appears to render the decree correct, the Appellate Court will adopt the latter construction. HIRJI JINA *v.* NARAN MULJI [I. L. R., 1 Bom., 1

DECREE—*continued.*

2. CONSTRUCTION OF DECREE—*continued.*

(*c*) COSTS.

117. ——— Decree for costs.—A decree which ordered the defendants, speaking of them collectively, to be paid their costs by the plaintiff, held to mean that each defendant who appeared in the suit as a separate party was to be paid his separate costs, estimated, not by the actual expenditure which the parties had been put to, but a sum in lieu thereof, calculated in a certain proportion to the value of the suit. GUNESH DUTT SINGH *v.* MUNGAY RAM CHOWDHRY . . . . 21 W. R., 288

118. ——— ——— *Separate defences.*—Where a decree of the High Court directed that the respondent (the plaintiff) should pay to the appellants (the defendants) the costs incurred by them in the lower Court,—*Held* that the costs referred to were those which were specified in the decree appealed against as the costs incurred by the defendants. If several defendants have severed in their defence and the lower Court has specified the costs incurred by each of them, the costs payable under the above directions will be their several costs. If they have joined in their defence, or, though they have severed their defence but the lower Court has specified a single set of costs as the only costs which it will allow or treat as costs in the suit, then the costs payable will be the single set of costs. RAM CHUNDER SEN *v.* DOORGA NATH ROY . 2 C. L. R., 152

119. ——— Decree for usual costs and interest.—*Costs of previous suits set aside.*—Where a decree was passed awarding the plaintiff's claim "with usual costs and interest" without any specification of the costs intended save the mention of some items in the schedule, and without mentioning the rate of the interest or the date from which it should run, it was held that the decree was meant to give all the costs which the successful party had incurred in the prosecution of the suit from the commencement until the date of the final decree including costs incurred in the abortive part of the proceedings, *i.e.*, in trials set aside, and that the interest was to be at twelve per cent. on the amount of money actually decreed. BROUGHTON *v.* PERHLAD SEN [19 W. R., 152

120. ——— Decree in favour of appellant with costs to the respondent.—*Deduction from amount due.*—When a decree in favour of an appellant describes a set of costs as due by the appellant to the respondent, it means not that any sum should be actually paid to the latter, but that the costs in question should be deducted from the gross amount decreed, and that the remainder only should be recovered under the decree. ISSUR CHUNDER MOOKERJEE *v.* MUNMOHUN CHOWDHRY [12 W. R., 308

121. ——— Decree for costs and for redemption.—*Alternative remedy.—Right to execute.*—Where a decree after awarding costs went on to provide for the redemption of the mortgaged property in dispute, or, on the mortgagor's failure to pay,

DECREE—*continued.*

2. CONSTRUCTION OF DECREE—*continued.*

(c) COSTS—*continued.*

Decree for costs and for redemption—*continued.*

for its sale and for the costs being added to the mortgage-debt as a charge on the property,—*Held* that the latter provision was an alternative remedy which did not deprive the decree-holder of the right which the first part of the decree gave him of executing the order for costs in the same manner as any other money-decree. ADJIN MULLAH MOODEEN *v.* CRUIKSHANK . . . **21 W. R., 299**

122. ——— Decree for costs in suit against minor.—*Liability of guardian.*—In a suit against a minor, if the Court considers that the guardian should be personally ordered to pay the costs, it should be so stated in the decree or order. Where the guardian is simply declared liable for them as the defendant in the case, the liability must be taken to refer to him as the representative of the minor and representing his estate. KOMUL CHUNDER SEN *v.* SURBESSUR DOSS GOOPTO **[21 W. R., 298**

BRIJESSUREE DOSSIA *v.* KISHORE DOSS . . **[25 W. R., 316**

123. ——— Rejection of suit in forma pauperis by guardian on behalf of minor.—*Personal liability for costs of suit.*—Where a guardian obtains permission to sue *in formâ pauperis* on behalf of a minor, the rejection of the suit supplies no ground for throwing the costs of the suit on the guardian; and where the terms of a decree do not make any such distinct order as to costs, no expression of opinion in a judgment can import any such liability for costs into the decree. BRIJESSUREE DOSSIA *v.* KISHORE DOSS . **25 W. R., 316**

(d) EJECTMENT.

124. ——— Suit for arrears of rent.—*Ejectment in default of payment.—Act X of 1859, s. 78.*—Where a plaintiff sued for arrears of rent, praying that, if they were not paid, defendant should be ejected, and the Deputy Collector gave him a decree setting forth that the prayer was a proceeding under section 78, Act X of 1859, and ordering that there should be such a proceeding to execute, the order was held to be an order for ejectment. GUNEE MAHOMED *v.* BAHADOOLLAH **[13 W. R., 240**

(e) FORFEITURE.

125. ——— Stipulation involving forfeiture.—*Penalty.—Consent decree.*—A consent decree provided that the defendant should retain possession of certain land in perpetuity on payment of a fixed annual rent to the plaintiff, but that the plaintiff might re-enter in case the defendant failed to pay the rent. The rent was not paid, and the transferee of the plaintiff's interest under the decree sued for possession. The defendant contended that the above clause in the decree was a penal stipulation

DECREE—*continued.*

2. CONSTRUCTION OF DECREE—*continued.*

(e) FORFEITURE—*continued.*

Stipulation involving forfeiture—*continued.*

which the Court would not enforce. *Held* that the doctrine of penalties was not applicable to stipulations contained in decrees, and that the plaintiff was entitled to recover. SHIREKULI TIMAPA HEGDA *v.* MAHABLYA . . **I. L. R., 10 Bom., 435**

(f) HEIR.

126. ——— Liability of heir of mortgagor from assets.—*Assets of estate.*—A decree declaring the heir of a mortgagor liable to pay the mortgage-debt out of such assets as he had received from the estate of his father (the mortgagor) was held not to include assets which came to him after passing through the hands of another heir (his brother) in right of inheritance from that brother. HAJEE ALI *v.* ALI NUKEE . **12 W. R., 240**

(g) INSTALMENTS.

127. ——— Money payable by instalments.—*Provisions for default in payment.*—A decree, of which the terms had been arranged by solehnamah between the parties, for payment of money by instalments with interest at six per cent., was construed to provide also for three contingencies, *viz.*, non-payment at due date (*a*) of the first instalment, two consecutive instalments being in arrear at the same time; (*b*) of instalments other than the first; (*c*) of the first instalment simply. Upon the occurrence of (*a*) or of (*b*), execution might issue for the whole decretal money, with interest thereon at twelve per cent. Upon the occurrence of (*c*) execution might issue for that instalment, with interest at twelve per cent. from the date of the decree. The decree-holder having accepted payment of the first instalment on the footing of (*c*),—*Held* that he had not, by any admission or settlement, precluded himself from insisting on the above construction as to (*b*). BALKISHEN DAS *v.* RUN BAHADUR SINGH **[I. L. R., 10 Calc., 305: 13 C. L. R., 418 L. R., 10 I. A., 162**

(h) INTEREST.

128. ——— Modification of decree on appeal.—*Omission to give interest.*—Where the lower Court gave a decree for R911 with interest, and the Sudder Court modified that decree by giving R1,353,—*Held* that the Sudder Court must have meant to give that sum with interest also. ROSSOOL MAHOMED *v.* BASSOO BEWA . . **8 W. R., 163**

129. ——— Decree for sum covered by bond.—*Bond providing for interest.*—Where a bond provided for the payment of interest from the date of the bond on failure of payment of the principal on a certain date, and the decree awarded "the entire sum of money covered by the bond,"—*Held* that the decree meant something more than the principal, and could only mean the principal together with the interest accruing thereon. ALEH AHMED SHAHAZADANUSHEEN *v.* BANY SINGH . **18 W. R., 277**

DECREE—*continued.*

2. CONSTRUCTION OF DECREE—*continued.*

(*h*) INTEREST—*continued.*

130. ——— Mortgage-decree directing accounts, &c., to be taken and report given. —*Tender of principal and interest before report.* —*Refusal to accept tender and subsequent charge of interest.*—A decree directed accounts to be taken of what was due for principal and interest under a mortgage, such interest to be allowed "up to the time of payment hereinafter mentioned, or until six months from the date of the decree," whichever first should happen; and further directed the plaintiff to pay what should be reported due for principal and interest up to the date of payment, and costs with interest at six per cent. from the date of taxation until payment, within six months after the Registrar should make his report. The plaintiff tendered a sum sufficient to cover the principal and interest due, but insufficient to cover costs, at a time prior to the drawing up of the Registrar's report. *Held* that the payment of principal and interest "hereinafter mentioned" referred to a time after the Registrar had made his report, because the sum to be paid was a sum reported to be due by the Registrar, and that, therefore, a tender made before the Registrar's report was given was not a sufficient tender to stop interest from the date of the tender. ADMINISTRATOR GENERAL OF BENGAL *v.* AHMED BEGG . **I. L. R., 9 Calc., 33**

(*i*) MAINTENANCE.

131. ——— Maintenance, Decree for.—*Arrears of maintenance.—Prospective decree for contingent arrears.*—Where a decree gave a certain sum per mensem to the plaintiff, and declared that the decree-holder should realise that amount monthly from the judgment-debtor,—*Held*, that the decree merely recognised and declared the decree-holder to be entitled to the certain monthly allowance, but did not authorise her in execution of the decree to claim and obtain any arrears that might at any time fall due. JULEBIA CHITTA KOER *v.* BHAGEE KOER **[6 N. W., 41**

(*j*) MESNE PROFITS.

132. ——— Mesne profits, Decree for.—*Indefinite decree.—Mesne profits after institution of suit.*—Where a plaintiff clearly asked in his claim for mesne profits subsequent to the institution of the suit, a decree in effect (though obscurely worded) for his full claim will extend to such profits. SKINNER *v.* ALDWELL . . . . . **2 N. W., 8**

133. ——— *Civil Procedure Code, 1859, ss. 196, 197.*—Where the words of a decree could be completely interpreted under section 197, Civil Procedure Code, and could only be brought under section 196 by a reference to certain words in the plaint omitted in the decree, the Court held itself bound to regard the decree as only one for the mesne profits claimed. TOONDUN SINGH *v.* POKLEE NARAIN SINGH . . . . . **20 W. R., 54**

134. ——— *Ascertainment, Date of.—Interest on mesne profits.*—A decree for interest upon mesne profits from the date on which they are ascertained was held to mean from the date they are ascertained by the Court, and not by an Ameen. DOORGA SOONDERI DEBIA *v.* SIBESSURRE DABIA **[10 W. R., 391**

DECREE—*continued.*

2. CONSTRUCTION OF DECREE—*continued.*

(*j*) MESNE PROFITS—*continued.*

Mesne profits, Decree for—*continued.*

135. ——— *Execution of decree.—Interest on mesne profits.*—A decree stated that mesne profits were to be recovered "with interest from the date of their ascertainment." *Held*, that the Court executing this decree had no authority to allow interest year by year upon the collections which ought to have been received. HURRO DURGA CHOWDHRAIN *v.* SURUT SUNDARI DEBI **[I. L. R., 8 Calc., 332**

136. ——— Decree for possession and mesne profits.—*Local enquiry.*—A decree declared the plaintiff entitled to the possession of land with wasilat from a date named, directing "the amount thereof to be ascertained on local enquiry," and to bear interest from the date of its ascertainment until payment, without saying more. *Held*, that the decree-holder was entitled to wasilat until the date of delivery of possession to him. *Semble*,—It was not necessary for the judicial officer who made the enquiry to hold a Court on the spot. FAKHARUDDIN MAHOMED AHSAN *v.* THE OFFICIAL TRUSTEE OF BENGAL . . **I. L. R., 8 Calc., 176**
10 C. L. R., 176
L. R., 8 I. A., 197

137. ——— *Liability for mesne profits.—Intervenor.*—In a suit for possession and wasilat, *N.* was originally the answering defendant; but when the suit had to be determined, *U.* intervened of her own accord, and her name was, at her own request, substituted in the decree for that of *N.* *Held* that, on the wording of the decree, *U.* was the person responsible for mesne profits and costs under the decree. UMBIKA DASSIA *v.* CHIRUNJEEL PERSHAD BOSE . . . . . **13 W. R., 81**

138. ——— Decree of Privy Council reversing decree declaratory of title.—*Mesne profits realised before reversal of decree.*—Objections having been successfully raised, under section 246, Act VIII of 1869, against a decree-holder's attachment of a tenure, as the property of his judgment-debtor, he brought a regular suit, and obtained a declaratory decree that the property belonged to his debtor. He then took out execution, attached, sold, and himself purchased the property in question. The objector in the meantime appealed to the Privy Council, and having obtained a decree reversing the declaratory decree, took out execution against the opposite party for costs and wasilat. The opposite party objected, but the Judge allowed the execution to proceed, and deputed an Ameen to ascertain the amount of mesne profits collected. *Held*, that the decree of the Privy Council could not be held to include restitution of everything that the decree-holder would have en-

DECREE—*continued.*

2. CONSTRUCTION OF DECREE—*continued.*

(*j*) MESNE PROFITS—*continued.*

Decree of Privy Council reversing decree declaratory of title—*continued.*

joyed had the property not been sold in execution. GOPAL CHUNDER CHUCKERBUTTY *v.* OODOY LALL DEY . . . . . **12 W. R., 411**

(*k*) MONEY.

139. ——— Decree for money.—*Civil Procedure Code, 1877, s. 320.—Rules prescribed by the Local Government under s. 320.—Meaning of "decrees for the recovery of money."—Held* that a decree for the sale of ancestral land, or of an interest in such land, in enforcement of an hypothecation on such land, is a decree for money within the meaning of the rules prescribed by the Local Government under section 320 of Act X of 1877. BIRCH *v.* RATI RAM . . . . . **I. L. R., 4 All., 115**

(*l*) MORTGAGE.

140. ——— Decree on bond pledging immoveable property.—*Right to execute.*—Where a decree for a bond-debt contained a clause to the effect that, if the money due was not paid, the property pledged in the bond might be sold, the clause was construed to mean that the property was liable for the debt decreed. *Held*, also, that the decree-holder could get at the property only in execution of the decree, in which case he would be in the position of any other judgment-creditor, and be bound by the provisions of the Civil Procedure Code, and the judgment-creditor would be entitled to the benefit of section 243. RAM RUCHA DASS *v.* DOORGA DUTT MISSER . . . . . **13 W. R., 453**

141. ——— ——— *Civil Procedure Code, 1877, s. 206.*—The plaintiff sued on a bond in which real property was hypothecated. In his claim the property hypothecated was detailed, and the property itself was impleaded as a defendant, and he obtained a decree in the following terms: "Decree for plaintiff in favour of his claim and costs against defendant." *Held* that the decree was to be regarded as simply for money and not for enforcement of lien. THAMMAN SINGH *v.* GANGA RAM **[I. L. R., 2 All., 342**

142. ——— Suit for money and for lien on immoveable property.—*Civil Procedure Code, 1877, s. 206.*—Where the plaintiff by his claim sought for a decree for money and enforcement of lien on the property hypothecated in the bond on which the claim was based, and he obtained a decree for the "claim as brought," without any specification in it as to the relief he sought by charging the property hypothecated,—*Held* that such a decree was a decree for money only, and did not enforce the charge on the property. *Muluk Fukeer Bukhsh* v. *Manohur Dass, 2 N. W., 79,* followed. HARSUKH *v.* MEGHRAJ . . . . . **I. L. R., 2 All., 345**

143. ——— Decree enforcing hypothecation.—*Money-decree.*—A suit on a bond in which

DECREE—*continued.*

2. CONSTRUCTION OF DECREE—*continued.*

(*l*) MORTGAGE—*continued.*

Decree enforcing hypothecation—*continued.*

immoveable property was hypothecated was adjusted by the defendant agreeing to pay the amount claimed and costs, with interest, by instalments within a fixed time, and that, in the event of default, the plaintiff should be at liberty to bring such property to sale. The Court made a decree ordering the defendant to pay the plaintiff the amount claimed and costs, with interest, "in accordance with" such agreement. *Held* (TURNER, *J.*, and OLDFIELD, *J.*, dissenting) that such decree was a mere money-decree and not one which gave the plaintiff a lien on such property. JANKI PRASAD *v.* BALDEO NARAIN . **I. L. R., 3 All., 216**

144. ——— ——— *Money-decree.*—The obligee of a bond for the payment of money, in which immoveable property was hypothecated as collateral security, sued the obligor upon such bond claiming to recover the moneys due thereunder from the obligor personally and by the sale of the hypothecated property. He obtained a decree in such suit in these terms: "That the claim of the plaintiff, with costs of the suit and future interest at eight annas per cent. per mensem, be decreed." *Held*, by the majority of the Full Bench, that such decree was not merely a money-decree, but was also one for the enforcement of a lien. *Janki Prasad* v. *Baldeo Narain, I. L. R., 3 All., 216,* distinguished by STUART, *C. J.* *Per* SPANKIE, *J.*, and STRAIGHT, *J.*—That such decree was a mere money-decree. *Muluq Fuqeer Buksh* v. *Lala Manohur Doss, 2 N. W., 79;* and *Thamman Singh* v. *Ganga Ram, I. L. R., 2 All., 342,* followed. DEBI CHARAN *v.* PIRBHU DIN RAM **[I. L. R., 3 All., 388**

145. ——— ——— *Money-decree.*—A decree was signed by the Court which made it in two places,—at the top of the first page, and at the bottom of the third page. The second signature followed these words: "Ordered that a decree be given for the plaintiff for the full amount claimed, being principal together with costs and interest at six per cent. per annum." The fourth page contained the following order: "The claim for R10,614-11-0 be decreed by enforcement of hypothecation and auction-sale of talooka M: it is further decreed that the defendants do pay the plaintiff R1,002-0-6, costs of the suit." *Per* OLDFIELD, *J.* (STUART, *C. J.*, dissenting), on the construction of such decree, that the order contained in the fourth page was part of such decree, notwithstanding that such page did not bear the Court's signature, as the Court's signature at the top of the page covered the whole document, and such decree was not a mere money-decree, but one enforcing the hypothecation of immoveable property. *Per* STUART, *C. J.*—That, construing such decree with reference to the plaint and judgment in the suit in which it was made, and not with reference to the Court's signatures, such decree was not a mere money-decree, but one enforcing the hypothecation of immoveable property. RAM PRASAD RAM *v.* RAGHUNANDAN RAM . . . **I. L. R., 3 All., 239**

DECREE—*continued.*

2. CONSTRUCTION OF DECREE—*continued.*

(*l*) MORTGAGE—*continued.*

146. ——— Decree on mortgage-bond. —*Right to execution against property of judgment-debtor other than that mortgaged.*—In a suit upon a bond under which certain lands were mortgaged, the decree ordered "that the amount claimed together with costs be caused to be paid by the defendants to the plaintiffs in this way, that the property pledged under the bond be held bound by the decree, and that the decree be realised by the sale of the pledged property," no provision being made for realisation from the other estate of the judgment-debtor in the event of the proceeds of the pledged property failing to satisfy the decree. *Held* that, under the circumstances, it must be presumed that the Court meant to limit the right of the plaintiff to recover to the mortgaged property, and to that alone, and that the judgment-creditor could not, in execution of his decree, proceed against the other estate of the judgment-debtor. SOLANO *v.* MORAN AND COMPANY . . . . . **4 C. L. R., 11**

147. ——— Mortgage-decree.—*Right of debtor to pay off mortgage-debt at once so as to avoid payment of high rate of interest.*—Where a plaintiff sued upon a mortgage, bearing interest at R2-8 per cent. per mensem, it was directed that the usual mortgage-decree should be made. *Held* that the defendant was entitled, at any time before the expiration of the usual six months ordinarily allowed by such decree, to satisfy the decree, by payment of the principal and interest. CHOTOOLALL *v.* MILLER **[7 C. L. R., 267**

See MOONZOORAD DOWLAH *v.* MEHIDI BEGUM **[7 C. L. R., 206**

(*m*) PAYMENT INTO COURT.

148. ——— Payment of money, Decree for, "in accordance with written statement."—*Interest.*—A decree for money directed that its amount should be payable "according to the terms of the judgment-debtor's written statement." In his written statement the judgment-debtor had promised to pay interest on the judgment-debt if the same were not discharged by a certain day. *Held,* having regard to the decision of the Full Bench in *Debi Charan* v. *Pirbhu Din, I. L. R., 3 All., 388,* that the judgment-debtor having failed to discharge the judgment-debt by such day, he was bound by the terms of the decree to pay interest on its amount. RAM NANDAN RAI *v.* LAL DHAR RAI **[I. L. R., 3 All., 775**

149. ——— Payment of money into Court, Decree for.—*Performance of order.*—*Departmental Rules directing all moneys to be paid into the treasury.*—*Rule No. 9, High Court Rules, and Circular No. 4, 1881, p. 37.*—*Beng. Act VIII of 1869, s. 52.*—Where a decree directs the payment of money into Court within a limited time, it is a sufficient compliance with such decree if the judgment-debtor bring the money into Court within that time, and diligently take the necessary steps required by

DECREE—*continued.*

2. CONSTRUCTION OF DECREE—*continued.*

(*m*) PAYMENT INTO COURT—*continued.*

Payment of money into Court, Decree for—*continued.*

the Departmental Rules for its actual payment into the treasury. GUJADHUR PAURKE *v.* NAIK PAURKE **[I. L. R., 8 Calc., 528**

(*n*) POSSESSION.

150. ——— Decree for possession.—*Modification on review of decree charging estate with payment of debt.*—*Conditional possession.*—The plaintiff had brought a suit to obtain possession of one third of the property of a deceased person, and on appeal to the High Court obtained a decree. After a review of its judgment, the High Court decreed that the plaintiff should hold possession of the one third share, subject however, as owner thereof, to the payment of a proportionate share of the debts of the deceased person. *Held,* that the plaintiff was not deprived of the possession which had been adjudged to him by the original decree by non-fulfilment of the terms of the decree passed on review of judgment. ALI HOSSEIN KHAN *v.* DWARKA DASS **[5 N. W., 134**

151. ——— *Imperfect decree.*—*Omission to ascertain amount of rent.*—Where the final decree upon a suit for possession declared that the defendant had a right of occupancy on payment of a proper rent, and was liable for rent from the date of suit, without defining the rate of rent,—*Held,* that the decree was imperfect and that the rent could not be ascertained in execution, and that another suit was necessary for the determination of the proper rent,—*i.e.,* to carry out the decree. KALEE NARAIN SINGH BUROOA *v.* CHUNDER NARAIN BUKSHEE **[23 W. R., 228**

152. ——— *Civil Procedure Code, 1859, s. 200.*—*Direction to enquire into value of property.*—The District Court gave a decree for certain immoveable and moveable property specified in the schedule annexed to the plaint, and made an order that the ameen was to ascertain the extent of the moveable property. In execution the Court ordered the ameen to give possession to the decree-holder of such of the said moveables as he could find, and to enquire into the nature, amount, and value of such as he could not find. *Held,* that it was not necessary to construe this order as giving in execution what had not been given in the decree,—*i.e.,* alternative damages,—but that the enquiry ordered was obviously necessary in order to guide the Court in the exercise of its discretion under Act VIII of 1859, section 200, and that the order must be assumed to have been made for lawful purposes and with a view to such further order as might seem just. BHOOBUN MOHINEE DEBIA *v.* GOBIND CHUNDER MOJOOMDAR **[19 W. R., 82**

(*o*) PRE-EMPTION.

153. ——— Decree for pre-emption.—*Payment of purchase-money.*—*Tender and deposit.*—

DECREE—*continued.*

2. CONSTRUCTION OF DECREE—*continued.*

(o) PRE-EMPTION—*continued.*

Decree for pre-emption—*continued.*

When a person obtained a decree declaring him entitled to the right of pre-emption with regard to certain lands, and ordering the payment of the purchase-money within the period of one month, and he paid the money into Court as a deposit until mutation of names had been effected,—*Held*, that although the petition with which the money was tendered asked that it might be deposited and paid to the judgment-debtor after mutation of names, yet it could not be said that the tender and deposit were saddled with a condition precluding the payment of the money before such mutation, and that the terms of the decree had been satisfied. AJOODHIA SHOOKOOL *v.* JEWBOODH SHOOKOOL . . . . 6 N. W., 46

154. ——————— *Conditional decree.—"Final" judgment and decree.*—The Court granting a decree to the plaintiff in a pre-emption suit is competent to grant the decree subject to the payment of the purchase-money within a fixed period, and if the decree-holder fails to comply with the condition imposed on him by the decree, he loses the benefit of the decree. When a direction contained in a decree referred to the time at which such decree should become *final*,—*Held*, (the case being one in which a special appeal lay), that such decree does not become final on being affirmed by the lower Appellate Court, but on the expiry of the period of special appeal, or where such an appeal was instituted when the decision of the lower Appellate Court was affirmed by the High Court. EWAZ *v.* MOKUNA BIBI [I. L. R., 1 All., 132

155. ——————— *Conditional decree.—"Finality" of decree.—Holiday.—Limitation Act, XV of 1877, s. 5.*—A decree in a suit to enforce a right of pre-emption directed that the purchase-money should be paid within a certain period from the date the decree became "final." The period of limitation prescribed for an appeal from this decree expired on a day when the Court was closed. *Held* that the decree did not become "final" before the day the Court reopened. *Ewaz* v. *Mokuna Bibi, I. L. R., 1 All., 132*, followed. RAM SAHAI *v.* GAYA [I. L. R., 7 All., 107

156. ——————— *Conditional decree.—"Final" judgment and decree.—Execution of decree.*—Where the plaintiff in a suit for pre-emption was granted a decree subject to the payment of the purchase-money within a fixed period, and failed to comply with the condition imposed on him by the decree,—*Held* that he had lost the benefit of the same. When a direction contained in a decree referred to the time at which such decree should become *final*,—*Held* that such decree became final on being affirmed by the lower Appellate Court, where, although a special appeal was preferred by the plaintiff against the decree of the lower Appellate Court, the same was subsequently allowed to be withdrawn. HINGAN KHAN *v.* GANGA PERSHAD . . I. L. R., 1 All., 293

DECREE—*continued.*

2. CONSTRUCTION OF DECREE—*continued.*

(o) PRE-EMPTION—*continued.*

Decree for pre-emption—*continued.*

157. ——————— *Execution of conditional decree.*—The decree of the original Court in a suit to enforce a right of pre-emption, dated the 18th February 1879, directed that, on the deposit of the purchase-money within one month of the date on which the decree became final, the decree-holder (plaintiff) should obtain possession of the property in suit, and that, if the decree-holder failed to make such deposit within such period, the decree should become null and void. The vendee (defendant) preferred an appeal from this decree, which the Appellate Court, on the vendee's application, struck off on the 18th September 1879. *Held* that, assuming that the order of the Appellate Court, by reason that it did not award costs to the decree-holder (respondent), might have been made the subject of a second appeal to the High Court, inasmuch as the decree of the 18th February 1879 could not have been affected by the result of such an appeal. That decree became final on the 18th September 1879, when the appeal from it was withdrawn and struck off, and not on the expiry of one month and ninety days from the date of the Appellate Court's order of the 18th September 1879. NARAIN DAS *v.* LACHMAN SINGH [I. L. R., 3 All., 135

158. ——————— *Conditional decree.—Act X of 1877 (Civil Procedure Code), s. 214.—Computation of period specified for payment of purchase-money.—Holiday.*—The decree in a suit to enforce a right of pre-emption, dated the 12th December 1879, declared that the plaintiff should obtain possession of the property on payment of the purchase-money "within thirty days," but that if such money was not so paid, the suit should stand dismissed. The period specified in the decree for the payment of the purchase-money, the day on which the decree was made not being computed, expired on the 11th January following. That day was a Sunday: the plaintiff paid the purchase-money into Court on the next day, the 12th January. *Held* that, inasmuch as the day on which the decree was made should not be taken into account in computing the period specified in the decree for the payment of the purchase-money, nor the last day of that period, that day being a Sunday, the plaintiff had complied with the condition imposed on him by the decree. *Semble*,—That if the plaintiff had actually failed to deposit the purchase-money within thirty days as directed by the decree, his suit would have been liable to be dismissed, as he could not have claimed to have such period computed from the date the decree became final. DABI DIN RAI *v.* MUHAMMAD ALI [I. L. R., 3 All., 850

3. ALTERATION OR AMENDMENT OF DECREE.

159. ——— **Power to amend decree.**—*Decree differing from judgment.*—It is a power which all Courts possess to amend their record when there

DECREE—*continued.*

3. ALTERATION OR AMENDMENT OF DECREE—*continued.*

Power to amend decree—*continued.*

is anything to amend by. Consequently, when a Judge finds that the decree varies from his judgment, he can set the decree right. TOONA *v.* KURREMUN . . . . . 6 W. R., Mis., 31

160. ——————— *Decree differing from judgment.*—Every Court has a right to correct its formal records in such a way, if needed, as will make them represent truly the decision which was intended to be judicially expressed. LUCAS *v.* STEPHEN . . . . . 9 W. R., 301

PEAREE MOHUN DUTT *v.* GOOROO DASS DUTT [20 W. R., 401

161. ——————— *Power of Court to recall order.*—Every Court has power to recall its own order on being satisfied that the order was obtained through fraud or misrepresentation or suppression of facts. SHEO PURSHUN CHOBEY *v.* COLLECTOR OF SARUN . . . . . 13 W. R., 256

HAMEEDA BIBI *v.* NOOR BIBEE . 9 W. R., 394

162. ——————— *Power of Judge to amend decree proprio motu.*—Without an application being made for review, a Judge has no power *proprio motu* to alter or amend his own judgment. PORESH NARAIN MONDUL *v.* KHETTRO MONEE DEBIA . . . . . 20 W. R., 284

163. ——————— *Confirmation of decree by High Court in appeal.*—After a decree has been confirmed by the High Court on appeal, the Subordinate Court has no power to make any alteration in it. ONRAET *v.* SANKAR DUTT SINGH [5 B. L. R., Ap., 60 : 14 W. R., 26

BHANUSHANKAR GOPALRAM *v.* RAGHUNATH RAM MANGALRAM . 2 Bom., 106 : 2nd Ed., 101

164. ——————— *Confirmation of decree by High Court on appeal.—Mistake.*—*A.* obtained a decree for costs in a suit brought by *B.* against *A.*, and the decree was confirmed on appeal to the High Court on 18th June 1869. On 13th December 1871, *A.* applied for execution of the decree, but it was found that the decree omitted to specify from whom *A.* was to obtain his costs, and it was held that no execution could be taken out under the decree. *A.* therefore applied to the Judge who passed the original decree to amend the decree, and the decree was amended on 21st August 1872 by inserting *B.* as the party who was to pay *A.'s* costs. *A.* then made a fresh application for execution, which was allowed. *Held* that the Judge had power to amend the decree, notwithstanding it had been appealed from and confirmed by the High Court, and such order was appealable. CHOWDHRY GOLUCK CHUNDER *v.* CHOWDHRY GANGA NARAIN [11 B. L. R., 368, and 11 B. L. R., 368, note

S. C. GOLUCK CHUNDER MUSSUNT *v.* GUNGA NARAIN MUSSUNT [20 W. R., 111 : 18 W. R., 111

DECREE—*continued.*

3. ALTERATION OR AMENDMENT OF DECREE—*continued.*

Power to amend decree—*continued.*

ZUHOOR HOSSEIN *v.* SYEDUN [11 B. L. R., 367, note : 11 W. R., 142

165. ——————— Court to amend decree.—*Confirmation of decree by High Court on appeal.*—Where a decree given by the first Court and affirmed by the Court of Appeal is found to need amendment with a view to its meaning being made clear, application should be made for that purpose to the lower Appellate Court, and not by way of appeal to the High Court. BUNWAREE CHAND THAKOOR *v.* MUDUN MOHUN CHUTTORAJ . 21 W. R., 41

166. ——————— *Proceedings to set aside decree.—Application for review.*—The proper course for a party desiring to set aside a decree passed against him by a competent Court, which he alleges to have been obtained by fraud, is to apply to the Court which passed the decree to review and alter it, and not to bring a suit for declaration of his right by setting aside such decree. MEWA LALL THAKUR *v.* BHUJHUN LALL . . 13 B. L. R., Ap., 11

167. ——————— *Court passing decree.*—A decree should be amended, if necessary, by the Court which passed it. BHUGGOBUTTY CHURN HALDAR *v.* NIROPUNAH DABEE. [1 W. R., Mis., 8

BANGSEERAM SHAHA *v.* JUGGERNATH SHAHA [W. R., 1864, Act X, 11

NILKOMUL ROY *v.* ROHINEE DOSSIA [13 W. R., 330

168. ——————— *Amendment made by wrong Court.*—But where the amendment was made by the Court executing it, the High Court disallowed the error as a ground of appeal, as no injustice had been done by it. BANGSEERAM SHAHA *v.* JUGGURNATH SHAHA . W. R., 1864, Act X, 11

169. ——————— *Mode of obtaining correction of error.—Review.*—Any error that may have crept into a decree can be corrected by that Court only which passed the decree. *Semble,*—Such a correction should be obtained by a review of judgment. RAO OOMRAO SINGH *v.* SUTUN LALL [1 N. W., Pt. 6, p. 77 : Ed. 1873, 168

BUNSEEDHUR *v.* KUDDEY LALL [1 N. W., Ed. 1873, 198

DWARKA PERSHAD *v.* BANKUT NURSEYA [2 N. W., 184

RAM NATH *v.* GOWHUR . . 2 W. R., 230

AKBUR ALI *v.* MULLICK MUKDOOM BUKSH [25 W. R., 63

170. ——————— *Court executing decree.*—A Court executing the decree of a superior Court has no power to alter the terms of the decree. RAO OOMRAO SINGH *v.* SUTUN LALL [1 N. W., Pt. 6, p. 77 : Ed. 1873, 168

SHEO PERSHAD *v.* SHIVA RAM . 2 N. W., 59

DECREE—*continued.*

3. ALTERATION OR AMENDMENT OF DECREE—*continued.*

Court to amend decree—*continued.*

171. ——— *Appellate Court.*—It is not competent to the Appellate Court in a matter arising in execution to add to, or alter, the decree. BECHARAM PAUL *v.* BHUGWAN CHUNDER GHOSE . . . . . 5 C. L. R., 522

172. ——— *Execution of decree.—Mode of payment of decree.*—In a case of execution of decree pending in a Munsif's Court, the Judge is not the person to sanction a proposition for a temporary alienation of the judgment-debtor's property to provide for payment of the decree, but the Court which passed the decree. Such an arrangement should provide for the whole amount payable under the decree, including interest. GOOMAN SINGH *v.* MAKHUN SINGH . . 2 N. W., 145

173. ——— **Time for amendment.**—*Clerical error in decree.*—A clerical error in the decree appealed against was ordered to be rectified at the hearing of the appeal. HIRJI JINA *v.* NARAN MULJI . . . . . I. L. R., 1 Bom., 1

174. ——— *Kistbundi.—Instalment decree.*—A kistbundi is part of, or incidental to, the decree of the Court, and cannot be altered after the decree is finally given, unless for the purpose of the correction of errors. LALL MAHOMED *v.* SHONA JOLLA GHAZEE [2 W. R., S. C. C. Ref., 3

175. ——— *Omission to award costs.—Clerical error.*—An omission to award costs cannot be considered merely as a clerical error, but must be rectified by way of review within the prescribed time. RAM SAHAY SINGH *v.* ROOKHOO SINGH . . . . . 15 W. R., 414

176. ——— *Decree awarding costs.*—A decree which contains a distinct specification of costs, whether rightly or wrongly calculated, cannot be amended in appeal. BIJOY GOBIND NAIK *v.* KALEE PROSSUNNO NAIK [16 W. R., 294

177. ——— **Decree of High Court on appeal from Recorder of Rangoon.**—*Order for execution of conveyance.*—The High Court, on appeal from a judgment of the Recorder of Rangoon, directed that an account should be taken between the parties, and that in default of payment of the amount thereby found to be due from the defendant to the plaintiff within three months, a sale of the mortgaged property should be effected. On the 18th March 1872, an order was passed by the Recorder of Rangoon, which was as follows: "By consent the property subject to the equitable mortgage to be given up to the plaintiff in satisfaction of all claims and demands against the defendant under the decree of the High Court." On the 3rd July 1872 the Recorder directed the defendant to execute within six days a conveyance of the mortgaged property to the plaintiff. On the 11th July 1872 the Recorder declared that, if the conveyance was not executed within twenty-

DECREE—*continued.*

3. ALTERATION OR AMENDMENT OF DECREE—*continued.*

Decree of High Court on appeal from Recorder of Rangoon—*continued.*

four hours by the defendant, the Court would execute it, and accordingly on the 12th July 1872 the Court executed the conveyance. *Held* that the Recorder had no power to pass the order of the 18th March 1872, and that the defendant could not be required to execute the conveyance. AZIMNULLAH MOODEEN *v.* CRUIKSHANK . . . 11 B. L. R., 67

178. ——— **Decree of predecessor.**—*Amendment of clerical error.*—Where a Judge finds that a decree passed by his predecessor contains something or bears a construction evidently not contemplated by the judgment of that Judge, he is quite competent to alter the decree so as to bring it into conformity with the judgment. The limitation for reviews does not apply to an application for alteration of a clerical error in a decree. MODOOSUDUN GHOSE *v.* ROMANATH GHOSE . . . 12 W. R., 65

179. ——— **Modification of decree in execution.**—*Power of Court to make alteration in directions.*—Where a decree, which has been passed on a mortgage bond, is to the effect that the decree-holder is entitled to have his lien satisfied by the sale of the rights and interests of the judgment-debtor in all the properties hypothecated, the High Court cannot modify its terms and direct the Court which is charged with the execution to sell first the judgment-debtor's rights and interests in one portion of the properties pledged, and then, if the proceeds are not sufficient, to proceed against the remaining portion. DEBEE DOSS *v.* LULLIT MOHUN SHAH CHOWDHRY [23 W. R., 195

180. ——— **Mode of amendment.**—*Notice to parties.—Presence of parties.*—A decree should not be amended except in the presence of the parties concerned, or after service of notice on them to attend. KISHEN DYAL SINGH *v.* SUNKAR DUTT [2 W. R., Mis., 15

BULORAM DOSS *v.* JOGENDRO NATH MULLICK [19 W. R., 349

181. ——— *Absence of party.—Recall of ex parte decree.*—If a Judge makes an *ex parte* order, unless in cases in which he is expressly empowered to make such an order, the party who has not been heard has a right to apply to the Judge to set it aside; and if the Judge finds that such order was wrong he is at liberty, on hearing both parties, to recall it. SHEO PROSUNNO SINGH *v.* BULDHAREE LALL . . . 13 W. R., 232

182. ——— *Evidence to amend uncertainty in decree.*—In the execution of a decree for the possession of land, if it is found that the boundaries described in the plaint are no longer in existence, it is allowable to take the evidence of witnesses to ascertain their former position. KALEE DABEE *v.* MUDOO SOODUN CHOWDHRY [16 W. R., 171

DECREE—*continued.*

3. ALTERATION OR AMENDMENT OF DECREE—*continued.*

Mode of amendment—*continued.*

183. ——— *Evidence to amend uncertainty in decree.—Execution.*—Where a decree is so uncertain that it is impossible to ascertain what is decreed, a plaintiff cannot be put into possession of any other thing by execution than that which the decree describes. Evidence cannot be given in the execution department to amend any uncertainty in the decree. The law allows certain matters to be ascertained in execution, but beyond those it is the duty of the Judge to take care that his decree is so precise that it is capable of execution without leaving it to the Court of execution to decide what the Judge intended to decree. The necessity of certainty in decrees discussed. DWARKANATH HALDAR *v.* KAMALA KANTH HALDAR

[3 B. L. R., Ap., 128: S. C. 12 W. R., 99

184. ——— *Decree for maintenance.—Charge on estate.—Necessity to alter amount of maintenance.*—A decree against the proprietor of an estate for a monthly maintenance, so long as it remains, creates a debt payable out of the estate and liable to be met out of any portion passing to the son. If new circumstances arise requiring that the original allowance ought not to be continued, the proper course would be to apply for a review to the Court which made the decree. The propriety of the sum allowed cannot be questioned in execution. RAM KULLEE KOER *v.* COURT OF WARDS

[18 W. R., 474

185. ——— *Alteration of decree by subsequent agreement.*—Petitioner, a decree-holder, attached the defendant's property in execution. Subsequently to the attachment, petitioner's vakeel presented a razinama petition to the Court on behalf of his client, praying that the attachment might be removed and execution stayed. An order was made granting the petition and allowing the decreed amount to be paid by instalments. Some months afterwards, the petitioner, charging that the vakeel had presented the former petition fraudulently and without authority, applied to have his decree executed. The Civil Judge refused to alter the former order, or to notice petitioner's allegations against his vakeel. On appeal, the High Court directed the Judge to investigate these allegations. The Civil Judge found that the vakeel was authorised to present the petition, and that his conduct was not fraudulent. *Held* that such a petition as that presented by the vakeel, even if within the scope of his duty, should not be permitted to alter the terms of a final decree. VENKATARAMMANNA *v.* CHAVELA ATCHIYAMMA

[6 Mad., 127

186. ——— *Mistake in decree.—Discovery of mistake on appeal.*—A compromise set up by the defendants in the present suit having been rejected, a decree was given to the plaintiff for the sum of R62,913, awarded in the original suit. That decree was upheld on appeal; but as it was alleged that on the facts stated in the plaint in the original suit the plaintiff's mother's share of the dower was an eighth, and not a third, the Privy Council held that plaintiff ought not to benefit by that mistake, if it was a mistake; and they accordingly left it to the lower Court to enquire into that point, and to let execution go for the eighth or the third share, according as the fact might turn out. ABDOOL ALI *v.* MOZUFFUR HOSSEIN CHOWDHRY . 16 W. R., P. C., 22

187. ——— *Irregular alteration of order in favour of Government.*—A pauper suit for possession was decreed with mesne profits to be ascertained in execution, costs being also awarded, including the value of stamps due to Government, which was to be paid by plaintiff and defendant in shares proportionate to their ultimate success when the amount of wasilat should be ascertained. As the parties did not choose to go into the enquiry as to mesne profits, the Court on a motion by Government called upon the parties to appear, and on their refusing to do so, altered its original order with respect to the payment of the stamp duty, and declared that it should be realised from both the parties jointly. *Held* that the Court had no authority to make the second order in favour of Government, and that the proceedings taken in execution thereof were without legal foundation. SHOSTEE CHURN ROY *v.* COLLECTOR OF CHITTAGONG . . . 13 W. R., 155

188. ——— **Decree of Special Commissioners under Act IX of 1859.**—*Revision of, by Government.—Held* that a decree of the Court of Special Commission under Act IX of 1859, though adjudging a right to the plaintiff other than that sued for, cannot for this reason be treated as a nullity, and as one conferring no right; that the appropriation in satisfaction of the decree once made, a proprietary right in the assigned villages would arise in the plaintiff under the decree, of which she could not afterwards be lawfully deprived on any such allegation as that of incorrect valuation, the Government under the circumstances having no power of revision. KHANZADEE *v.* COLLECTOR OF BOOLUNDSHUHUR

[1 Agra, 57

189. ——— **Application to amend by person not party to the suit.**—*Application by Government to protect revenue.—Omission to specify costs in decree in pauper suit.—A.* instituted a suit *in formâ pauperis* against *B.* to which the Government was not a party. The claim was decreed in the Court of first instance, but this decision was reversed by the High Court in regular appeal and the plaintiff's suit dismissed. The decree of the High Court did not contain any order as to the payment of the stamp fees, and the Government applied to have the decree amended in that respect. *Held* that the application must be refused on the ground that the Government, not being a party to the suit, had no right to be heard in the matter. IN THE MATTER OF THE PETITION OF SECRETARY OF STATE FOR INDIA IN COUNCIL

[2 C. L. R., 461

DECREE—*continued.*

3. ALTERATION OR AMENDMENT OF DECREE—*continued.*

190. ——— Civil Procedure Code, 1882, s. 206.—*Jurisdiction of Court to amend its decree after appeal.*—Under section 206 of the Code of Civil Procedure a Court has power to amend its decree by bringing it into conformity with the judgment after the said decree has been confirmed on appeal. SUNDARA *v.* SUBBANNA [I. L. R., 9 Mad., 354

191. ——— *Decree in accordance with judgment.—Notice to parties.*—The Court in a suit upon a bond gave the plaintiff a decree, making a deduction from the amount claimed of a sum covered by a receipt produced by the defendant as evidence of part payment, and admitted to be genuine by the plaintiff. The decree was for a total amount of R1,282. Subsequently, on application by the decree-holder, and without giving notice to the judgment-debtor, the Court which passed the decree, purporting to act under section 206 of the Civil Procedure Code, altered the decree and made it for a sum of R1,460. The decree-holder took out execution, and the judgment-debtor objected that the decree was for R1,282 and had been improperly altered. The Court executing the decree disallowed the objection, on the ground that it was not such as could be entertained in the execution department. *Held*, that the decree as it originally stood was in accordance with the judgment, and the Court had no power to alter it as it did; and the proceeding was further irregular, in that no notice was given to the opposite party, as required by section 206 of the Code. ABDUL HAYAI KHAN *v.* CHUNIA KUAR . . . I. L. R., 8 All., 377

192. ——— Observations by MAHMOOD, *J.*, on the amendment of decrees and section 206 of the Civil Procedure Code. TARSI RAM *v.* MAN SINGH . . . I. L. R., 8 All., 492

193. ——— *Suit for possession of immoveable property.—List of properties sued for appended to plaint.—Omission to specify in decree properties decreed.*—The plaintiff in a suit claimed possession of villages said in the plaint to be "detailed below." No details of the villages were given in the plaint itself, but a separate paper containing a list of villages was filed with the plaint. The plaintiff obtained a decree for possession of "all the villages claimed," but there was no indication in the decree what those villages were. *Held*, that the Court executing the decree was not justified in reading the contents of the list of villages attached to the plaint into the decree, and awarding the decree-holder possession of the villages named in such list. S. A. No. 310 of 1882, decided on 11th August 1882, followed. *Debi Charan* v. *Pirbhu Din Ram, I. L. R., 3 All., 388*, referred to. MUHAMMAD SULAIMAN *v.* MUHAMMAD YAR . . . . I. L. R., 6 All., 30

194. ——— *Amendment of decree.—Judgment awarding interest for period prior to suit.—Decree directing interest to be paid from date of suit.*—The judgment in an appeal adjudged interest to be paid for the period prior to the institution of the suit only. The decree contained an order for payment of interest from the date of the suit onwards. *Held* that no variance with the judgment, within the meaning of section 206 of the Civil Procedure Code, was involved in the additional order contained in the decree. KOLAI RAM *v.* PALI RAM [I. L. R., 7 All., 755

DECREE—*continued.*

3. ALTERATION OR AMENDMENT OF DECREE—*continued.*

Civil Procedure Code, 1882, s. 206—*continued.*

195. ——— *Order amending decree.*—A District Judge, by an order passed under section 206 of the Civil Procedure Code, altered a decree passed by his predecessor in the terms, "I dismiss the appeal," to read "I accept the appeal," on the ground that his predecessor had obviously meant to say he accepted the appeal, and that the decree as it stood failed to give effect to the judgment. *Held*, on appeal under the Letters Patent, that an order passed under section 206 of the Civil Procedure Code constituted an adjudication separate from that concluded by a decree under the Code passed after the parties had been heard and evidence taken, and that the order in the present case was therefore a separate adjudication, and was not appealable under section 588. Also that, in saying that by "dismiss" his predecessor had meant "decree," the Judge had altered the decree in a manner not warranted by the terms of section 206, that he had therefore exercised his jurisdiction "illegally and with material irregularity" within the meaning of section 622 of the Code, and that the High Court was consequently competent to reverse his order. SURTA *v.* GANGA [I. L. R., 7 All., 875

Reversing judgment of OLDFIELD, *J.* (differing from MAHMOOD, *J.*), in SURTA *v.* GANGA [I. L. R., 7 All., 412

196. ——— Order for payment by instalments.—*Civil Procedure Code, 1859, s. 194.—Interest.—Discretion of Court.*—The discretion vested in Courts by section 194 of Act VIII of 1859 should not be exercised without sufficient reason. MOHESSUR BUKSH SINGH *v.* THUBBOO CHOWDHRY [2 Hay, 68

197. ——— *Civil Procedure Code, 1859, s. 194.*—It should not be applied to an action for money due on an instalment bond the terms of which had been broken. LUCHMENAUTH DOOGUR *v.* HARADHUN MOOKERJEE . . 2 Hay, 95

198. ——— *Civil Procedure Code, 1859, s. 194.—Held* that, when the not ordering the amount of the decree to be paid by instalments has arisen from any error or omission, or it is otherwise requisite for the ends of justice, the Court which passed the decree has power to review it, and to make an order for payment by instalments. Otherwise the Court has no power to make such an order subsequent to the decree, without the consent of the judgment-creditor. RAVICHAND DALICHAND *v.* MOTILAL NARBHERAM . 4 Bom., A. C., 77

DECREE—*continued.*

3. ALTERATION OR AMENDMENT OF DECREE—*continued.*

Order for payment by instalments—*continued.*

199. ——— *Civil Procedure Code, 1859, s. 194 (1877, s. 210).—Quære,*—Whether "a decree for the payment of money" means merely what is commonly known as a money-decree, or includes a decree in which a sale is ordered of immoveable property in pursuance of a contract specifically affecting such property, within the meaning of section 194 of Act VIII of 1859, and section 210 of Act X of 1877. Where a Court, on the ground that the defendant was "hard pressed," directed the amount of a decree to be paid by instalments extending over ten years, and allowed only one half of the usual rate of interest,—*Held* that there was no "sufficient reason" for directing payment of the amount of the decree by instalments, and that such Court had exercised its discretion injuriously to the plaintiff by the length of the period over which instalments were extended, and by allowing a rate of interest less than the ordinary rate. BINDA PRASAD *v.* MADHO PRASAD . . **I. L. R., 2 All., 129**

200. ——— *Civil Procedure Code, 1877, s. 210.—Held,* that the provisions of section 210 of Act X of 1877 are not applicable in a suit for the recovery of the amount of a bond-debt by the sale of the property hypothecated by such bond. In such a suit, therefore, the Court cannot direct that the amount of the decree shall be payable by instalments. HARDEO DAS *v.* HUKAM SINGH **[I. L. R., 2 All., 320**

101. ——— *Civil Procedure Code, 1877, s. 210.—Decree for money.*—There is nothing in section 210 of Act X of 1877, or elsewhere in that Act, authorising a Court to direct that the amount of a decree should be paid within a fixed time from its date. *Semble,*—That the provisions of section 210 of Act X of 1877 are not applicable in a suit for the recovery of the amount of a bond-debt by the sale of the "nankar" allowance hypothecated by such bond. BACHCHU *v.* MADAD ALI **[I. L. R., 2 All., 649**

See TATA CHARLU *v.* KONADULA RAMACHANDRA REDDI . . . **I. L. R., 7 Mad., 152**

102. ——— *Civil Procedure Code, Act XIV of 1882, s. 210, Decree under.—Right to execution.*—On the 23rd February 1878, an application was made for execution of a decree, dated the 3rd December 1877, in which the decree-holder stated that the judgment-debtor had agreed to pay the balance then due on the 13th August 1878. The application was then struck off on the 26th June 1878. On the 30th June 1881 the decree-holder again applied for execution, and on the 11th July 1881 the judgment-debtor, with the consent of the decree-holder, applied for time to pay the balance due till the 8th September 1881, and that application was also struck off. On the 1st March 1883 the decree-holder again applied for execution. *Held* that the application by the judgment-debtor made on the 11th July 1881, alleging that he had come to an arrangement with the decree-holder for the payment of the amount due by instalments, having resulted in its being registered and the proceedings struck off, amounted to a direction that the decretal amount be paid by instalments as stipulated in the petitions; and that this being so, there was a decree passed on that date under the provisions of the second paragraph of section 210 of the Code of Civil Procedure, of which the decree-holder was entitled to have execution. JHOTI SAHU *v.* BHUGUN GIR **[I. L. R., 11 Calc., 143**

4. EFFECT OF DECREE.

203. ——— **Decree made with jurisdiction.**—*Estoppel.*—A decree made with jurisdiction, until it is set aside, is, as between the parties to it, conclusive both as to the rights of those parties and the character in which they sue. BHAWABAL SINGH *v.* RAJENDRA PRATAP SAHOY **[5 B. L. R., 321: 13 W. R., 157**

204. ——— *Illegal decree.—Void decree.*—Where a Court has jurisdiction over the subject-matter of a suit, its judgment or decree, even though irregular or illegal, cannot be said to be null and void. PHOOL KOORE *v.* SHEOBURUN SINGH . . . . . **12 W. R., 489**

205. ——— **Decree made without jurisdiction.**—A decree made without jurisdiction is of no effect in creating any charge on immoveable property. LUCHMEENATH SINGH *v.* MADHO DASS SAHOO . . . . . **2 N. W., 70**

206. ——— **Effect of a decree obtained by an attaching creditor in a suit against successful intervenors or claimants.**—*Civil Procedure Code (Act VIII of 1859), ss. 240, 270, 271.*—In 1872 the plaintiff obtained a money-decree against two brothers, *P.* and *K.* In execution of that decree he attached their one-half share in certain fields in 1874. The attachment was removed at the instance of two claimants, *S.* and *B.* In 1875 the plaintiff sued the claimants, and obtained a decree in his favour in 1878. Meanwhile, in December 1874, after the plaintiff's attachment had been removed, one *V.* obtained a decree against one of the brothers, *P.* In 1876, while the plaintiff's suit against *S.* and *B.* was pending, *P.'s* right, title, and interest in the one-half share of the fields belonging to himself and *K.* was sold in execution of *V.'s* decree and purchased by the defendant. In 1881 the plaintiff again attached the one-half share belonging to the two brothers under his decree of 1872. Thereupon the defendant, relying on his purchase of 1876, applied for the removal of the attachment. It was removed from *P.'s* one-fourth share and maintained on *K.'s* share, which was in due course sold. The plaintiff now sued to establish his right to sell *P.'s* on-

DECREE—*continued.*

4. EFFECT OF DECREE—*continued.*

Effect of a decree obtained by an attaching creditor in a suit against successful intervenors or claimants—*continued.*

fourth share under his decree of 1872. *Held*, also, that though the effect of the decree obtained by the plaintiff in his suit against the claimants, *S.* and *B.*, was to efface entirely their obstruction to his attachment of 1874, to reinstate that attachment as in full force *ab initio*, and to restore the state of things that had been disturbed by the order of release, yet the plaintiff could not succeed in the present suit, as the sale to defendant under *V.'s* decree was perfectly valid, and *P.'s* property having been sold under that decree, could not be sold again under the plaintiff's decree. The rights of rival decree-holders taking out execution against the same judgment-debtor considered. LALU MULJI THAKAR *v.* KASHIBAI
[I. L. R., 10 Bom., 400

207. ——— **Effect of setting aside a decree on the ground of fraud and collusion.**—*A.* filed a suit against *B.* in which a consent decree was passed. This decree was set aside in a subsequent suit brought by *B.*, on the ground that it had been obtained by fraud and collusion between *A.* and *B.'s* agent, who had no authority to consent. Thereupon *A.* applied to have his suit restored to the file and re-heard on the merits, contending that the decree having been set aside, the suit remained undecided. *Held*, refusing the application, that *A.'s* decree, though set aside, was not reversed. The decree obtained by *B.* left *A.'s* decree legally complete, and amounted only to a declaration that the decree obtained by *A.* "should avail nothing for or against the parties to *B.'s* suit who were affected by it." BHIMAJI GOVIND *v.* RAKMABAI
[I. L. R., 10 Bom., 338

5. REVIVAL OF DECREE.

208. ——— **Jurisdiction to revive decree.**—In a suit for recovery of a sum of money expended towards improvement of a joint property, the Court passed a decree that, if the defendant would contribute towards payment of the expenses for the improvement, he would be entitled to a proportionate share of the profits. No steps were taken by the plaintiff from 1863 to revive the decree; but on the application of the defendant tendering the amount due from him, and praying to be put in possession, the lower Courts restored the decree, and passed an order in his favour. *Held* that the lower Courts had no jurisdiction to revive a decree at the instance of the judgment-debtor. NILAMBAR SEN *v.* KALI KISHOR SEN
[3 B. L. R., Ap., 94 : 12 W. R., 28

DECREE-HOLDER, MEANING OF—

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWERS OF COURT.
[I. L. R., 2 Mad., 216

DECREE-HOLDER, ARRANGEMENT BETWEEN DECREE-HOLDER AND ONE OF SEVERAL JUDGMENT-DEBTORS.

See DEBTOR AND CREDITOR.
[3 B. L. R., A. C., 357

DECREE-HOLDER, LIABILITY OF, WHERE PROPERTY IS WRONGLY SEIZED.

See SALE IN EXECUTION OF DECREE—WRONGFUL SALES.
[5 B. L. R., Ap., 71, 73, note
3 B. L. R., A. C., 413
5 N. W., 211
7 W. R., 355

DECREE-HOLDER, PURCHASE BY—

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY—GENERAL CASES.
[3 B. L. R., A. C., 320
6 B. L. R., Ap., 37
I. L. R., 5 Calc., 308
I. L. R., 7 Calc., 346
I. L. R., 5 Bom., 575
I. L. R., 11 Calc., 731
I. L. R., 10 Calc., 757

DEDUCTION OF TIME SUIT IS BEING PROSECUTED IN COURT WITHOUT JURISDICTION.

See CASES UNDER LIMITATION ACT, 1877, s. 14 (1871, s. 15 : 1859, s. 14).

DEDUCTION OF TIME ANOTHER SUIT WAS PENDING—

See BENGAL RENT ACT, 1869, s. 29.
[I. L. R., 3 Calc., 791

See CASES UNDER LIMITATION ACT, 1877, s. 14 (1871, s. 15 : 1859, s. 14).

DEED. Col.

1. EXECUTION 1499
2. ATTESTATION 1499
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——— **Construction of—**

See COMPROMISE—CONSTRUCTION, ENFORCING, EFFECT OF, AND SETTING ASIDE COMPROMISE . I. L. R., 8 Calc., 576

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——— **executed to defeat claims of third persons.**

See ESTOPPEL—ESTOPPEL BY DEEDS AND OTHER DOCUMENTS.
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DEED—*continued.*

——— Execution of—

See ESTOPPEL—ESTOPPEL BY CONDUCT. [4 B. L. R., P. C., 16

See EVIDENCE—PAROL EVIDENCE—TO VARY OR CONTRADICT TERMS OF WRITTEN INSTRUMENTS. [1 B. L. R., O. C., 28, 31, note B. L. R., Sup. Vol., 383, 399

See EVIDENCE ACT, SS. 60 AND 67. [12 B. L. R., Ap., 18

——— Execution of, obtained by misrepresentation.

See CONTRACT—ALTERATION OF CONTRACTS—ALTERATION BY THE COURT. [I. L. R., 3 Bom., 242 13 B. L. R., Ap., 34

——— Suit to set aside—

See CONSIDERATION. [I. L. R., 3 Calc., 192

See DECLARATORY DECREE, SUIT FOR—SUITS CONCERNING DOCUMENTS.

See CASES UNDER DECREE—FORM OF DECREE—DEEDS, SUITS TO SET ASIDE.

See DURESS . 7 B. L. R., P. C., 630

See CASES UNDER LIMITATION ACT, 1877, ARTS. 91, 92, 93 (1871, ARTS. 92, 93).

1. EXECUTION.

1. ——— Completion of deed of sale.—*Delay in delivery.*—A deed of sale is complete on the day when it is signed and attested by the Cazee, and consideration is paid for it. Delay in the delivery of the deed does not invalidate it. BHIKUN SINGH *v.* JUMEELA KOONWAR . W. R., 1864, 62

2. ATTESTATION.

2. ——— Attesting witness unable to write.—*Name written or mark added by another person.*—Where an attesting witness is unable to write, and either makes a mark or has his name written for him in a deed, the style of execution of the attestation cannot invalidate the deed. AGUM MISRA *v.* PULLUKDHAREE MISRA . W. R., 1864, 187

3. ——— Effect of deed on witness attesting it.—*Estoppel.*—The attesting of a deed of conveyance of property made with full knowledge of the contents of the deed and of the object of the signature may convey the right of the person signing. SURIATOOLLAH *v.* DASEE BIBEE. [1 W. R., 66

4. ——— *Reversioner.—Consent.*—A reversioner attesting a conveyance by Hindu widow cannot impeach the sale on the ground of waste by such alienation. GOPAUL CHUNDER MANNA *v.* GOURMONEE DOSSEE . . . 6 W. R., 52

DEED—*continued.*

2. ATTESTATION—*continued.*

Effect of deed on witness attesting it—*continued.*

5. ——— *Evidence of assent to deed.*—Where a person executes a deed as witness with full knowledge of its contents, such execution may be taken to be evidence of his assent to the statements contained in the deed. NOORUM *v.* KHODA BUKSH . . . . . 1 Agra, 50

MATADEEN ROY *v.* MUSSOODUN SINGH [10 W. R., 293

6. ——— *Suit for possession.—Estoppel.*—In a suit for possession, the fact of plaintiff having been a subscribing witness to a pottah which is set up by the defendant is not conclusive against the former. HOSSEINEE KHANUM *v* TIJUN LALL . . . . . 14 W. R., 293

7. ——— Necessity of attestation.—*Maurasi pottah.*—Documents of the description of a maurasi pottah are not required by law to be attested. GRISH CHUNDER ROY *v.* BHUGWAN CHUNDER ROY . . . . . 13 W. R., 191

3. CONSTRUCTION.

8. ——— Intention of parties.—*Rights at time of execution.*—In construing a document the situation of the parties and their rights at the time of the execution must be looked at. DINO NATH MUKERJEE *v.* GOPAL CHUNDER MOOKERJEE [8 C. L. R., 57

9. ——— *Evidence of intention.*—The intentions of parties in deeds must be taken from the words they use, where those words are plain. RADHA JEEBUN MOSTOOFEE *v.* BISSESSUR MOSTOOFEE . . . 2 Hay, 178

10. ——— In construing deeds, where their terms are doubtful, it should be ascertained in what manner the terms of the deed were understood and acted upon by the parties during the years immediately succeeding the grant. SHUNKER LALL *v.* POORUN MULL . 2 Agra, 150

11. ——— Native documents.—*Mode of construing.*—Native deeds and contracts ought to be construed liberally, regard being had to the real meaning of the parties, rather than to the form of expression. In this view a person was held to be a manager, who was in a deed inaccurately and erroneously described as a proprietor or heir. HUNOOMAN PERSHAD PANDEY *v.* BABOOEE MUNDRAJ KOONWEREE [6 Moore's I. A., 393: 18 W. R., 81, note

12. ——— Deed of sale.—*Evidence of price of land.*—In construing a deed of sale where the terms are ambiguous, the conduct of the parties immediately after, and acting upon the deed, is very important, such conduct being sometimes (as in this instance) the only means by which the Court can know how the price of land was fixed. CHEETUN LALL *v.* CHUTTERDHAREE LALL 19 W. R., 432

DEED—*continued.*

3. CONSTRUCTION—*continued.*

13. ——— **Use of general words in document.**—*Limit on implication.—Per* MAHMOOD, *J.*—When general words are used in a document, they must be understood in a general sense, unless they are accompanied by any expression limiting or restricting their ordinary meaning, or unless such limitation or restriction arises from necessary implication. SHEORATAN KUAR *v.* MAHIPAL KUAR [I. L. R., 7 All., 258

14. ——— **Circumstances attending execution.**—*Conduct of parties after execution.*—If, in order properly to apply and understand the provisions of a deed, it be necessary to enquire into the circumstances under which it was executed, a Court may rightly make such enquiry. The conduct of the parties after the making of an instrument affords a clue to their intentions in regard to its effect only where they are voluntary actors in the execution of the conveyance, not where it is made against their will by coercion of a Civil Court. LOOTF ALI *v.* BUDROOL HUQ . 21 W. R., 119

15. ——— **Construction irreconcileable with other documents.**—If a particular construction of a part of a document renders a contract evidenced by it inoperative, and another construction renders it operative and is reconcileable with other portions of the document, the first should give way to the second. DHERAJ MAHTAB CHAND BAHADOOR *v.* HURDEO NARAIN SAHOO . 16 W. R., 119

16. ——— **"Sontan."**—*"Issue."—Male issue.*—The word "sontan" occurring in a deed of agreement between co-sharers, members of a Hindu family, was construed to mean issue generally and not male issue merely. KRISTO KISHORE BHUTTACHARJEE *v.* SEETAMONEE BHUTTACHARJEE [7 W. R., 320

17. ——— **Absolute conveyance.**—*Property in possession and expectancy.*—When several persons join in a conveyance and convey "the whole and entire property absolutely," they must be taken to have exercised every power which they possess, and to have parted with their whole interest, whether in possession or expectation. . KISHEN GEER *v.* BUSGHET ROY . . . . 14 W. R., 379

18. ——— **Covenants as to title and quiet possession.**—*Protection against dispossession.*—In a kobala by which certain landed property was conveyed, the vendor bound herself in the following terms: "If any one objects to my sale and gives you any sort of trouble, I will arrange it, and if I fail to do so, I will restore the purchase-money, in default you may realise it by an action." *Held* that it was intended to provide not only against defect in the power of the vendor as a Hindu widow, but against any disturbance of the purchaser, and to protect him against dispossession. BISSESSUREE DEBIA *v.* GOBIND PERSHAD TEWAREE . 21 W. R., 398

Varied on appeal by decision of Privy Council by making more parties liable under the decree. BISSESSURI DEBYA *v.* GOBIND PRASAD TEWARI [L. R., 3 I. A., 194: 26 W. R., 32

DEED—*continued.*

3. CONSTRUCTION—*continued.*

19. ——— **Interest passing to purchaser.**—*Deed of sale.*—It was held that the words "the arrears of past years due by asamis" in a deed of sale did not pass to the purchasers decrees for arrears of rent held by the vendors. BALAM DAS *v.* DWARKA DAS . . . . 7 N. W., 88

20. ——— **Ikrarnamah, Construction of.**—*Rent charge.*—The defendants' ancestor granted to *A.* and *B.* an ikrarnamah in the following terms: "In consideration of R4,952 due by me to you, and in lieu thereof, I do hereby grant and alienate to *A.* and *B.* out of the whole and entire profits of my proper share in mouzah X the sum of R600 per annum, in equal proportion, free from all incumbrances, and constitute them part owners thereof. The said *A.* and *B.* shall be at liberty to make joint collection with me, and to receive and enjoy in perpetuity R600; or upon division and partition of as much land as may yield to them R600, to make separate collection as from their own property. If in any way by sale, &c., the said mouzah shall cease to be my property, I agree to set apart, upon partition and division for *A.* and *B.*, as much land as may yield R600 in another of the mouzahs owned by me exclusively, and to that also the same conditions as above shall be applicable." *A.* applied to have his name registered as owner of a share in the mouzah sufficient to yield an income of R300 per annum. *Held* that, under the ikrarnamah, *A.* had only a rent charge on the property. MAHOMED ZAHUR ALUM *v.* CHUNDER CUMAR . [5 C. L. R., 449

21. ——— **Maxim, Expressio unius est exclusio alterius.**—*Mistake in deed.—Suit to reform deed.*—The plaintiff sold to the defendant a field containing a well; tax was payable to Government on the field as well as a tax on the well. The deed of sale expressly provided for the payment of the tax on the field by the defendant, but was silent as to the tax on the well. Government recovered the amount of the tax on the well from the plaintiff for 1871, as the well stood entered in the Government books in the plaintiff's name. The plaintiff sued to recover the amount from the defendant. *Held* that, under the deed of sale, the defendant was not liable to reimburse the plaintiff the amount paid by him to Government. *Held* also that, if the omission in the deed of sale to provide for the payment of the tax on the well by the defendant should have arisen from a mistake, his only remedy was a suit for reforming the deed so as to make it in accord with the actual agreement between the parties at the time of the sale. Amount and value of proof required of the plaintiff in such a suit pointed out. GULABHAI MONDAR *v.* DAYABHAI GOVARDHANDAS [10 Bom., 51

22. ——— **Mistake in boundaries in deed.**—*Intention of parties.*—Where by mistake a part only of the premises intended to be mortgaged is described in the deed, and would alone pass under a bill of sale in execution to the auction-purchaser,—*Held* that the Court ought to interfere for the rectification

DEED—*continued.*

3. CONSTRUCTION—*continued.*

Mistake in boundaries in deed—*continued.*

of the instrument, and that, regard being had to the intention and subsequent dealings of the agreeing parties, it ought to be construed as if it had *expressly* and *fully* mortgaged and conveyed the entire premises in question. PUDDOMONEE DOSSEE *v.* DWARKANATH BISWAS .. . **25 W. R., 335**

4. PROOF OF GENUINENESS.

23. ——— Mode of proof.—*Evidence as to similarity of handwriting.*—When it becomes necessary to establish the genuineness of a writing, the testimony of the writer or of some person who saw the paper or signature written is not, as a matter of law, the only mode of proof. Evidence as to the similarity of handwriting is just as good in point of admissibility as the testimony of the subscribing witnesses. GRISH CHUNDER ROY *v.* BHUGWAN CHUNDER ROY . **13 W. R., 191**

24. ——— Suspicion.—*Unregistered deeds.*—Deeds though unregistered (registration not being compulsory), when proved by all the attesting witnesses, and against which there is no evidence on the other side, ought not to be set aside on mere suspicion of perjury and forgery. KALI CHANDRA CHOWDRY *v.* SHIB CHANDRA BHADURI **[6 B. L. R., 501: 15 W. R., P. C., 12**

See BHUGWAN DOSS *v.* HUNNOOMAN PERSHAD SAHOO . . . . **18 W. R., 184**

25. ——— Inadequacy of consideration.—*Evidence of want of genuineness in deed.*—*Party wanting deed said to be executed by him declared a forgery.*—Where a deed has been proved and attested in due form, a Court is not justified, without any evidence of its fabrication, in finding from such circumstances as inadequacy of the consideration-money that the deed has been fabricated. Where a person asks to have a deed which is said to have been executed by him declared to be a forgery, he ought to present himself for examination.—WISE *v.* RADHA GOBIND SHAHA . **20 W. R., 181**

26. ——— Attestation by Registrar and proof by witnesses.—*Evidence of genuineness.*—A finding by a Court that a mortgage-deed has been attested by the Registrar of Deeds and proved by witnesses, is a sufficiently distinct finding on the *bona fides* of the deed. MOORUL SINGH *v.* MOHUN KOOER . . . . . **9 W. R., 167**

27. ——— Registration of deed.—*Proof of genuineness.*—Registration of a deed does not affect the question of *bona fides*, nor is a conveyance to be considered *bona fide* simply because there is proof of its execution and some statement that money was on the occasion actually paid by the vendee into the hands of the vendor in the presence of witnesses unacquainted with the circumstances of the parties and the relation they bear to each other. BHOOBUN CHUNDER BURRAL *v.* NAGOREE DOSSIA **[15 W. R., 15**

DEED—*continued.*

4. PROOF OF GENUINENESS—*continued.*

Registration of deed—*continued.*

MUTHOOROOLLAH *v.* TORABOODDEEN **[15 W. R., 305**

28. ——— *Kabuliat.*—*Primâ facie proof of genuineness.*—A Subordinate Judge having set aside the decision of a Munsif on the ground, *inter alia*, that it was improbable that the defendant would have executed a kabuliat in which his rent was suddenly raised to about three times the rate at which he had formerly paid, the Munsif's order was restored on the ground that the registration of the kabuliat with all the due formalities was *primâ facie* proof of the truth of its contents, and that, as this proof was not rebutted by defendant, the Munsif had been right in acting on it. NITTYANUND KUR *v.* RAJ BULLUBH ADYA **[25 W. R., 267**

29. ——— *Proof of execution of.*—Although the Court can assume from the certificate of the Registrar that certain persons appeared before him, and that, after satisfying him that they were the persons they represented themselves to be, they admitted execution of a deed presented for registration, yet where the execution of a document is in issue, the circumstance of its having been registered does not dispense with the necessity for independent proof of its genuineness. FUZAL ALI *v.* BIA BIBI CHOWDHRAIN . **7 C. L. R., 276**

See KRIPANATH TULLAPATTUR *v.* BHASHAYE MOLLAH . . . . **6 W. R., 105**

30. ——— Deed on two pieces of paper of different dates.—*Suspicion of forgery.*—Where the Judge of first instance doubted the authenticity of a deed, it being written on two pieces of stamped paper of different dates,—*Held*, under the circumstances, not to be a proper deduction. KURALI PRASAD MISSER *v.* ANANTARAM HÁJRA **[8 B. L. R., 490: 16 W. R., P. C., 16**

31. ——— Evidence of intention with which documents were executed to ascertain their bona fides.—*Proceedings against third person.*—*A.* and *B.*, two undivided Hindu brothers, conveyed to their mother, *C.*, one-third share in the ancestral property of the family by a deed of sale, dated 29th August 1851. Subsequently, *A.* sold his one-third share in the joint ancestral property to *B.* by a deed dated the 4th August 1852. In a suit brought by a judgment-creditor of *A.* in 1868 to recover *A.'s* half share in the joint property from *B.* and *C.*, the plaintiff gave in evidence proceedings taken by *A.* jointly with his brother *B.* in 1856 against a third person, relating to the joint property with a view to show that the two documents were illusory, and intended to screen *A.'s* share from execution by his creditors. *Held* that such proceedings were important and relevant evidence, in order to test the *bona fides* with which *A.* executed the two documents, as it was important to ascertain how *A.* subsequently demeaned himself with regard to the property, his share or interest in which he purported to

DEED—*continued.*

4. PROOF OF GENUINENESS—*continued.*

Evidence of intention with which documents were executed to ascertain their bona fides—*continued.*

convey by those documents. GIRDHAR NAGJISHET *v.* GANPAT MAROBA . . . 11 Bom., 129

32. ——— **Discussion of evidence and its effect.**—*Evidence of want of genuineness in deed.*— Case in which evidence was discussed and its true effect pointed out, and in which it was held, reversing a decree of the High Court, that an ikrarnamah relied on by the respondents was fabricated. It was connected with other documents already found to be forgeries, its contents did not dispel suspicion, it was not established by credible witnesses, nor supported by evidence of possession under it. COOMARI RODESHWAR *v.* MANROOP KOER [L. R., 13 I. A., 20

33. ——— **Alterations in documents.**—*Evidence of want of genuineness.*—A person who presents a document as evidence in an altered and suspicious state must explain the existing state of the document, unless there is corroborative proof strong enough to rebut the presumption which arises against an apparent falsifier of evidence. Such corroborative proof will be greatly strengthened if there be reason to suppose that the opposite party has withheld evidence which would prove the original condition and import of the suspected document. KHOOB KOONWUR *v* MOODNARAIN SINGH [1 W. R., P. C., 36: 9 Moore's I. A., 1

34. ——— **Production when most likely to be challenged.**—*Evidence of genuineness of deed.*—The production of a pottah in the presence of the party most interested in challenging its genuineness is a fact legally of the utmost importance in determining its genuineness. GUNEE BISWAS *v.* SREEGOPAL PAUL CHOWDHRY . . 8 W. R., 395

35. ——— **Failure to raise objection to deed in former suit.**—*Evidence of genuineness of deeds.*—Where no issue was raised in former suits as regards certain pottahs filed in those suits, the *bona fides* of such pottahs cannot be regarded as a *res judicata*; yet (*per* JACKSON, *J.*) where the pottahs (about half a century old) were put forward in suits to which the representatives of the present litigants were parties and no objection was raised then or since, their conduct was held to amount to an admission of, or acquiescence in, the *bona fides* of the pottahs. KAILAS CHANDRA ROY *v.* HIRA LAL SEAL. FAKIR CHAND GHOSE *v.* HIRA LAL SEAL [2 B. L. R., A. C., 93: 10 W. R., 403

36. ——— **Delay in bringing forward.**—*Evidence of want of genuineness.*—In dealing with documents which purport to have been executed many years before they are brought into Court, and of which the fact of execution is denied, the Court will not only require credible and satisfactory testimony as to the actual making, but will look very much at the indications of its having or not having been published contemporaneously with or soon after its preparation, and

DEED—*continued.*

4. PROOF OF GENUINENESS—*continued.*

Delay in bringing forward—*continued.*

will regard with strong suspicion a deed which has neither seen the light nor been acted upon until after the lapse of many years from the date it bears. RADHAMADHUB GOSSAIN *v.* RADHABULLUB GOSSAIN [2 Ind. Jur., O. S., 5

37. ——— **Agreement not brought forward in former suit.**—*Evidence of want of genuineness.*—Suit for the recovery of a debt upon an agreement which was not brought forward or alleged to be in existence, when the same demand was successfully disputed in a former suit brought during the infancy of the predecessor of the present appellant, who was the son of the alleged original debtor. The respondent having failed to account satisfactorily for the non-production of the agreement before, and the probabilities of the case being against the genuineness of the agreement, the suit was dismissed. KATCHY KULLYANA RUNGAPPA KALAKA THOLA OODIAR, ZEMINDAR OF OODIARPALLIAM *v.* BALOOSAMY CHETTY [3 W. R., P. C., 50: 7 Moore's I. A., 224

38. ——— **Lapse of time between production and necessity for proving.**—*Evidence of bona fides.—Admission.*—*A.* sued *B.* in 1841 to recover possession of certain villages in Gujrat. *B.* produced a deed purporting to be a conveyance by way of mortgage by *A.'s* ancestors of their six-sixteenths share in villages to *B.'s* ancestors. *A.* at first denied the genuineness of the deed, but, the suit of 1841 having been withdrawn by consent with a view to arbitration, took no steps to have the question decided until the deed was again produced (from the records of the Court, where it remained meanwhile) in the present suit brought in 1859 by *A.* against *B.* to recover the same villages. *Held*, in the absence of evidence to show that the defendants had by their conduct during the interval admitted that the deed was not genuine, or that they did not intend to rely upon it, so as to mislead the plaintiffs, that the time which elapsed must be taken into account, and that they ought not to be required to prove the deed in the same way as they might have been when it was first produced and relied upon by them. *Held* also, that the High Court sitting in special appeal will not examine the evidence with a view to determine whether such a document be genuine or not; nor will it consider the question whether there is any evidence to connect the plaintiffs with the parties to the deed, when the suit appears to have been conducted in the Courts below as if this was admitted. DEVAJI GOYAJI *v.* GODADBHAI GODEBHAI . 2 Bom., 28: 2nd Ed., 27

39. ——— **Property after execution of deed treated as vendor's.**—*Deed of sale.*—Where it was shown that for twenty years the plaintiff had enjoyed the profits of an estate made over to her by her husband for her maintenance, and subsequently conveyed to her by a deed purporting to be a deed of sale in part payment of dower,—*Held* that the deed of sale or hibba-bil-awaz was not vitiated merely by the fact of the property being managed by the lady's husband or his agents, or that in the Mutiny it was attached and released as her husband's property, and

DEED—*continued.*

4. PROOF OF GENUINENESS—*continued.*

Property after execution of deed treated as vendor's—*continued.*

was subsequently recorded in his name. LADO BEGUM *v.* ACHPUL *alias* AMEEROOLNISSA [2 Agra, 153

40. ——— **Custody of deed.**—*Evidence of genuineness of deed.—Ancient deed.—Possession.*—Where a kobala upwards of thirty years old was produced from proper custody and offered in evidence, but rejected by the lower Appellate Court as not genuine because evidence had not been given that it had remained in the custody of the parties after the death of their father, and because it had not been filed in any public office, and no mention made of the purchase in the mofussil or at the sudder station,—*Held* that it was erroneous to require such proof, and to overlook the evidence of possession under the kobala. ANUND CHUNDER POOSHALEE *v.* MOOKTA KESHEE DEBIA . . 21 W. R., 130

41. ——— **Failure to prove payment of consideration.**—*Evidence of want of bona fides of deed.—Purchase by pleader.*—In a suit to recover possession with mesne profits of property alleged to have been purchased by the plaintiff from *A.* where the defendant *U.* was a daughter of *A.'s* sister, *R.*, who claimed the property through her son, *V.*, the question was whether the plaintiff had obtained the property by a valid deed of sale. The plaintiff was a pleader, and while a suit was in progress in which on behalf of his step-mother and another client he contended that *V.* had no property at all in the mouzah, he obtained a conveyance from *A.*, whose sole title was derived from *V.*, which conveyance nominally made to *S. T.* was never asserted by the plaintiff until seven years later, when he commenced the present suit. The evidence for the payment by the plaintiff of the consideration-money was so unsatisfactory that the High Court summoned him and examined him. *Held* that it was somewhat dangerous to allow the plaintiff, a professional man, who did not give evidence in his own suit in his own behalf, to be called for the purpose of supporting his case which had broken down; that the plaintiff's evidence as to payment of the consideration-money was very unsatisfactory and at variance with his previous deposition, and that though the mere *factum* of his deed was proved, it was not a *bonâ fide* conveyance. USHRUFOONISSA BEGUM *v.* GRIDHAREE LALL . . 19 W. R., 118

42. ——— **Deed fraudulent against decree-holder.**—*Deed of sale.—Held* that the circumstances proved justified the Court in holding that a sale deed relied on by the plaintiff was fraudulent and void as against decree-holders. BEHAREE LALL SAHOO *v.* JUGGERNATH PERSHAD . 1 Agra, 41

5. CANCELLATION.

43. ——— **Cancellation of deed for fraud and collusion.**—*Equitable conditions.*—Upon the cancellation of instruments of hypothecation and sale on proof of fraud and collusion between the grantee, who had advanced money, and the

DEED—*continued.*

5. CANCELLATION—*continued.*

Cancellation of deed for fraud and collusion—*continued.*

manager of the grantor's estate, the grantor having been unduly influenced in the transaction,—*Held* that the condition of cancellation should be, not the repayment of all money received by the manager, but only of sums shown to have been paid to the grantor personally, and of such sums received by the manager, as he would have been justified in borrowing in the course of a prudent management of the estate. AJIT SINGH *v.* BIJAI BAHADUR SINGH [I. L. R., 11 Calc., 61: L. R., 11 I. A., 211

DEED OF ASSIGNMENT.

See REGISTRATION ACT, 1877, s. 18 (1871, s. 18) . I. L. R., 2 Bom., 97

DEED OF GIFT.

See HINDU LAW—ADOPTION—WHO MAY BE ADOPTED . 3 B. L. R., P. C., 25

See CASES UNDER HINDU LAW—GIFT.

See HINDU LAW—WIDOW—INTEREST IN ESTATE OF HUSBAND—BY DEED, GIFT, OR WILL . I. L. R., 1 Calc., 104
[I. L. R., 8 Calc., 357
I. L. R., 5 Calc., 684

DEED OF SALE.

See CHAMPERTY.
[I. L. R., 8 Bom., 323

See CASES UNDER EVIDENCE—PAROL EVIDENCE — TO CONTRADICT OR VARY WRITTEN INSTRUMENTS.

See MORTGAGE—CONSTRUCTION.
[I. L. R., 2 Bom., 113, 231

——— **Recital in—**

See HINDU LAW—ALIENATION—ALIENATION FOR LEGAL NECESSITY AND BY CONSENT, &c. . 3 B. L. R., P. C., 57

DEED OF TRUST GIVING POWER OF SALE OF LAND IN MOFUSSIL.

See JURISDICTION—SUITS FOR LAND—TRUSTS &c. . I. L. R., 1 Calc., 249

DEFAMATION.

See CHARGE—FORM OF CHARGE—SPECIAL CASES . . . 9 Bom., 451

See CASES UNDER DAMAGES—SUITS FOR DAMAGES—TORTS.

See CASES UNDER LIBEL.

See LIMITATION ACT, 1877, ART. 24 (1859, s. 1, CL. 2) . . 2 Agra, 47

——— **Suit for—**

See SPECIAL APPEAL—SMALL CAUSE COURT SUITS—DAMAGES . 4 B. L. R., Ap., 59
[12 W. R., 372

DEFAMATION—*continued.*

1. ——— **Form of defamation.**—*Written or spoken defamation.—Penal Code, s. 499.*—The Penal Code makes no distinction between written and spoken defamation. QUEEN *v.* PURSORAM DOSS [2 W. R., Cr., 36
Upheld on review . . 3 W. R., Cr., 45

2. ——— **Defamation of a deceased person.**—*Suit by surviving member of family of deceased.—Cause of action.—Damage to reputation of family of deceased by reason of defamation of deceased.*—A suit for defamation can only be brought by the person who has been defamed. The fact that the defamatory statement has caused injury to other persons does not entitle them to sue. A suit brought by the heir and nearest relation of a deceased person for defamatory words spoken of such deceased person, but alleged to have caused damage to the plaintiff as a member of the same family,—*Held* not maintainable. LUCKUMSEY ROWJI *v.* HURBUN NURSEY [I. L. R., 5 Bom., 580

3. ——— **Liability for defamation.**—*Failure to prove bonâ fide charge.*—The mere failure of a complainant in proving a *bonâ fide* criminal charge does not make him liable to an action for damages for defamation. BROJONATH ROY *v.* KISHEN LALL ROY . . . 5 W. R., 282

MOHENDRONATH DUTT *v.* KOYLASH CHUNDER DUTT . . . . 6 W. R., 245

4. ——— *Malice.—Unprivileged publication.*—The law will infer malice where a statement is deliberately false in fact and injurious to the character of another, and the publication is not privileged. PETER *v.* DUFOUR . 6 W. R., 92

5. ——— **Nature of defamation.**—*Penal Code, s. 499.—"Publishing" defamatory matter.—Filing petition in Court.*—The act of filing in Court a petition containing imputations concerning a person calculated to harm his reputation, with the intention that it should be read by other persons, amounts to making or publishing the imputation within the meaning of section 499 of the Penal Code. The criminal law of this country with regard to defamation depends on the construction of section 499 of the Penal Code, and not on what may be the English law on the same subject. GREENE *v.* DELANNEY . . . . . 14 W. R., Cr., 27

6. ——— *Untrue statement.—Penal Code, s. 499.*—The accused, an inspector of police, was sent to enquire if it was true that one Brojonath was a leader of dacoits. He reported that it was false, and that the Banias of the village were trying to get him punished from an ill-feeling. He added: "I learnt from private enquiries that there is scarcely a woman in the houses of the Banias who has not passed a night or two with the defendant Brojonath." Commitment of the accused for trial for defamation under section 499 of the Penal Code supported under the circumstances of the case. IN THE MATTER OF THE PETITION OF RAJNARAIN SEIN [6 B. L. R., Ap., 42

S. C. RAJNARAIN SEIN *v.* DEEGOBUR PAUL [14 W. R., Cr., 22

DEFAMATION.—Nature of defamation—*continued.*

7. ——— *Publishing order of priest excommunicating person from caste.—Privileged communication.*—The gomastah of a guru or priest was convicted of defamation for having published an order of his master excommunicating the complainant from his caste. The letter publishing the excommunication was a statement that complainant disobeyed some one and treated him with disrespect. *Held* that the letter contained no expressions defamatory *per se.* If the person so treated was in a position entitling him to demand submission, and to make non-submission an offence, then that position would render the communication privileged; and if not, then the mere statement that the complainant did not obey one whom he was not bound to obey was not a defamatory imputation. ANONYMOUS . . . 6 Mad., Ap., 47

8. ——— *Publishing order of priest excommunicating person from caste.—Penal Code, ss. 500, 503, 508.—Injury.—Privilege.—Unnecessary publication.*—*N.* having attended a Hindu widow marriage (legalised by Act XV of 1856), *S.*, his guru, or spiritual superior, published a notice declaring *N.* to be an outcast, and forbidding the disciples of *S.* and the public of the town in which *N.* lived to associate with *N.*, until he submitted to the prescribed penance and obtained a certificate of purification from *S.* *S.* also sent by post a registered post-card of similar purport to *N.* In consequence of the interdict of *S.*, *N.* was prevented from performing vows in the temple, lost the society of his relatives, and was otherwise damnified. *N.* charged *S.* with criminal intimidation, intimidation by attempt to induce a belief that by an act of the offender the person intimidated will become an object of divine displeasure, and defamation. *Held* that the first two charges were unfounded, but that *S.*, by communicating the sentence of excommunication by a registered post-card to *N.*, was guilty of defamation. QUEEN *v.* SANKARA . I. L. R., 6 Mad., 381

9. ——— **Publication.**—*Penal Code, s. 499.—Communication of defamatory matter to complainant only.—"Making."—Held,* by the Full Bench (DUTHOIT, *J.*, dissenting), that the action of a person who sent to a public officer by post in a closed cover a notice under section 424 of the Civil Procedure Code, containing imputations on the character of the recipient, but which was not communicated by the accused to any third person, was not such a making or publishing of the matter complained of as to constitute an offence within the terms of section 499 of the Penal Code. QUEEN-EMPRESS *v.* TAKI HUSAIN . . I. L. R., 7 All., 205

10. ——— *Privilege.—Penal Code, s. 499, exceps. 8 and 10.—Letter written to protect religious interests of writer.*—A letter written by a Brahman to the Brahman community of the neighbourhood, with a view to obtain their decision on a matter affecting his own religious interests and that of the Brahman community, if written in good faith, falls within exceptions 8 and 10 of section

DEFAMATION.—Publication—*continued.*

499 of the Penal Code. REG. *v.* KASHINATH BACHAJI BAGUL . . . 8 Bom., Cr., 168

11. ——— **Good faith.**—*Penal Code, s. 499, excep. 8.—Privileged communication.—Justification.—Practice.—Cross-examination of complainant.—Held,* on the evidence in this case, in which the question was whether a person accused of defamation was protected by the eighth exception to section 499 of the Penal Code, that the accused had failed to establish that he acted in good faith. *Abul Hakim* v. *Tej Chandar Mukarji, I. L. R., 3 All., 815,* referred to. Where the accused in a case of defamation intends to bring evidence to prove the truth of the defamatory matter, his advocate should cross-examine the complainant upon every matter upon which evidence is intended to be brought. If he does not do so, it is a subject of serious consideration whether he should subsequently be allowed to tender proof as to the material incidents of which he was not cross-examined. QUEEN-EMPRESS *v.* DHUM SINGH [I. L. R., 6 All., 220

12. ——— *Statement in pleading made in good faith.—Penal Code, s. 500, excep. 9.*—A pleader or mookhtear relying upon the statements of his client, and in good faith introducing into a pleading a defamatory averment, will be protected from liability for defamation by the ninth exception to section 500 of the Penal Code, but the case is otherwise if the pleading be prepared by a person who has no such employment, and does not act in good faith. QUEEN *v.* CHRESTIEN [2 N. W., 473

13. ——— **Newspaper libel.**—*Penal Code, s. 500.—Act XXV of 1867, ss. 5, 7.—Burden of proof.*—On the prosecution of the editor of a newspaper for defamation under section 500 of the Penal Code by publishing a libel in his paper, an attested copy of a declaration made by the editor under section 5 of Act XXV of 1867, to the effect that he was the printer and publisher of the newspaper, was produced in evidence by the complainant. The editor having been convicted by the Magistrate, the Sessions Court on appeal quashed the conviction on the ground that there was no evidence that the editor was the writer of the libel or permitted its publication.—*Held* that, in the absence of proof to the contrary, the declaration was *primâ facie* proof of publication by the editor. *Held,* also, that it would be a sufficient answer to the charge if the editor proved that the libel was published in his absence and without his knowledge, and that he had in good faith entrusted the temporary management of the newspaper during his absence to a competent person. RAMASAMI *v.* LOKANADA . . I. L. R., 9 Mad., 387

14. ——— **Intention to injure reputation.**—*Absence of actual injury to good name.*—To sustain a charge of defamation it is not necessary to prove that the complainant actually suffered directly or indirectly from the scandalous imputation alleged; it is sufficient to show that the accused intended or knew or had reason to believe that the imputation made by him would harm the reputation of the complainant. QUEEN *v.* THAKUR DASS . 6 N. W., 86

DEFAMATION—*continued.*

15. ——— **Reason to believe truth of statements.**—*Penal Code, s. 499.—Good faith.*—In dealing with the question of good faith, the proper point to be decided is not whether the allegations put forward by the accused in support of the defamation are in substance true, but whether he was informed and had good reason, after due care and attention, to believe that such allegations were true. IN THE MATTER OF THE PETITION OF SHIBO PROSAD PANDAH . I. L. R., 4 Calc., 124: 3 C. L. R., 122

16. ——— **Newspaper criticism on advertisement.**—*Penal Code, s 499.—Publication.—Liability of publisher of newspaper.*—*M.,* a medical man and editor of a medical journal published monthly, said in such journal of an advertisement published by *H.,* another medical man, in which *H.* solicited the public to subscribe to a hospital of which he was the surgeon in charge, stating the number of successful operations which had been performed,—"The advertiser is certainly entitled to be congratulated on this marvellous success; but it is hardly consistent with the feelings and usages of the medical profession to herald them forth in this fashion. We are not surprised to find that the line he has elected to adopt has not met with the approval of his brother officers serving in the same province, and we have no hesitation in pronouncing his proceedings in this matter unprofessional." *Held* that, inasmuch as such advertisement had the effect of making such hospital a "public question," and of submitting it to the "judgment of the public," and *M.* had expressed himself in good faith, *M.* was within the third and sixth exceptions, respectively, to section 499 of the Penal Code. *Held,* also, that *M.* came within the *ninth exception* to that section. The sending of a newspaper containing defamatory matter by post from Calcutta, where it is published, addressed to a subscriber at Allahabad, is a publication of such defamatory matter at Allahabad. See *Queen* v. *Kally Doss Mitter, 5 W. R., Cr., 44.* The publisher of a newspaper is responsible for defamatory matter published in such paper, whether he knows the contents of such paper or not. EMPRESS OF INDIA *v.* MCLEOD [I. L. R., 3 All., 342

17. ——— **Ambiguous expressions.**—*Intentions.—Penal Code, s. 499.—Good faith.*—*C.* was put out of caste by a panchayat of his caste-fellows on the ground that there was an improper intimacy between him and a woman of his caste. Certain persons, members of such panchayat, circulated a letter to the members of their caste generally, in which, stating that *C.* and such woman had been put out of caste, and the reason for the same, and requesting the members of the caste not to receive them into their houses or to eat with them, they made certain statements applying equally to *C.* or such woman. Such statements were defamatory within the meaning of section 499 of the Penal Code. *Held* that, if such persons were careless enough to use language which was applicable to *C.* they did so at their peril, and they could not escape the responsibility of having defamed *C.* by saying that they intended such language to apply to such woman. *Held,* also, on the question whether such persons had acted in good faith, that,

DEFAMATION.—Ambiguous expressions —*continued.*

looking to the character of such letter, the circumstances under which it was written, and to the fact that *C.* had been put out of caste for the reason alleged, had such persons contented themselves with announcing the determination of the panchayat, and the grounds upon which such determination was based, they would have been protected; but, inasmuch as they did not so content themselves, but went further and made false and uncalled-for statements regarding *C.*, they had rightly been held not to have acted in good faith. EMPRESS OF INDIA *v.* RAMANAND . . . **I. L. R., 3 All., 664**

18. ——— Statements in judicial proceeding.—*Good faith.—Privileged communication.*—The law of defamation which should be applied in suits in India for defamation is that laid down in the Penal Code, and not the English law of libel and slander. *Held*, therefore, that defamatory statements are not privileged merely because they are used in a petition preferred in a judicial proceeding. It is not essential that, before a person can be held entitled to the privilege of having made a statement in good faith for the protection of his interests, he should establish that every word he has spoken or written is literally true. If, having regard to facts and circumstances within his knowledge, he might, as an ordinarily reasonable and prudent man, have drawn the conclusions which he has expressed in defamatory language for the protection of his own interests, he may fairly be held to have made out his good faith. ABDUL HAKIM *v.* TRI CHANDAR MUKARJI . . . **I. L. R., 3 All., 815**

19. ——— True statement but not made in good faith or for the public good.—*Penal Code (Act XLV of 1860), s. 499, exceps. 2 and 9.*—The accused person, an editor of a newspaper, published an article in which the following passage, admittedly referring to the complainant, occurred: "Has his (the complainant's) character been enquired into? Does no one remember that this very man was sent by the Subordinate Judge of Sholapur to be prosecuted? Are not the proceedings instituted by the Subordinate Judge to be found on the record?" The Magistrate found that it was literally true that the complainant had been sent to be prosecuted, but that it was also true that the prosecution had, to the accused's knowledge, been ordered to be withdrawn by the District Judge. *Held* that, although the statement contained only the truth, it was incomplete and misleading; and that, as the accused was well aware that the prosecution referred to had been withdrawn, and did not injuriously affect the complainant's character, he could not plead that the imputation made by him on the complainant's character was made in good faith, or for the public good. EMPRESS *v.* KAKDE **[I. L. R., 4 Bom., 298**

20. ——— Justification.—*Express malice.—Evidence of complainant having previously acted as alleged in the libel.—Act XLV of 1860 (Penal Code), s. 499.*—In a prosecution for defamation under section 500 of the Penal Code, the alleged libel accused

DEFAMATION.—Justification—*continued.*

the complainant, who was a judicial officer, of (i) having, upon a particular occasion, used abusive language to certain respectable native litigants appearing before him in Court, and (ii) having, upon other occasions not specified, treated other respectable natives (not named) "in a similar manner." This latter accusation was contained in a postscript. The complaint filed by the complainant in the Court of the committing Magistrate, and the charge sheet in which the Magistrate committed the defendant for trial, covered the whole of the document complained of except the postscript. At the trial of the case the defendant pleaded not guilty, and also relied on the first, eighth, and ninth exceptions to section 499 of the Penal Code. The prosecution gave evidence to prove that, in making the charges contained in the alleged libel, the defendant was actuated by express malice toward the complainant. *Held*, with reference to the terms of section 499 of the Penal Code, that evidence of particular instances of abusive language applied by the complainant upon former occasions to natives appearing in his Court was admissible, first, as relating to the question what was the reputation which the defendant was said to have injured, and, secondly, because it must be gathered from the document complained of *as a whole* whether it showed a malicious intention or not. LAIDMAN *v.* HEARSEY . . . **I. L. R., 7 All., 906**

21. ——— Malice, want of.—*Penal Code, s. 499, excep. 9.—Good faith.—Tampering with witnesses, imputation of.*—The accused was watching a civil case on behalf of his partner. During the hearing of the case the accused informed the Subordinate Judge that the complainant was "tampering with the witnesses," and prayed that the complainant might be made to sit in the Court. Accordingly the Subordinate Judge directed the complainant to sit in the Court. The complainant thereupon lodged a complaint against the accused before a First Class Magistrate, charging the accused with having defamed him. The Magistrate convicted the accused of the offence, and inflicted upon him a fine of R25, or, in default, sentenced him to one month's simple imprisonment. The accused made an application to the Sessions Judge at Thana to call for the record of his case, and, if he thought proper, to make a reference to the High Court. The Sessions Judge, having called for the record and examined it, was of opinion that as no malice or bad faith appeared on the part of the accused in making the imputation, the case of the accused fell within exception 9 of section 499 of the Penal Code, and that the accused had committed no offence. He accordingly referred the case, under section 438 of the Criminal Procedure Code (Act X of 1882), to the High Court. *Held* that the view of the Sessions Judge was correct. The conviction and sentence were accordingly set aside. QUEEN-EMPRESS *v.* PURSHOTAM KALA **[I. L. R., 9 Bom., 269**

22. ——— Onus probandi.—*Act XVIII of 1862, s. 27.—Good faith.*—Section 27 of Act XVIII of 1862 required proof of the existence of the circumstances relied on as a defence, before good faith could be presumed in a case of defamation.

DEFAMATION.—Onus probandi—*continued.*

The *onus* of proving good faith is on the person making the imputation. Before such person can claim the benefit of exception 9, section 499 of the Penal Code, he must show that he has exercised due care and caution. SEALY *v.* RAMNARAIN BOSE [4 W. R., Cr., 22

23. ——— *Reasonable and probable cause.—Malice.—Held* that, in cases of defamation, the *onus* of proving the statement, or at least of showing that he had reasonable ground for believing it to be true, and was actuated in making such statement not by malicious motives, but by an intelligent zeal for the public interest, lies on the person making the statement. ALTAF HOSSEIN *v.* TASUDDOOK HOSSEIN . . . 2 Agra, 87

24. ——— *Suit for defamation.—Police officer's report.—Words spoken in judicial proceeding.*—A suit for damages for defamation of character is cognisable by a Civil Court, even though the words on which the suit is founded were spoken in a judicial proceeding. In such a suit a police officer's report may be evidence that the words were spoken, but not of malicious intention. The plaintiff must start his case by showing he was not guilty of the offence charged, and it will then be upon the defendant to show that he made the imputation in good faith and for the public good. MOHENDRO CHUNDER CHUCKERBUTTY *v.* SURBO ROKHYA DABIA . . . . . 11 W. R., 534

25. ——— *Evidence of falseness of charge.*—In a suit for damages for defamation of character, the plaintiff is not required by any absolute rule of law to give affirmative evidence of the falseness of the charge. DHURMO DOSS KOONDOO *v.* KOYLASH KAMINEE DOSSIA . 12 W. R., 372

DEFAULT IN APPEARANCE, POWER TO RESTORE CASE STRUCK OFF FOR—

See SMALL CAUSE COURT, PRESIDENCY TOWNS—PRACTICE AND PROCEDURE—GENERAL CASES. [I. L. R., 1 Calc., 476

DEFENDANT, NON-APPEARANCE OF—

See SMALL CAUSE COURT, MOFUSSIL—PRACTICE AND PROCEDURE—NEW TRIALS . I. L. R., 4 Calc., 318

DEFENDANTS, SEPARATE APPEARANCE OF—

See COSTS—SPECIAL CASES—DEFENDANTS.
[2 B. L. R., A. C., 169
17 W. R., 188
Marsh., 95 : 1 Hay, 162
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14 W. R., 94

DEKKAN AGRICULTURISTS' RELIEF ACTS—XVII of 1879.

See JURISDICTION—QUESTION OF JURISDICTION—WRONG EXERCISE OF JURISDICTION . I. L. R., 7 Bom., 448

See MUNSIF, JURISDICTION OF— [I. L. R., 5 Bom., 180

——— **XXII of 1882.**

See GENERAL CLAUSES CONSOLIDATION ACT, 1868, s. 6 . I. L. R., 8 Bom., 340

See STATUTES, CONSTRUCTION OF— [I. L. R., 8 Bom., 340

——— **XVII of 1879, XXIII of 1881, and XXII of 1882.**—*Agriculturist, Definition of.—Change of definition between date of filing of suit and date of trial.—Jurisdiction.*—Some time previously to the institution of this suit the defendants lived and carried on business as money-lenders at Yeola, a talooka not subject to the Dekkan Agriculturists' Relief Act (XVII of 1879), and while there they became indebted to the plaintiff. Subsequently they removed to Kopargaon, in which district the said Act was in force. Both at Yeola and at Kopargaon they, in the course of their business, acquired land which they cultivated. In 1882, the plaintiff brought this suit against them in the Subordinate Judge's Court at Yeola to recover the debt due to him. The defendants contended that they were agriculturists, and could not be sued in the Court of the Subordinate Judge at Yeola. The suit came on for trial in July 1883, at which date Act XXII of 1882 had come into force, which altered the definition of "agriculturist." The Subordinate Judge held that the defendants were agriculturists, and that he had no jurisdiction to try the suit. His decree was reversed by the District Judge, who held that the defendants earned their livelihood only partially, and not principally, from agriculture, and that the lower Court had jurisdiction. The defendants appealed to the High Court, and contended that the definition of "agriculturist" to be applied in the case was that contained in Act XXIII of 1881, which was in force when the suit was instituted, and not that in Act XXII of 1882, which was in force at the date of the trial. *Held* that, having regard to the very special nature of the legislation embodied in section 12 of the Dekkan Agriculturists' Relief Act (XVII of 1879) for the benefit of a particular and very limited class, it was intended by the Legislature that a person claiming the benefit of that section *at the trial* should fill the character of an agriculturist as then defined by law. SHAMLAL *v.* HIRACHAND [I. L. R., 10 Bom., 367

——— **s. 2, cl. 2, and s. 11.**—*Jurisdiction.—Courts of Small Causes.*—The effect of the extension of section 11 of the Dekkan Agriculturists' Relief Act (XVII of 1879), by the first section of it, to all India, is simply to impose upon any person in any part of India who brings a suit of the nature mentioned in the third section against an agriculturist or agriculturists residing within the districts of Poona, Satara, Sholapur, and Ahmednagar, the necessity of instituting such suit, and having it tried, in a Court within

DEKKAN AGRICULTURISTS' RELIEF ACTS—XVII of 1879, s. 2, cl. 2, and s. 11—*continued.*

the local limits of whose jurisdiction he or they reside. The Court must necessarily be in some one of the said four districts. The word "agriculturist" as defined in section 2, clause 2, refers to an agriculturist residing within any one of the said four districts only, and not to one residing in any other district. On the 25th February 1879, a suit was filed for R85 in the Small Cause Court at Nadiad, in the district of Ahmedabad, against two defendants, one of whom was an agriculturist residing within the local limits of the Subordinate Judge's Court at Umreth, and not within those of the Small Cause Court at Nadiad. The Judge was of opinion that he had no jurisdiction to try it under the Dekkan Agriculturists' Relief Act, and referred the case for the opinion of the High Court. *Held*, that the Act did not affect the jurisdiction of the Small Cause Court in the case of a defendant who was an agriculturist and resided in a place in the district of Ahmedabad, and not in any one of the four districts mentioned in the Act. PURSHOTAM LALBHAI *v.* BHAVANJI PARTAB . I. L. R., 4 Bom., 360

1. ——— s. 3.—*Plaintiff.—Mortgagor.—Assignee.*—The provision in section 3, clause (*z*) of Act XVII of 1879 is not limited to an agriculturist who is himself the original mortgagor; so that where the plaintiff, though an assignee, is an agriculturist, he is entitled to the benefit of sections 12, 13, and 14 of the Act. ANNAJI WAGHUJI *v.* BAPUCHAND JETHIRAM . . . . I. L. R., 7 Bom., 520

2. ——— *Time intervening between application to Conciliator and grant of certificate.—Conciliator's certificate when necessary.—Limitation.*—The necessity to procure the Conciliator's certificate before the entertainment of a suit to which an agriculturist residing within any local area for which a Conciliator has been appointed, is a party, is not limited to suits specified in section 3 of the Dekkan Agriculturists' Relief Act, 1879, but extends to all matters within the cognisance of a Civil Court. *Held*, that such certificate was necessary before bringing a suit against an agriculturist to obtain a declaration that certain property was liable to be sold in execution. In computing the period of limitation for such a suit, the time intervening between the application to the Conciliator and the grant of a certificate by him must be excluded. DURGARAM MONIRAM *v.* SHRIPATI . . . I. L. R., 8 Bom., 411

——— s. 7.

See WITNESS—CIVIL CASES—SUMMONING WITNESSES . I. L. R., 5 Bom., 184

——— s. 11.—*Agriculturist.*—The Dekkan Agriculturists' Relief Act (XVII of 1879) is not limited in its application to suits for sums not exceeding R500. The effect of the reference, in section 11 of the Dekkan Agriculturists' Relief Act, to clause (*w*) of section 2 is to make all suits of the kinds therein described when brought against an agriculturist cognisable by the local Courts, and by them only. Section 11 extends to the whole of

DEKKAN AGRICULTURISTS' RELIEF ACTS—XVII of 1879, s. 11—*continued.*

British India as to suits brought against agriculturists of the description given in section 2. In a suit against defendants, who were residents at Sholapur, for R1,947, the price of goods sold and delivered, the defendants moved for a postponement of the hearing in order that a commission might issue to take evidence at Sholapur, alleging that by the evidence thus obtained they would be proved to be agriculturists within the meaning of the Dekkan Agriculturists' Act, and consequently under section 11 could only be sued at Sholapur. The Court granted the commission, holding that if the defendants established that they were *bonâ fide* agriculturists they were exempt from the jurisdiction of the High Court. A man must have gained his livelihood by farming, for at least one full agricultural season, to have acquired the condition of an agriculturist under the Act. TULSIDAS DHUNJI *v.* VIRBASAPA [I. L. R., 4 Bom., 624

——— ss. 11 & 12.—*Suits instituted after November 1879.*—The provisions of sections 11 and 12 of the Dekkan Agriculturists' Relief Act (XVII of 1879) are applicable only to suits instituted upon and after the 1st November 1879. SURYAJI *v.* TUKARAM . . . I. L. R., 4 Bom., 358

1. ——— ss. 12 & 13.—*Mortgage.—Agriculturist mortgagor.—Suit for account and redemption before the time fixed for payment.*—Under the Dekkan Agriculturists' Relief Act (XVII of 1879) an agriculturist mortgagor may sue for an account and possession of mortgaged property before the time fixed in the mortgage deed for the payment of the mortgage-debt, on the ground that the debt has been satisfied. The rule of law that the right to redeem is co-extensive with the right to foreclosure, and is consequently postponed until the time fixed for the payment of the mortgage-debt, does not apply to cases falling under that Act. BABAJI *v.* VITHU [I. L. R., 6 Bom., 734

2. ——— *Mortgagee overpaid.—Decree.—Suit for account and redemption.*—In a suit for account and redemption, if the mortgagee on taking the accounts, is found to have been overpaid, the general practice is to order the payment, by him, of the balance due to the mortgagor, with interest from the date of the institution of the suit. The application of the above rule, however, in redemption suits instituted under the Dekkan Agriculturists' Relief Act (XVII of 1879), in cases where the terms of the mortgage contract between the parties are set aside for the purpose of taking the account under the provisions of section 13 of the Act, would not only lead to the redemption of the mortgaged property, contrary to the terms and conditions of the contract, but would in many cases oblige the mortgagee to refund the money which rightly came into his hands under the contract. The plaintiff, an agriculturist, sued (as mortgagor) for account and redemption of the mortgaged property under the Dekkan Agriculturists' Relief Act. The defendant pleaded that, by the terms of the mortgage-bond, he was not bound to account, and that section 12 of the Act did not apply.

DEKKAN AGRICULTURISTS' RELIEF ACTS—XVII of 1879, ss. 12 & 13—*continued.*

The Subordinate Judge overruled the objection, and on taking the account, found a balance due from the defendant to the plaintiff. He accordingly made a decree in favour of the plaintiff for the land and the amount. The District Judge confirmed the decree of the first Court. *Held*, that the decree of the lower Court must be varied by omitting the direction ordering the defendant to pay the balance to the plaintiff. JANOJI *v.* JANOJI . . I. L. R., 7 Bom., 185

——— **ss. 12 & 15.**—*Suit on bond the execution of which is admitted.—Consideration.—Burden of proof.—Practice.—Procedure.*—In cases to which the Dekkan Agriculturists' Relief Act (XVII of 1879) applies, where a suit is brought upon a bond the execution of which is admitted by the defendant, no strict rule can be laid down as to the party upon whom the burden of proof rests. If the parties adduce no evidence, the Court must be content with the evidence of the parties themselves; and endeavour, in the language of section 15 of the Act, to "satisfy itself." If it cannot "satisfy itself as to the amount which should be allowed on account of principal or interest, or both," it may, under that section, direct, of its own motion, that such amount be ascertained by arbitration. Although proviso 2 of section 92, and section 102 of the Evidence Act I of 1872, which correspond with clause 1 of Regulation V of 1827, have not been repealed, the intention of the Legislature in enacting the Dekkan Agriculturists' Relief Act (XVII of 1879) clearly was to relieve the debtor from the necessity of proving failure of consideration, although admitted in the bond on which he is sued, and the execution of which he admits. MALOJI SANTAJI *v.* VITHU HARI [I. L. R., 9 Bom., 520

——— **s. 13.**—*Contract, Effect of adjudication on, by Court.—Merger of contract in decree.—Revision of decree.—Opening of account.*—Where a contract has been made the subject of adjudication by the Civil Court, and a decree has been passed, the contract is thereupon merged in the decree, and section 13 of Act XVII of 1879 furnishes no warrant for the revision of the decree, and opening of the account, between the agriculturist debtor and his creditors from the commencement of the transaction, since a decree, though based upon a contract and giving effect to it in a particular way, is yet a very different thing from the contract, and in case of revision entirely different principles apply to the two cases. TATYA VITHOJI *v.* BAPU BALAJI [I. L. R., 7 Bom., 330

——— **s. 15 (B).**—*Mortgage.—Conditional sale.—Foreclosure.—Instalments.*—The applicant, an agriculturist mortgagor, sued the defendant, the mortgagee, for redemption on the terms provided by the Dekkan Agriculturists' Relief Act, 1879. The account was made up, and the mortgagor was directed to pay the sum found to be due within six months, or to be for ever foreclosed. He failed to pay within the time fixed; and afterwards applied, under section 15 (B) of the Act as amended by Act XXII of 1882, to be allowed to pay the amount of the decree

DEKKAN AGRICULTURISTS' RELIEF ACTS—XVII of 1879, s. 15 (B)—*continued.*

by instalments. *Held* that the order asked for could not be made. An order for foreclosure when the time appointed by the order has expired, itself operates to transfer the ownership; and the ownership having once passed to the mortgagee, cannot be taken away from him by a subsequent order not founded on any new transaction of the parties, except on some special ground, such as fraud or inevitable accident. LADU CHIMAJI *v.* BABAJI KHANDUJI [I. L. R., 7 Bom., 532

——— **s. 16.**—*Mortgage.—Suit by a mortgagor for account only.—Execution of a money-decree obtained by mortgagee.*—Under the Dekkan Agriculturists' Relief Act, XVII of 1879, section 16, an agriculturist mortgagor has no right to sue his mortgagee in a mere action for account. HARI *v.* LAKSHMAN . . . I. L. R., 5 Bom., 614

——— **s. 20.**—*Mortgage decree.—Decree in suit on mortgage.—Payment by instalments.—Civil Procedure Code (Act X of 1877), s. 210.*—The words "decree passed against an agriculturist" in section 20 of the Dekkan Agriculturists' Relief Act XVII of 1879 mean a decree passed against an agriculturist *personally*, and do not include a decree for the recovery of money by the sale of mortgaged property. The effect of that section must be taken to be an enlargement of the indulgence granted by section 210 of the Civil Procedure Code (Act X of 1877), but only in those cases to which the latter section applies. By section 210 of the Civil Procedure Code the Court may, after the passing of a decree in money-suits, order the amount to be paid by instalments, provided the decree-holder consents. By section 20 of Act XVII of 1879 the Court may make the same order in similar suits, *without the consent* of the decree-holder. In the case of a debt secured by a mortgage, the agriculturist's remedy lies in a suit, not for an account, but for redemption; and the only decree which can be made in such a suit, in the absence of any special provision in the Act, is the ordinary decree for payment of the whole amount within six months, or, in default, for foreclosure. *Hurdeo Das* v. *Hukam Sing, I. L. R., 2 All., 320,* approved. SHANKARAPA DARGO PATEL *v.* DANAPA VIRANTAPA . . . I. L. R., 5 Bom., 604

——— **ss. 21 and 22.**—*Attachment in execution prior to the Act coming into operation.—Right of holder of decree obtained prior to Act.*—Neither section 21 nor section 22 of the Dekkan Agriculturists' Relief Act, 1879, applies to a decree made previously to the 1st day of November 1879, the day on which the Act came into force; and the holder of such a decree may arrest or imprison his agriculturist judgment-debtor, as well as attach and sell his immoveable property not specifically mortgaged. DIPCHAND *v.* GOKALDAS . . . I. L. R., 4 Bom., 363

——— **s. 22.**

See LIMITATION ACT, 1877, ART. 179—NATURE OF APPLICATION—IRREGULAR AND DEFECTIVE APPLICATIONS. [I. L. R., 10 Bom., 91

DEKKAN AGRICULTURISTS' RELIEF ACTS—XVII OF 1879, s. 22—*continued.*

——— *Immoveable property.—Standing crops.—Attachment.*—Standing crops are immoveable property within the meaning of section 22 of the Dekkan Agriculturists' Relief Act (XVII of 1879), as well as within the Code of Civil Procedure, and not liable to attachment and sale in execution of money-decrees, unless specifically pledged. SADU *v.* SAMBHU . . . I. L. R., 6 Bom., 592

——— ss. 41, 43, 44, & 46.—*"Amicable settlement."—"Finally disposing of the matter."—Instalment.—Interest.*—The expression "finally disposing of the matter" in sections 43 and 44 of Act XVII of 1879 means no more than the expression "amicable settlement" in sections 41 and 46. An agreement for the settlement of a plaintiff's claim to be paid a mortgage-debt at once or to have the property sold, by an arrangement for the payment of the debt by instalments with power to the plaintiff in default of payment of any instalment to take or retain possession until the debt has been satisfied out of the produce of the estate, is an "amicable settlement," and therefore one "finally disposing of the matter" which, if duly presented, must be filed by the Court. Where the sum due upon such an agreement is partly made up of interest, a provision to pay interest on any instalment remaining unpaid does not make the agreement illegal. VASUDEV PANDIT *v.* NARAYAN JOSHI . . . . I. L. R., 9 Bom., 15

——— s. 44.—*Agreement of compromise.*—Under section 44 of Act XVII of 1879 the plaintiff presented to the subordinate Court of Talegaon an agreement compromising the amount of a decree obtained by the plaintiff against the defendant in the Small Cause Court at Poona. The agreement stipulated that the plaintiff was to receive, in full satisfaction of the amount of the decree (which was for R59-15-1), the sum of R40 to be paid by yearly instalments of R4 each, and that, in default, the plaintiff was to recover the whole amount of the decree by executing it. The Subordinate Judge refused to file the agreement, being of opinion that it did not finally dispose of the matter. The case being referred to the High Court,—*Held* that the agreement was one finally disposing of the matter within the meaning of section 44 of Act XVII of 1879, and that, therefore, the Subordinate Judge of Talegaon was bound to receive it, and to proceed as directed in that section. LAKSHMICHAND *v.* ARJUNA [I. L. R., 6 Bom., 77

——— s. 47.—*The Code of Civil Procedure (XIV of 1882), s. 525.—Construction.—Arbitration award.—Conciliator's certificate.*—Where a matter has been referred to arbitration, without the intervention of a Court of Justice, by parties, one of whom is an agriculturist, and an award has been made thereon, any person interested in the award may, without obtaining the Conciliator's certificate, apply for the filing of the award under section 525 of the Code of Civil Procedure, the provisions of which are not superseded by section 47 of the Dekkan Agriculturists' Relief Act, 1879. GANGADHAR SAKHARAM *v.* MAHADU SANTAJI [I. L. R., 8 Bom., 20

DEKKAN AGRICULTURISTS' RELIEF ACTS—XVII OF 1879—*continued.*

——— ss. 47 & 48.—*Application for execution of decree.—Conciliator's certificate.*—The presentation, to any Civil Court, of an application for execution of a decree passed before 1st November 1879 (the date on which the Dekkan Agriculturists' Relief Act came into force), to which any agriculturist residing within any local area for which a Conciliator has been appointed is a party, is no legal presentation at all, if the application be not accompanied by the Conciliator's certificate. MANOHAR *v.* GEBIAPA [I. L. R., 6 Bom., 31

——— s. 48.

See LIMITATION ACT, 1877, ART. 179—PERIOD FROM WHICH LIMITATION RUNS—CONTINUOUS PROCEEDINGS. [I. L. R., 10 Bom., 108

——— s. 49.

See RULES OF LOCAL GOVERNMENT. [I. L. R., 10 Bom., 189

——— s. 54.

See s. 72 . I. L. R., 9 Bom., 320

——— s. 56.—*Signed balance of account.—Evidence.*—A balance of account signed by an agriculturist is an instrument which purports to evidence an obligation for the payment of money, and cannot, therefore, be admitted in evidence, unless written by, or under the superintendence of, and attested by, a village registrar, as required by section 56 of Act XVII of 1879. KANJI LADHA *v.* DHONDE KONDAJI [I. L. R., 6 Bom., 729

——— s. 60.

See s. 72 . . I. L. R., 9 Bom., 320

1. ——— s. 72.—*Limitation Act, 1877, art. 59.—Non-agricultural principal.—Agriculturist's surety.—Contract of guarantee.—Contract Act, ss. 126-147.*—On the 11th September 1880, a suit was instituted against a non-agriculturist principal and agriculturist surety for R88-8-0, being principal and interest due on a bond dated the 5th August 1877, and payable on demand. The action being barred against the principal debtor under the Limitation Act, XV of 1877, schedule II, article 59, the question was referred to the High Court, whether, under section 72 of the Dekkan Agriculturists' Relief Act, XVII of 1879, the agriculturist surety was still liable for the amount sued for. *Held* that, although the suit was barred as against the principal debtor under article 59, schedule II of the Limitation Act, yet the surety, being an agriculturist, was still liable, inasmuch as section 72 of the Dekkan Agriculturists' Relief Act, which extends the period of limitation in the case of suits against agriculturists, applies to all agriculturists, whether principals or sureties, in the districts affected by that Act. Sections 126 to 147 of the Contract Act IX of 1872 considered in connection with the effect of section 72 of the Dekkan Agriculturists' Relief Act XVII of 1879. HAJARIMAL *v.* KRISHNARAV . I. L. R., 5 Bom., 647

DEKKAN AGRICULTURISTS' RELIEF ACTS—XVII OF 1879, s. 72—*continued.*

2. ——————— *Limitation.—Surety.—Principal.*—*A.* as principal, and *B.* and *C.* as sureties, obtained a lease from *D.* of certain land, dated 30th July 1880. *A.*, *B.*, and *C.* were agriculturists within the meaning of Act XVII of 1879, and the lease was registered under section 56 of that Act. On 1st March 1884, *D.* sued *A.*, *B.*, and *C.* to recover the rent under the lease. *Held* that, under section 72 of Act XVII of 1879, as amended by Acts XXIII of 1881 and XXII of 1882, the extended limitation did not apply to the surety even though the principal debtor was an agriculturist. The words "not merely a surety for the principal debtor" (which enact the exception to the extended limitation given by that section) are not restricted to the case in which the principal debtor is a non-agriculturist. The lease, however, having been registered under section 54,—*Held* that it was under section 60 "to be deemed to have been registered under the provisions of the Indian Registration Act, 1877," and that therefore, by clause 116 of schedule II of the Limitation Act XV of 1877, the period of limitation applicable to the surety was six years from the date of default by the principal debtor to pay rent. KESU SHIVRAM *v.* VITHU KANAJI . . I. L. R., 9 Bom., 320

3. ——————— *Agriculturist co-defendant sued as surety merely to principal debtor on an unregistered money-bond.—Limitation Act, 1877, arts. 67, 115.*—Where an agriculturist, who was surety for the principal debtor, was made co-defendant in a suit on a money bond,—*Held* that in his case the period of limitation was the ordinary period of three years, and not the period of six years allowed by section 72 of Act XVII of 1879. GANESH RAVJI *v.* GOVIND GOPAL . . . . I. L. R., 9 Bom., 461

DELAY IN INSTITUTING SUIT.

See ACQUIESCENCE . I. L. R., 1 All., 82
[I. L. R., 2 Bom., 133
2 Mad., 114, 270
22 W. R., 267
18 W. R., 500
1 Mad., 131

See DIVORCE ACT, s. 14.
[I. L. R., 3 Calc., 668

DELEGATION, POWER OF—

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION.
[I. L. R., 3 Calc., 63
I. L. R., 4 Calc., 172

DELIVERY OF POSSESSION.

See CASES UNDER HINDU LAW—GIFT—REQUISITES FOR GIFT.

See CASES UNDER MAHOMEDAN LAW—GIFT—VALIDITY.

See CASES UNDER VENDOR AND PURCHASER—POSSESSION.

DELIVERY ORDER.

1. ——————— **Document of title.**—*Consideration.*—A document in the following terms: "Allahabad, 27th January 1866. Commercial Transport Association received from *C. M.*——bales of——which the Commercial Transport Association, in consideration of R —— when paid to their agent at Howrah, hereby agree and contract to deliver safely at Howrah," is a mere delivery order and not a document of title, at all events as between European parties. The claimant under it must prove consideration, and a consideration past at the time it came into the claimant's hands as between himself and his immediate indorser will not support a claim on such a document. ASSARAM BARTRAH *v.* COMMERCIAL TRANSPORT ASSOCIATION . . . . 2 Ind. Jur., N. S., 113

2. ——————— **Effect of endorsement of.**—*Vendor's lien.—Contract Act (IX of 1872), s. 108.*—The plaintiff was a broker in cotton and also traded in cotton on his own account. On the 27th January 1883, he contracted with the defendants to sell to them 100 candies of cotton, at R200 per candy, *deliverable from the 15th to the 25th April following.* On the 30th January 1883, in his capacity as broker, he effected a contract for the sale of the same 100 candies of cotton by the defendants to *L. & Co.* at R202 per candy. *L. & Co.* sold the cotton to *D.*, and *D.* again sold it back to the defendants at R191 per candy. The defendants then sold it to *H.*, by whom it was sold to *K.*, and *K.* finally sold it to *B. & Co.* at R191 per candy. *B. & Co.* obtained possession of the cotton from the plaintiff on or about the 24th April on payment of R191 per candy, for which they had contracted to buy it from *K.* The delivery order for the cotton had been sent on the 20th April by the plaintiff to the defendants, who, immediately on receiving it, wrote to the plaintiff as follows: "We beg to ask *pro formâ* for survey on 100 bales M.-G. Broach cotton tendered by you to us to-day. As we are handing over the delivery order to a third party please secure payment for the cotton direct, and before parting with cotton, if necessary." The delivery order was then endorsed by the defendants to their vendees (*L. & Co.*), who in turn endorsed it to *D.*, by whom it was endorsed to the defendants. By subsequent endorsements it came ultimately to *B. & Co.*, who, as above mentioned, got delivery of the cotton from the plaintiff on payment of R191 per candy. The plaintiff, who had sold to the defendants at R200 per candy and who received from *B. & Co.* only R191 per candy, sued the defendants in the Small Cause Court for the difference. The defendants contended that after the receipt of the letter written by them to the plaintiff he was bound not to deliver the cotton to *L. & Co.*, or to any subsequent endorsee of the delivery order, until he had obtained payment of the full price (R200 per candy) which the defendants had agreed to pay him for it; that the delivery to *B. & Co.* was not a delivery authorised by the defendants; that the payment made by *B. & Co.* to the plaintiff was not a payment made by, or on behalf of, the defendants; that the plaintiff's cause of action, if any, against the defendants was for the full price of the cotton; and that as that exceeded R2,000 the Small Cause Court had no jurisdiction. *Held* that the defendants' letter to the

DELIVERY ORDER.—Effect of endorsement of—*continued.*

plaintiff was ineffectual to control or alter the course of the delivery order, and that the plaintiff was bound to deliver the cotton to *B. & Co.* on payment by them of the price of R191 per candy. The defendants having re-purchased the cotton after it had passed through several hands, sold it for R191 per candy to *H.*, from whom it ultimately passed to *B. & Co.* The plaintiff's lien, therefore, as regarded *H.* and his sub-vendees, was confined to the price at the above rate, and *B. & Co.* were entitled to the goods as against the defendants on payment of that price. The defendants' letter, therefore, of the 20th April 1883—however the plaintiff might have been bound to act on it as regarded *L. & Co.*, to whom the cotton was sold at R202 per candy, and the other sub-vendees *prior* to the re-purchase by the defendants—could only, as regards *subsequent* purchasers, prevent delivery to them before payment of the price at which the defendants had re-sold the goods, *viz.*, R191 per candy. That price was actually paid to the plaintiff before he did deliver the goods, and credit was given to the defendants in the account. By the English common law a delivery order is regarded as a mere token of authority to deliver; and before the wharfinger has attorned, it does not, independently of statute or custom, enable the purchaser to confer a title upon a vendee or a sub-vendee free from the vendor's lien for the price. The Contract Act (IX of 1872) gives no larger effect, *except by section 108*, to a delivery order than it had by English common law, and under that Act (section 90, illustration (*c*), and sections 95 and 98) the giving of a delivery order by a vendor to a vendee does not of itself give the vendee such a possession of the goods as to defeat the vendor's lien. The exception to this rule contained in exception (1) to section 108, which provides that a seller may give to a buyer a better title than he had himself where he is, by consent of the owner, in possession of the goods or documents relating thereto, cannot be held to apply to cases where the possession is entirely beyond the control of the owner. LEGEYT *v.* HARVEY . I. L. R., 8 Bom., 501

DEMURRAGE.

——— *Delay caused by inability of captain to deliver goods.*—Where a purchaser engaged to take delivery of cargo from a ship at a certain rate per diem, and, in the event of failure, to pay demurrage, and the contract contained a stipulation in the following terms: "But should the captain be unable to deliver weighment of the goods on account of the lightness of the vessel to which I have no objection, but would not hold myself liable for any demurrage,"—*Held* that, according to a reasonable construction of the contract, if delay took place in unloading, demurrage was to cease so long as the delay was caused by the inability of the captain to deliver the goods; not that the matter was to be thereby set at large, and that there was no longer to be any period under the contract within which delivery was to be taken of the cargo. GILLANDERS, ARBUTHNOT AND COMPANY *v.* OBHOY CHURN NUNDY [23 W. R., 139

DEPOSIT OF ARREARS OF RENT.

See CASES UNDER SALE FOR ARREARS OF RENT—DEPOSIT TO STAY SALE.

DEPOSIT OF COSTS OF APPEAL.

See APPEAL TO PRIVY COUNCIL—PRACTICE AND PROCEDURE—TIME FOR APPEALING.

[I. L. R., 2 Calc., 128, 272
I. L. R., 1 Calc., 142
23 W. R., 220
I. L. R., 6 All., 250
I. L. R., 10 Calc., 557

DEPOSIT OF MONEY.

See CASES UNDER LIMITATION ACT, 1877, ART. 60 (1859, s. 1, CL. 9).

See PARTIES—PARTIES TO SUITS—LEGACY, SUIT FOR . 13 B. L. R., 142

See SALE IN EXECUTION OF DECREE—INVALID SALES—DECREES BARRED BY LIMITATION.

[I. L. R., 4 Calc., 6

DEPOSIT OF SECURITY BY PERSON ENTITLED TO CERTIFICATE.

See APPEAL—CERTIFICATE OF ADMINISTRATION . I. L. R., 1 Calc., 127
[I. L. R., 1 All., 287

DEPOSIT OF TITLE-DEEDS.

See HINDU LAW—CONTRACT—LIEN.
[7 Bom., O. C., 45

See LIEN . . 7 Bom., O. C., 45

See REGISTRATION ACT, 1877, s. 48.
[I. L. R., 11 Calc., 158

1. ——— Equitable mortgage.—*Security.*—*Lien.*—The firm of *C. N. & Co.*, Calcutta, had an account with a Bank of which *R.* was manager, under an arrangement that the Bank should discount bills accepted by *C. N. & Co.* to a certain amount, and that *C. N. & Co.* should keep in the Bank a certain fixed cash balance. In November, *R.*, finding that the limit of the discount accommodation had been exceeded, and the cash account overdrawn, declined to discount any more bills unless security were given for the amount then due to the Bank. *A.*, the only partner in the firm of *C. N. & Co.* then in Calcutta, verbally promised on 24th November to deposit with the Bank the title-deeds of the premises in which *C. N. & Co.* carried on their business; and in consideration of such promise, *R.* discounted further bills from 24th to 29th November. *A.* sent to *R.* a letter on 25th November as follows: "In pursuance of the conversation the writer had with you yesterday, we now deposit the title-deeds of landed house property as security against our discount account." The letter enclosed certain title-deeds, of which *R.* acknowledged the receipt. *R.* subsequently discovered they were not the title-deeds which *A.* had promised to deposit, and of this he gave *A.* notice by letter on 28th November. *C. N. & Co.*,

DEPOSIT OF TITLE-DEEDS.—Equitable mortgage—*continued.*

on the 5th December 1870, suspended payment, and by the usual order their estate and effects vested in the Official Assignee, who thereupon, finding that the Bank claimed a lien on the deeds, brought a suit against the Bank for recovery of them. *Held* that the Bank was entitled to retaint he deeds as security, both for the balance of the discount account existing at the time of the promise to deposit, and also for the bills discounted between the 24th and 29th November. *Semble,*—The Bank was entitled to hold the deeds actually deposited as if they were the deeds which formed the subject of the verbal promise to *R.* MILLER *v.* THE CHARTERED MERCANTILE BANK OF INDIA, LONDON, AND CHINA . **6 B. L. R., 701**

2. ——————— *Security for debt.* - Where title-deeds of land had been deposited by a debtor with the Bank of Bengal, and a letter was given authorising the Bank to sell the land and apply the proceeds in liquidation of a debt then existing and due to the Bank, it was held that a valid equitable mortgage was thereby created in favour of the Bank as a security for the money due. IBRAHIM AZIM *v.* CRUIKSHANK

[7 B. L. R., 653 : 16 W. R., 203

3. ——————— *Memorandum given after deposit.—Security for loan.*—The defendant deposited certain title-deeds with the plaintiff as security for the repayment of R1,200 lent him by the plaintiff at the time the deposit was made. On the evening of the same day, the defendant, by way of further security, gave to the plaintiff a promissory note for the amount of the loan and endorsed thereon the following memorandum: "For the repayment of the loan of R1,200 and the interest due thereon of the within note of hand, I hereby deposit with the plaintiff, as a collateral security by way of equitable mortgage, title-deeds of my property;" *Held,* the equitable mortgage was complete without the memorandum; the memorandum was not a writing which the parties had made as the evidence of their contract, but only a writing which was evidence of the fact from which the contract was to be inferred. KEDARNATH DUTT *v.* SHAMLALL KHETTRY

[11 B. L. R., 405 : 20 W. R., 150

4. ——————— *Return of deeds to satisfy doubts as to title.*—Where the plaintiff had advanced to the first defendant R38,000, and had agreed to advance R27,000 more, the whole R65,000 to be secured by a mortgage of the first defendant's immoveable property, and the first defendant had deposited with the plaintiff the title-deeds of his immoveable property, for the purpose of enabling him to get a mortgage-deed prepared, and had agreed to execute such mortgage-deed on payment to him by the plaintiff of the balance of the R65,000, and the title-deeds were afterwards returned by the plaintiff to the first defendant for the purpose of enabling him to clear up certain doubts asto his title to some of the premises comprised in the deeds, and such deeds were not subsequently returned by the first defendant, nor were others deposited in lieu thereof, and the balance of the R65,000 was not paid by the plaintiff to the first defendant,—*Held* that there was an equitable mortgage to the plaintiff to secure R38,000, so far as concerned the property comprised in the deeds. DAYAL JAIRAJ *v.* JIVRAJ RATANSI . . . **I. L. R., 1 Bom., 237**

5. ——————— *Contract of mortgage.—Letter stating terms of equitable mortgage, Effect of.—Equitable mortgagee, his proper remedy.*—*A.* and *B.* executed a joint and several promissory note in favour of the plaintiff. On the same day *A.* deposited with the plaintiff the title-deeds of his property as collateral security, and received conjointly with *B.* a part of the consideration-money for the promissory note. Shortly afterwards *A.* addressed a letter to the plaintiff to this effect: "As collateral security for the due payment of R2,000 secured by a promissory note of even date * * I herewith hand you the title-deeds of my property * * money borrowed and received in pledge of house," and obtained the balance. In a suit on the basis of the documents for foreclosure, or for sale of the property, or in the alternative for a conveyance of the legal estate,—*Held* that the letter itself was not a contract of mortgage, and was without registration admissible in evidence of the equitable mortgage which had been completed upon deposit of title-deeds. *Held,* also, that the existence of the letter would not prevent the plaintiff from giving any other evidence in proof of his claim. *Kedar Nath Dutt* v. *Sham Lall Khettry, 11 B. L. R., 405,* followed. *Held,* further, that the plaintiff was not entitled upon the transaction to a conveyance of the legal estate, his proper remedy being by sale of the mortgaged property. OO NOUNG *v.* MOUNG HTOON OO

[I. L. R., 13 Calc., 322

6. ——————— *Legal mortgage unregistered.—Claim by mortgagee, who has failed to register mortgage-deed, to have an equitable mortgage by virtue of deposit of title-deeds previously to execution of mortgage-deed.*—The plaintiff having consented to lend R10,000 to the defendant, the latter deposited with him, on the 2nd April 1883, the title-deeds of a certain property. On receiving them the plaintiff told the defendant that he would take them to his attorney, have a deed drawn up, and then advance the money. The defendant applied to the plaintiff for the money before the deed was prepared, but the plaintiff refused, saying he would not advance the money until he was satisfied by his attorney, and the deed had been prepared. At the time the deeds were handed over to the plaintiff (*i.e.,* the 2nd April 1885), there was no existing debt due by the defendant to the plaintiff. On the 6th April 1885, the mortgage-deed was executed, and on the same day the money was advanced by the plaintiff to the defendant. The plaintiff stated that he "had advanced the money on the security of the title-deeds on the same day." He did not say how long before the execution of the deed the money had been paid, but the deed itself recited that the R10,000 were paid immediately before the execution of the mortgage. The mortgage-deed was not registered. The

DEPOSIT OF TITLE-DEEDS.—Equitable mortgage—*continued.*

plaintiff stated that he knew that it required registration, but that it was left unregistered at the request of the defendant, who did not wish to be "exposed in the eyes of the public." The plaintiff sued for a declaration that he was entitled to an equitable mortgage upon the said property, and for the sale thereof, in default of the payment of the mortgage-debt. He contended that the loan had been made on the security of the title-deeds which had been deposited on the 2nd April; that he had, no doubt, intended to obtain a legal mortgage, but that he had abandoned that intention by consenting to leave the mortgage-deed unregistered, and had on the 6th April elected to rely upon his equitable mortgage. *Held* that the plaintiff had no equitable mortgage. At the time when the deeds were deposited, there was no antecedent or existing debt, nor was any oral agreement made that the title-deeds should stand as a security for future advances, nor was any advance, in fact, made until the mortgage-deed was about to be executed. There could be no doubt that if the defendant had not been ready to execute the deed, no advance would have been made. The money was really advanced on the security of the mortgage-deed, though, at the time the money was advanced, the plaintiff had the title-deeds in his possession. JAITHA BHIMA *v.* ABDUL VYAD OOSMAN

[I. L. R., 10 Bom., 634

7. ——————*Lien.—Mahomedan law.—Trust.—S.* purchased the muttah of *E.* and paid part of the consideration-money. When the parties came to complete, the vendors had not the title-deeds, but they promised to deliver them in a few days, and arranged that the remaining part of the purchase-money should be retained by the purchaser, and they handed over to him the title-deeds of another muttah called *T.* to be held as security for their delivering to the purchaser the title-deeds of muttah *E.* in order to perfect his title. The purchaser, on the faith of this, advanced large sums and paid off a mortgage on muttah *T.* This latter muttah having been sold, *S.* brought a suit to recover the amount advanced by him on account of that muttah, claiming to be equitable mortgagee, and to have a charge on that estate for the advances made by him in respect thereof. *Held* that the transaction created a lien, and bound the muttah *T.* for the advances made by *S.* *Semble,*—by the Mahomedan law such a deposit for a security in respect of a contingent loss would be in the nature of a trust, not a power. VARDEN SETH SAM *v.* LUCKPATHY ROYJEE LALLAH

[9 Moore's I. A., 303

DEPOSITIONS.

See CASES UNDER EVIDENCE—CIVIL CASES —DEPOSITIONS.

See CASES UNDER EVIDENCE—CRIMINAL CASES—DEPOSITIONS.

See CASES UNDER EVIDENCE ACT, s. 33.

DEPUTY COLLECTOR, JURISDICTION OF—

See CASES UNDER COLLECTOR.

DEPUTY COMMISSIONER.

1. ——————**Jurisdiction.**—*Criminal Procedure Code, 1872, s. 36.—Commitment to Deputy Commissioner as Court of Session when he could only act as Magistrate.*—The prisoner was committed to the Court of Session for trial on the 21st day of December 1872, and the record was sent to the Deputy Commissioner of Jalaun. Under the Code of Criminal Procedure, Act X of 1872, which came into force on the 1st day of January 1873, the Deputy Commissioner was no longer a Court of Session, but received powers under section 36 to try, as a Magistrate, classes of cases which formerly he would have tried as a Court of Session. The Deputy Commissioner, disregarding the commitment, took the case up afresh as a Magistrate of the district under section 36. *Held* that this was clearly illegal, and that the Magistrate was bound to have sent the commitment on to the proper Court, and had no power, a trial being in progress, to commence a new enquiry in the same matter against the prisoner. QUEEN *v.* POORUN . . . . . **5 N. W., 219**

2. ——————**Assistant Commissioner, Chota Nagpore.**—An Assistant Commissioner in Chota Nagpore (exercising the powers of a Sudder Ameen) has no jurisdiction to try a suit valued at R2,800. The suit is cognisable by a Deputy Commissioner who has the powers of a Principal Sudder Ameen. DHODHEYA *v.* MUNABAN TEWARY

[7 W. R., 356

3. ——————**Non-Regulation Province.**—*Criminal Procedure Code, 1861, ss. 14, 412.—Appeal.*—A Deputy Commissioner in a non-Regulation Province came, under section 14 of the Code of Criminal Procedure, under the designation of Magistrate of the district, and was competent to decide upon an appeal preferred under section 412 from an order of a Subordinate Magistrate who had exercised jurisdiction in a case in which he had no jurisdiction. QUEEN *v* BORON DHOOM . . **16 W. R., Cr., 1**

DEPUTY COMMISSIONER, AKYAB.

——————**Insolvency.**—*Civil Procedure Code, 1877, s. 6, and ss. 344-360.*—The Deputy Commissioner of Akyab, sitting as District Judge, has power to entertain applications under Chapter XX of Act X of 1877. Section 6 (*d*) of that Act interposes no obstacle in the way of the Deputy Commissioner dealing with such applications, nor does the exercise of such power in any way "affect the jurisdiction of the Recorder of Rangoon sitting as an Insolvent Court in Akyab" within the meaning of that section. IN THE MATTER OF ABDUL HAMED

[I. L. R., 4 Calc., 94 : 2 C. L. R., 485

DEPUTY COMMISSIONER OF POLICE, CALCUTTA, CONFESSION SIGNED BY—

See CONFESSION—CONFESSIONS TO POLICE OFFICERS . **I. L. R., 1 Calc., 207**

DESERTION.

See DIVORCE ACT, s. 3, CL. 9, s. 14 AND s. 37.

[I. L. R., 4 Calc., 260 : 3 C. L. R., 484
I. L. R., 3 Calc., 485 : 1 C. L. R., 552
5 B. L. R., Ap., 153

DETENTION OF ACCUSED BY POLICE.

——— *Criminal Procedure Code, 1877-1882, s. 61 (1872, s. 124, para. 1; 1861-69, s. 152).*—Section 152 of the Code of Criminal Procedure does not apply to cases in which there has not been a continuous detention of twenty-four hours. INDROBUR *v.* QUEEN . . . 1 W. R., Cr., 5

DEVISE SUBJECT TO ITS BEING CHARGED IN PARTICULAR WAY.

See MORTGAGE—FORM OF MORTGAGE. [I. L. R., 1 All., 753

DEVISEE, LIABILITY OF, FOR DEBTS OF TESTATOR.

See VENDOR AND PURCHASER—NOTICE. [I. L. R., 4 Calc., 897

DEVISEE UNDER WILL.

See CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE. [B. L. R., Sup. Vol., 588

DEWAN.

See CRIMINAL PROCEDURE CODE, 1882, s. 45 (1872, s. 90). [I. L. R., 4 Calc., 603: 3 C. L. R., 87

DIGNITY, SUIT TO ESTABLISH RIGHT TO—

See CASES UNDER RIGHT OF SUIT—DIGNITIES.

DILUVION.

See CASES UNDER ACCRETION.

See LIMITATION ACT, 1877, ART. 142 (1871, ART. 143) . I. L. R., 6 Calc., 725

See CASES UNDER ONUS PROBANDI—LIMITATION AND ADVERSE POSSESSION.

DIRECTORS.

See CASES UNDER COMPANY—POWERS, DUTIES, AND LIABILITIES OF DIRECTORS.

DISAPPEARANCE.

See CASES UNDER HINDU LAW—PRESUMPTION OF DEATH.

DISBURSEMENTS, LIEN FOR—

See BOTTOMRY-BOND . 6 B. L. R., 323

DISCHARGE OF ACCUSED.

See CASES UNDER COMPLAINT—DISMISSAL OF COMPLAINT.

See REVISION—DISCHARGE OF ACCUSED.

[I. L. R., 1 Calc., 282
I. L. R., 2 Calc., 405
I. L. R., 2 Bom., 534
I. L. R., 4 Calc., 16, 647
19 W. R., 56
1 C. L. R., 83
I. L. R., 6 All., 40

DISCHARGE OF ACCUSED—*continued.*

1. ——— **Acquittal.**—*Warrant of release.*—A prisoner is entitled to be discharged from custody immediately on the judgment of acquittal being pronounced, and no formal warrant of release is necessary. ANONYMOUS . . . 5 Mad., Ap., 2

2. ——— **Want of evidence.**—*Discharge.*—*Acquittal.*—Where there is no *primâ facie* case against an accused, and he has not been put on his defence, nor any charge preferred against him, he should be discharged, and not acquitted. QUEEN *v.* BIPRO DOSS . . . . 8 W. R., Cr., 45

3. ——— **Omission to draw up charge.**—*Discharge.*—*Acquittal.*—Where no charge in writing has been drawn up, and the prisoner has not been asked to make his defence, the Magistrate, if he thinks that no offence has been proved, can only discharge and not acquit the prisoner. QUEEN *v.* SHERIFF . . . . 6 W. R., Cr., 13

4. ——— **Investigation by Magistrate.**—*Criminal Procedure Code, 1861, ss. 171 and 225.*—Where, under section 171 of the Criminal Procedure Code, a case was sent up for investigation by a Magistrate, it was competent for such Magistrate to discharge the accused under section 225, if, in his opinion, the evidence against the accused was not sufficient to warrant their committal to the Sessions Court. REG. *v.* PAUDURANG MAIJRAL [5 Bom., Cr., 41

5. ——— **Re-trial by Magistrate after discharge and acquittal by Deputy Commissioner.**—*Criminal Procedure Code, 1861, ss. 202, 207, 225.*—Where a Deputy Commissioner held a proceeding in which the accused was charged with forgery and using a forged document, and after calling on the accused during the enquiry to make a statement, but without calling on him to make any further defence, and after hearing the whole evidence both for the prosecution and for the defence discharged and acquitted the accused,—*Held* that there had been no trial, but that this was a proceeding under Chapter XII of Act XXV of 1861; that under section 202 of that Act the Magistrate had discretion to examine the accused, and under section 207 to examine witnesses on behalf of the accused, and under section 225 the Magistrate, when finding there was no sufficient ground for committing the accused to the Sessions, was competent to discharge and acquit him. NILMONEE SINGH DEO *v.* OOMA CHUBN ROY . . . . . 19 W. R., Cr., 49

6. ——— **Improper discharge without enquiry.**—*Charge of false evidence.*—*Criminal Procedure Code, 1872, s. 473.*—A Joint Magistrate having directed a recusant witness in a trial before him to be put on his trial for giving false evidence, subsequently, on the 9th May, on hearing the statement of the witness confessing that what he had stated was false, and that he had wilfully withheld what he knew, recorded a proceeding stating that the case would not be proceeded with, and directing the discharge of the accused witness,—*Held* that, as the Joint Magistrate could not himself try the case by virtue of section 473 of the Criminal Procedure Code,

DISCHARGE OF ACCUSED.—Improper discharge without enquiry—*continued.*

his proceeding of the 9th May was either a part of an enquiry into a case triable by a Court of Session, or of some proceeding before a Magistrate other than such enquiry in respect of an offence which the enquiring Magistrate was not competent to try, and that in either case the Joint Magistrate had no authority to discharge the accused. QUEEN *v.* DUDRAJ DOSADH . . . . **22 W. R., Cr., 83**

7. ——— **Complaints sent up by Civil Court and referred by Sessions Judge to Magistrate.**—*Improper discharge.*—Where a Sessions Judge directed a Magistrate to make an enquiry into the matter of some complaints made by a Munsif against certain persons, and the Magistrate recorded the opinion that there was evidence enough to incriminate one of the accused, but dismissed the complaint against him because the complaint made against him had not been explicit,—*Held* that the Magistrate was wrong to have discharged the accused, and ought to have drawn up a charge against him. QUEEN *v.* THAKOOR RAM **[25 W. R., Cr., 35**

8. ——— **Sufficient grounds.**—*Criminal Procedure Code, 1872, s. 195.*—As to the meaning of the words "sufficient grounds" for committing an accused for trial in section 195 of the Criminal Procedure Code, and when he may be discharged. LUCHMAN *v.* JUALA . . **I. L. R., 5 All., 161**

9. ——— **Warrant cases.**—*Criminal Procedure Code, 1872, ch. XVII.*—In cases triable under the provisions of Chapter XVII of Act X of 1872, the Magistrate should not discharge the accused person until after trial as prescribed in that chapter. IN THE MATTER OF NEWAR . **7 N. W., 230**

10. ——— **Discharge without evidence.**—*Criminal Procedure Code, 1872, s. 215.*—In a warrant case, in which, although the complainant's witnesses and the accused were present, the Deputy Magistrate discharged the accused on the report of a police officer,—*Held* that his decision was illegal, as he was bound to take the evidence of the complainant before discharging the accused. AZEEM ALI *v.* HURNAM DASS . . **24 W. R., Cr., 9**

11. ——— *Obligation to hear evidence before discharge.*—When a Magistrate has referred a case for police investigation and the police arrest certain persons and send in evidence against them, he is bound to consider that evidence before he discharges them. IN THE MATTER OF BEPUTOOLLA *v.* NAJIM SHEIKH . **2 C. L. R., 374**

12. ——— **Power of Sessions Judge to commit.**—*Criminal Procedure Code, 1861, s. 435.*—The discharge by a Deputy Magistrate of a person charged with an offence triable only by a Court of Session, is no bar to the Sessions Judge ordering the committal of such person to the Sessions under section 435, Act VIII of 1859. QUEEN *v.* SREENATH DEY . . . . . **15 W. R., Cr., 61**

DISCHARGE OF ACCUSED.—Power of Sessions Judge to commit—*continued.*

13. ——— *Use by Magistrate of word "acquittal."*—Where a Magistrate used the words "acquittal and discharge" when he intended only to discharge a person accused of an offence not triable by him,—*Held* that the Court of Session was competent, under section 435, Criminal Procedure Code, 1861, to order the commitment of such accused person. QUEEN *v.* NEETER DULAL **[8 W. R., Cr., 41**

14. ——— **Effect of discharge.**—*Criminal Procedure Code, 1861, s. 435.*—The discharge of a person accused of an offence triable by the Court of Session is no bar to his being again brought, with a view to commitment, before a Magistrate, who may proceed in such a case without an order from the Judge. Section 435, Code of Criminal Procedure, applies where a Magistrate has not thought fit to commit. QUEEN *v.* TILKOO GOALA **[8 W. R., Cr., 61**

15. ——— *Criminal Procedure Code (Act XXV of 1861), ss. 250, 251, 255, 435.—Act VIII of 1869, s. 435.—Sessions Judge, Power of.*—Where no formal charge had been drawn up by the Magistrate under section 250 of Act XXV of 1861, and the accused had not been called upon under section 251 to plead thereto, and was not tried thereunder, a release by the Magistrate of the accused did not amount to an acquittal under section 255, but simply to a discharge under section 250. Under such circumstances, section 435, Act VIII of 1869, empowers a Sessions Judge to direct the committal of the accused to take their trial. IN RE JAGABANDHU MYTI *v.* GOBERDHAN BERA . **4 B. L. R., A. Cr., 1**

S. C. QUEEN *v.* GOBERDHAN BERA **[12 W. R., Cr., 65**

IN RE SHOODHUN MUNDLE . **5 W. R., Cr., 58**

16. ——— *Criminal Procedure Code, 1861, s. 250.—Power of Sessions Court.*—Where an accused person had been discharged by a Magistrate under section 250 of the Criminal Procedure Code, after enquiry into the case, the Court of Session could not, under section 435, remand the case for further enquiry. IN THE MATTER OF THE PETITION OF CASPERSZ . . . **9 B. L. R., 337**

S. C. CASPERSZ *v.* RANEEGUNGE COAL COMPANY. **[18 W. R., Cr., 39**

17. ——— *Criminal Procedure Code, 1861, s. 250.—Power of Sessions Court.*—Where a Magistrate had discharged an accused under section 250 of the Criminal Procedure Code, and afterwards the Sessions Judge having remanded the case for further enquiry re-tried it and convicted the accused, the High Court, while holding that the Sessions Judge had no power to make the order of remand, upheld the conviction. IN THE MATTER OF THE PETITION OF JIAT SAHU . **9 B. L. R., 339**

S. C. JIAT SAHU *v.* BHEEKON ROY **[18 W. R., Cr., 39**

18. ——— *Committal by Magistrate after discharge.—Sessions case.—Per*

DISCHARGE OF ACCUSED.—Effect of discharge—*continued.*

GLOVER, *J.*—In a case triable by the Sessions Court a Magistrate had power to commit the accused to the Sessions after he had once discharged him. QUEEN *v.* RAMSODOY CHUCKERBUTTY **20 W. R., Cr., 19**

19. ——————— *Dismissal of charge without enquiry.—Fresh trial.*—Where the Subordinate Magistrate dismissed a charge of theft without enquiry,—*Held* that the District Magistrate might institute a fresh enquiry into the complaint. ANONYMOUS . . . . **5 Mad., Ap., 31**

20. ——————— *Power of Magistrate to revive case after discharge.*—A Magistrate of a district has power to order a Subordinate Magistrate to revive a case in which the accused have been discharged. HARI SINGH *v.* DANISH MAHOMED **[20 W. R., Cr., 46**

21. ——————— *Power to revive case after discharge.—Transfer of case part heard.*—In a case before the Joint Magistrate in which the prosecution was closed and the accused discharged under section 215 of the Criminal Procedure Code, the Magistrate on a petition presented to him by the prosecutor passed an order of remand directing the Joint Magistrate to proceed with the case at the stage at which he left it,—*Held* that the discharge not being equivalent to an acquittal, the Magistrate might have received a complaint, if he saw sufficient reason for doing so, and might have made it over to a subordinate officer to be heard, but he had no power to make the order of remand which he made. KISTORAM MOHARA *v.* ANIS . **20 W. R., Cr., 47**

IN THE MATTER OF THE PETITION OF NOOR MAHOMED . . . **25 W. R., Cr., 31**

22. ——————— *Revival of charge after withdrawal.*—Where a Deputy Magistrate under section 210, Criminal Procedure Code, permitted a complainant to withdraw a complaint which was not considered heinous, and discharged the accused, and the District Magistrate revived the case against the accused at the instance of the Commissioner,—*Held,* that the Magistrate had no jurisdiction to act as he did. QUEEN *v.* ZUHOORUL HUQ **[25 W. R., Cr., 64**

23. ——————— *Acquittal by Deputy Magistrate under s. 220, Criminal Procedure Code, 1872.—Power of Magistrate to order re-trial.*—A man accused of theft was acquitted by the Deputy Magistrate under section 220 of the Code of Criminal Procedure. The District Magistrate, at the instance of the police, ordered the case to be re-tried. It appeared that the Deputy Magistrate had not framed any charge, but that no failure of justice had been occasioned by his not doing so. *Held* that the Magistrate had no power to order a re-trial without first setting aside the order of acquittal, and that he had no power to set aside the order of acquittal as the case had not been appealed to him. IN THE MATTER OF JOJA PASHAN . . **3 C. L. R., 131**

24. ——————— *Criminal Procedure Code, 1872, s. 216.—Omission to prepare charge.—Acquittal.—Revival of prosecution.*—A Magistrate tried and acquitted a person accused of an offence without preparing in writing a charge against him. Such omission did not occasion any failure of justice. *Held,* with reference to section 216 of Act X of 1872, explanation 1, that such omission did not invalidate the order of acquittal of such person and render such order equivalent to an order of discharge, and such order was a bar to the revival of the prosecution of such person for the same offence. EMPRESS OF INDIA *v.* GUADU . **I. L. R., 3 All., 129**

25. ——————— *Revival of prosecution.—Place of enquiry or trial.—Enticing away married woman.*—A person was prosecuted before a Criminal Court in the Punjab for enticing away a married woman, with a criminal intent, an offence punishable under section 498 of the Penal Code. Such prosecution was legally instituted in such Court and such offence was properly triable by it. Such Court discharged such person under the provisions of section 215 of Act X of 1872. Subsequently it appeared that such person was detaining such woman at a place in the North-Western Provinces, and he was prosecuted before a Criminal Court of the district in which such place was situated for the same offence as he had been prosecuted for before the Criminal Court in the Punjab, *viz.,* enticing away such married woman, and was convicted of that offence. *Held* that, although his previous discharge did not bar the revival of a prosecution for the same offence, such prosecution could only be revived in the Punjab Court, and he could not be convicted under the latter part of section 498 of the Penal Code for detaining an enticed woman until the enticing had been proved, and such conviction had been properly set aside by the Court of Session. EMPRESS OF INDIA *v.* TIKA SINGH . . . **I. L. R., 3 All., 251**

26. ——————— *Criminal Procedure Code, 1872, s. 215.—District Judge, Power of.*—A District Magistrate has no power under the Code of Criminal Procedure, 1872, to revive a prosecution in a case where the accused has been improperly discharged under section 215 by a Magistrate having jurisdiction to try the case. QUEEN *v.* VENGUVAYYANGAR . . . . **I. L. R., 6 Mad., 25**

DISCHARGE OF JUDGMENT-DEBTOR.

See ATTACHMENT—ATTACHMENT OF PERSON . **I. L. R., 8 Mad., 276, 503**

See CIVIL PROCEDURE CODE, 1882, s. 341. **[I. L. R., 9 Bom., 181**
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See CASES UNDER SUBSISTENCE-MONEY.

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See ARREST—CIVIL ARREST. **[I. L. R., 1 Calc., 78**
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5 C. L. R., 170

See COMPLAINT—REVIVAL OF COMPLAINT. **[I. L. R., 1 Bom., 64**

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See CASES UNDER PRIVY COUNCIL, PRACTICE OF—DISMISSAL OF APPEAL FOR WANT OF PROSECUTION.

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[4 Mad., 56
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——— for insufficient stamp.

See APPELLATE COURT—REJECTION OR ADMISSION OF EVIDENCE ADMITTED OR REJECTED BY COURT BELOW—VALUATION OF SUIT, ERROR IN—
[4 B. L. R., A. C., 139: 12 W. R., 484

——— for multifariousness.

See RES JUDICATA—JUDGMENTS ON TECHNICAL POINTS.
[13 B. L. R., Ap., 37

——— for want of jurisdiction.

See RES JUDICATA—JUDGMENTS ON TECHNICAL POINTS.
[I. L. R., 2 Bom., 19
I. L. R., 3 Bom., 223

——— on failure to pay Commissioner's fee.

See COMMISSIONER FOR TAKING ACCOUNTS . . I. L. R., 3 Mad., 259

——— on failure to produce evidence.

See RES JUDICATA—JUDGMENTS ON TECHNICAL POINTS.
[I. L. R., 1 Mad., 84

DISPOSSESSION IN EXECUTION OF DECREE AGAINST ANOTHER PARTY.

See CASES UNDER RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE.

DISTRESS.

See INSOLVENT ACT, s. 7.
[5 B. L. R., 309

See LANDLORD AND TENANT—PAYMENT OF RENT—GENERALLY.
[3 B. L. R., O. C., 56

DISTRESS—*continued.*

1. ——— **Property of third parties on premises of tenant.**—*Act VII of 1847.*—The goods of third parties on the premises of the tenant are not distrainable for rent under provisions of Act VII of 1847. DWARKA NAUTH BISWAS *v.* UDDIT CHURN ADDY . **1 Ind. Jur., N. S., 361**

2. ——— **Right to distrain in Presidency towns.**—*Act VII of 1847.—Distress warrant.*—The right to distrain for rent in arrear has always to some extent existed and been recognised in the Presidency towns, and the Acts passed since 1847 are distinct declarations by the Legislature, made while regulating the exercise of the right and providing for its exercise only through the intervention of a Judge of a Court of Small Causes, that the right itself, subject to the restriction, is general, and that "any person claiming to be entitled to arrears of rent of any house or premises" in a Presidency town is authorised to apply for the issue of a distress warrant. MOHUN SING *v.* KAREEMOONISSA BEGUM **[8 Mad., 57**

3. ——— **Distraint for arrears of rent.**—*Beng. Rent Act, 1869, ss. 71, 74 (1859, ss. 115, 118).—Distraint for arrears of rent.—Trees.—Produce of land.*—Trees are not subject to distraint for arrears of rent under Act X of 1859. The term "produce of land" referred to in that Act means that which can be gathered and stored—crops of the nature of cereal, or grass, or fruit crops; it does not apply to the trees from which the crops, if fruit crops, are gathered. SHEO PERSHAD TEWARY *v.* MOLEEMA BEBEE . **1 N. W., 53; Ed. 1873, 106**

4. ——— **Goods of sub-tenant.**—*Beng. Rent Act, 1869, s. 68 (1859, s. 112).—Act X of 1859, s. 112.—Sub-letting.—Produce of land sub-let.*—Where the tenant had sub-let his holding to a shikmi or sub-tenant,—*Held* that, under section 112 of Act X of 1859, the produce of the land was hypothecated for rent payable in respect thereof, and that the crops cultivated by the sub-tenant were distrainable by the zemindar. GEETUM SING *v.* BULDEO KAHAR . . . . **4 N. W., 76**

5. ——— **Power to distrain.**—*Beng. Rent Act, 1869, ss. 96, 98, 99 (1859, ss. 139, 142, 143).*—The sections of Act X of 1859 (sections 139, 142, and 143) which relate to distraint, and the power to distrain, discussed. JOYLOLL SHEIKH *v.* BROJONATH PAL CHOWDRY . **9 W. R., 162**

6. ——— **Distraint of crops.**—*Person not cultivator of crops.*—A landlord cannot distrain crops for arrears due, not from the tenant, but from another person not in possession, and who did not cultivate the crops. MOHINEE DASSEE *v.* RAM COOMAR KURMOKAR **W. R., 1864, Act X, 77**

7. ——— **Suit to contest distress.**—*Beng. Act VIII of 1869, s. 80.—Issue.*—Where after receiving notice of distress a party brought a suit under Bengal Act VIII of 1869, section 80, the first Court was held to be in error in thinking it necessary to enquire whether all the steps of the process of distraint were perfectly correct; the simple question to be determined having been whether the demand

DISTRESS.—Suit to contest distress—*continued.*

made by the distrainer was good and valid. DOONER MAHTON *v.* SHEO NARAIN SINGH . **21 W. R., 37**

DISTRESS ACT.

——— **I of 1875, s. 10.**—*Seizure of property in possession of mortgagee.*—Where moveable property upon leasehold premises has been mortgaged by the lessee, and the mortgagee is in possession, the landlord cannot seize it under a distress warrant, as it is not property "belonging to the person from whom the rent is claimed," within the meaning of section 10 of the Distress Act. GOBIND LALL SEAL *v.* KNIGHT
[I. L. R., 7 Calc., 372: 9 C. L. R., 390

DISTRIBUTION, STATUTES OF—

See PARSIS . . **I. L. R., 2 Bom., 75**

DISTRIBUTION OF SALE PROCEEDS.

See CASES UNDER SALE IN EXECUTION OF DECREE—DISTRIBUTION OF SALE PROCEEDS.

DISTRICT COURT.

See CASES UNDER CONTRACT ACT, s. 265.

See REGISTRATION ACT, 1877, s. 77 (1871, s. 76) . . **I. L. R., 2 Calc., 131**

DISTRICT JUDGE, JURISDICTION OF—

See APPEAL—ORDERS.
[I. L. R., 4 Bom., 123

See CASES UNDER BENGAL RENT ACT 1869, s. 102.

See CASES UNDER CONTRACT ACT, s. 265.

See LOCAL INVESTIGATION.
[I. L. R., 4 Calc., 718

See PROBATE—JURISDICTION OF DISTRICT COURTS . . **6 C. L. R., 138, 391**
[4 C. L. R., 498
I. L. R., 9 Bom., 241

See RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE.
[I. L. R., 4 Bom., 123

See SANCTION TO PROSECUTION—POWER TO GRANT SANCTION.
[I. L. R., 2 Bom., 481

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—MONEY ILLEGALLY EXACTED . . . . **10 Bom., 305**

1. ——— **Appointment of guardian.**—*Beng. Reg. V of 1804, s. 20.—Guardian.—Minor.—Estate paying revenue to Government.*—A District Court has no jurisdiction under section 20 of Regulation V of 1804 and section 3 of Regulation X of 1831 to appoint a guardian of the estate of a minor when the estate pays revenue to Government. IN RE NADUVATH MANNAKEL SUBRAMANYAN NAMBUDRIPAD . . . . **I. L. R., 6 Mad., 187**

DISTRICT JUDGE, JURISDICTION OF—*continued.*

2. ——— Suit to compel guardian to account.—*Subordinate Judge.—Bombay Minors' Act (XX of 1864).*—A suit to compel a minor's guardian, appointed under Act XX of 1864, to account for his administration of the minor's estate, cannot be properly brought in the Court of a Subordinate Judge, or in any Court but in the principal Civil Court of the district where the property is situated, if it be in one district; but if it be in more districts than one, then in the principal Civil Court of the district in which the minor has his residence. UTAMRAM MANIKLAL *v.* DAMODHARDAS MANIKLAL [9 Bom., 39

3. ——— Suit against Municipality.—*Subordinate Judge.—Small Cause Court Judge.—Bom. Act VI of 1873, s. 7.—Act X of 1876, s. 15.*—In a suit by or against a municipality constituted under the Bombay District Municipal Act (No. VI of 1873), every individual Commissioner must be regarded as a party within the meaning of section 15 of the Bombay Revenue Jurisdiction Act (X of 1876); and, consequently, such a suit cannot be entertained by a Subordinate Judge or a Judge of a Court of Small Causes, but can be entertained by the District Judge alone. AHMEDABAD MUNICIPALITY *v.* MAHAMUD JAMUL . . I. L. R., 3 Bom., 146

4. ——— Mad. Reg. IV of 1816, Hearing of petition under.—*Subordinate Judge.*—A Subordinate Judge has no jurisdiction to hear and determine petitions under section 29, Regulation IV of 1816. The jurisdiction created by that Regulation being peculiar can only be exercised by the District Judge as representative of the Zilla Judge. PONNUSAMI PILLAI *v.* PACHAI . I. L. R., 2 Mad., 336

Overruled by PONNUSAMI CHETTI *v.* KRISHNA AIYYAR . . . . I. L. R., 5 Mad., 222

5. ——— Power to refer case under s. 265, Contract Act.—*Bombay Civil Courts Act, 1869.—Quære,*—Whether the District Judge had power, under the Bombay Civil Courts Act, XIV of 1869, to refer to the Assistant Judge a case falling under section 265 of Act IX of 1872. SORABJI FARDUNJI *v.* DULABHBHAI HARGOVANDAS [I. L. R., 5 Bom., 65

6. ——— Order respecting execution of decree of Subordinate Judge.—*Civil Procedure Code, s. 270.*—A decree was passed by the Subordinate Judge, and in execution of that decree a sale of certain property was held and conducted by the Nazir of the District Judge. *Held* that, in reference to that sale, the District Judge had no jurisdiction to pass any order under the provisions of section 270, or any order respecting the re-sale of the property. NOBO KISHORE DASS *v.* PROTAP CHUNDER BANERJEA . . . 1 C. L. R., 534

7. ——— Transfer of case to Regulation Provinces.—*Appeal.—Bom. Reg. XVIII of 1831.—Bom. Act III of 1863.*—A suit was instituted in a Court which, at the date of the filing of such suit, was in a non-regulation district, to recover possession of a piece of land situate in a village then within

DISTRICT JUDGE, JURISDICTION OF—Transfer of case to Regulation Provinces—*continued.*

the jurisdiction of that Court; when the Regulations were introduced, the Regulation Court which succeeded the said Court was placed in a district different from that to which the said village was annexed. *Held* that the village in which the suit arose having been transferred to a district different from that which included the Court which had succeeded the Non-Regulation Court, this last-named Court had no jurisdiction to try and determine the suit. *Held,* also, that an appeal to a Judge of one district from a decree of a subordinate Court in another district, when such an appeal was permissible, was not an appeal which could be referred by the District Judge for trial to a Principal Sudder Ameen under Regulation XVIII of 1831, section 3. *Quære,*—When a district, or particular portion of a district, is for the first time brought under the Regulations, can the Regulation Court, which is established in the territory where a Non-Regulation Court previously existed, continue the trial of suits instituted in the Non-Regulation Court, if no provision have been made in the Act by which the Regulations became operative in the said territory, for the continuance of the trial of such suits by the said Regulation Court? PAYAPPA BIN SHESHAPPA NADNI *v.* DHONDO NARAYAN DAMLE . . . 5 Bom., A. C., 26

8. ——— Appeals in suits above R5,000 decided before Bombay Civil Courts Act (XIV of 1869).—Appeals in suits wherein the subject-matter exceeds R5,000 in value decided before the Bombay Civil Courts Act (XIV of 1869) came into operation lay to the District Courts as before the Act, and not to the High Court. RATAN CHAND SHRI CHAND *v.* HANMANTRAV SHIVBAKAS [6 Bom., A. C., 166

9. ——— Sanction to prosecution.—*Power of District Judge to revoke sanction of Subordinate Judge.*—A District Court has jurisdiction under section 195 of the Code of Criminal Procedure to revoke or grant a sanction granted or refused by a Subordinate Judge's Court. VENKATA *v.* MUTTUSAMI . . . . I. L. R., 7 Mad., 314

10. ——— Trial of case for false evidence in civil case.—*Criminal Procedure Code, s. 477.—False evidence.*—A man died leaving some money due to him in the hands of the Telegraph authorities. *P.* wrote a letter to those authorities claiming the money as the sole heir of the deceased. This letter was sent to the District Judge for verification and orders. *P.* supported his claim before the Judge by the evidence on oath of *C.* *C.'s* evidence being, in the opinion of the District Judge, false, the District Judge, in his capacity as Sessions Judge, tried him for giving false evidence, and convicted him of that offence. *Held* that the District Judge had no judisdiction, under section 477 of the Criminal Procedure Code, to try *C.* EMPRESS *v.* CHAIT RAM [I. L. R., 6 All., 103

DISTRICT MAGISTRATE.

See COLLECTOR . I. L. R., 1 Bom., 628

DISTRICT MAGISTRATE—*continued.*

See CASES UNDER MAGISTRATE, JURISDICTION OF—

DIVESTING OF PROPERTY.

See HINDU LAW—ADOPTION—EFFECT OF ADOPTION . I. L. R., 2 Calc., 295
[4 C. L. R., 538
I. L. R., 7 Calc., 178
I. L. R., 12 Calc., 18, 246
8 Mad., 108
I. L. R., 7 Bom., 229
7 W. R., 392
3 Agra, 349
6 W. R., P. C., 43; 3 Moore's I. A., 229
3 W. R., P. C., 15; 10 Moore's I. A., 279

See CASES UNDER HINDU LAW—INHERITANCE—DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE.

See CASES UNDER HINDU LAW—WIDOW—DISQUALIFICATION OF—UNCHASTITY.

See WILL—CONSTRUCTION.
[I. L. R., 4 Calc., 420

DIVISION BENCH OF HIGH COURT.

——— **Power of—**

See ENGLISH COMMITTEE.
[10 B. L. R., 79, 80, 82, note

——— **Appeal from judgment of—**

See LETTERS PATENT, N.-W. P. HIGH COURT, CL. 10.
[I. L. R., 1 All., 31, 181

——— **Difference of opinion between Judges of—**

See LETTERS PATENT, N.-W. P. HIGH COURT, CL. 10 . I. L. R., 1 All., 181

See LETTERS PATENT, N.-W. P. HIGH COURT, CL. 27 . . 2 N. W., 117
[S. C. Agra, F. B., Ed. 1874, 196

1. ——— **Power of.**—*Security for stay of execution.*—*A.* had executed a security bond on behalf of *K.*, who had an appeal to the High Court in a case in which the Court had ordered stay of execution until the appeal was heard. The appeal was heard by a Division Bench, and the Judges differing, the appeal was decreed in accordance with the opinion of the Senior Judge. From this judgment an appeal was preferred under section 15 of the Letters Patent. After the opinion of the Division Bench was pronounced, *A.* applied to the Judge before whom he had made it for the return of his security bond, but his application was refused pending the final decree of the High Court in the matter. *A.* then moved the High Court for the cancellation or return of the bond. *Held* that there was no necessity that this motion should have been presented to the Judges who heard the appeal, for it related to matter beside the judgment, and a Division Bench may receive motions from all districts, without reference to the division into groups. *Held* that the rule of practice, that applications referring to

DIVISION BENCH OF HIGH COURT.
—Power of—*continued.*

matters which have judicially arisen in a particular district, should be made before the Bench to which that district belongs, does not divest any Division Bench of the Court of the jurisdiction given to it by the Charter, nor can it be always properly adhered to. AMEER ALI KHAN *v.* KASSIM ALI KHAN
[13 W. R., 403

2. ——— **Reference to High Court after former reference in same case.**—An order passed by an Assistant Magistrate in a case of breach of the peace under section 530 of the Code of Criminal Procedure was referred to the High Court by the Sessions Judge, with a recommendation that the order should be set aside on certain grounds stated, the want of jurisdiction in the Assistant Magistrate not being one of the grounds. The Division Bench before whom that reference came declined to interfere with the order. It was held by another Division Bench before whom the matter was subsequently brought on motion, that they were not debarred from entering into the question of the want of jurisdiction, and as the effect of the Assistant Magistrate's order was to prejudice one of the parties, the order, which was admittedly without jurisdiction, was set aside. RUN BAHADOOR SINGH *v.* HAR DOYAL SINGH . . . 21 W. R., Cr., 32

3. ——— **Decision of Division Bench as to Bengali expression.**—The decision of one Division Bench as to the meaning of a Bengali expression occurring in a particular plaint cannot be binding upon another Division Bench for the purpose of a different suit. WATSON & CO. *v.* SURNO MOYEE . . . . . 24 W. R., 414

4. ——— **Decision of, how far binding on another Court.**—The decision of an Appeal Bench of the High Court upon a point of law, or the construction of a document in the case before them, is not necessarily binding on a single Judge of that Court, when the same question again arises in another suit before him. ABHAI CHARAN GHOSE *v.* DASMANI DASI . . . 6 B. L. R., 623

5. ——— **Ruling of Division Bench referred to Full Bench.**—*Per* BAYLEY, *J.*—*Quære,*—Whether a ruling of three Judges of the High Court of Bombay on a case referred by a Division Bench of two Judges for decision by the Full Bench can be regarded otherwise than a ruling of a Division Court of three Judges? IN THE MATTER OF THE PETITION OF BAI AMRIT
[I. L. R., 8 Bom., 380

DIVORCE.

See HINDU LAW—MARRIAGE—DISSOLUTION OF MARRIAGE.
[I. L. R., 3 Calc., 305
I. L. R., 8 Mad., 169

See CASES UNDER MAHOMEDAN LAW—DIVORCE.

——— **ACT (IV OF 1869).**

See PLEADER—REMUNERATION OF—
[7 Mad., 394

DIVORCE ACT (IV OF 1869)—*continued.*

1. ——— s. 2.—*Application of Act.—Polygamous contracts under Mahomedan law.*—The Indian Divorce Act was intended to apply to such marriages as are recognised as marriages by Christians, and not to polygamous contracts, such as are the unions known as marriages to the Mahomedan law. Such polygamous contracts are not subject to the jurisdiction of the Courts created by the Indian Divorce Act of 1869. ZUBURDUST KHAN *v.* HIS WIFE . . . . . 2 N. W., 370

2. ——— *Jurisdiction.—Damages.*—The High Court has jurisdiction to admit a petition for divorce, where the parties are resident, and the adultery is committed, in the district of the 24-Pergunnahs. Principle on which the Court will assess damages discussed. KELLY *v.* KELLY AND SAUNDERS . . . . . 3 B. L. R., O. C., 67

3. ——— *Jurisdiction.—Dissolution of marriage.*—A District Judge ought in all cases to enquire into, and set out in his judgment, the facts relied on as giving jurisdiction to the Court to pronounce a decree of dissolution of marriage. DURAND *v.* DURAND . . . 14 W. R., 416

4. ——— *Jurisdiction.—Residence of parties.*—In a suit for dissolution of marriage, where at the time of the presentation of the petition the respondent does not reside within the jurisdiction of the Court, the jurisdiction of the Judge and the right of the petitioner to petition him will depend on where the parties "last resided together." WINGROVE *v.* WINGROVE . . 14 W. R., 416

5. ——— *European British subjects.—Jurisdiction of the High Court of Bombay to hear a suit for divorce arising in a Native State between European British subjects.—Legislative powers of Governor General.*—The petitioner, a European British subject resident at Secunderabad in the Dekkan, sued for a divorce, alleging against the respondent various acts of adultery committed at Secunderabad. *Held* that the High Court of Bombay had jurisdiction to try the suit under the provisions of the Indian Divorce Act IV of 1869. *Held*, also, that the provisions of the Indian Divorce Act, IV of 1869, apply to suits between European British subjects resident in Native States in India; and that section 2 of that Act, which extends those provisions to such persons, was not *ultra vires* of the Indian Legislature. Statute 28 and 29 Victoria, cap. 15, section 3, transferred to the Governor General in Council the power, previously vested in Her Majesty by section 18 of the High Courts Act (Statute 24 and 25 Victoria, cap. 104) to alter and determine the territorial limits of the jurisdiction of the High Courts in India. The power thus transferred was a power "by Order" to authorise the exercise of jurisdiction. But the power so conferred upon the Governor General in Council did not affect the general legislative powers as to matters of jurisdiction previously possessed by him under Statute 24 and 25 Victoria, cap. 67, section 22. Those powers were (section 6 of Statute 28 and 29 Victoria, cap. 15) expressly reserved; and the special power given by section 3 of altering the limits of the jurisdiction by executive order does not exclude by implication the general legislative powers. To effect

DIVORCE ACT (IV OF 1869), s. 2—*continued.*

an alteration of such jurisdiction by Act instead of by Order is still within the general scope of the legislative powers of the Governor General in Council, although the more convenient course of an executive Government notification is usually followed. Previously to the institution of the present suit the respondent had left India and gone to England without any intention of returning to India. It was contended that Act IV of 1869, passed by the Indian Legislature in exercise of its power to make laws for persons resident in Native territories, could not affect her. *Held* that the petition satisfied the Act by alleging residence of the petitioner in India and the commission of the act of adultery whilst the parties last resided together in India. It was not necessary to show the residence of the respondent. THORNTON *v.* THORNTON . I. L. R., 10 Bom., 422

——— s. 3, cl. 2.—*District Judge.—Judicial Commissioner of Oudh.—Oudh Civil Courts Act (Act XIII of 1879), s. 27.*—A decree dismissing a suit for dissolution of marriage made by the Judicial Commissioner of Oudh, exercising the powers of a District Judge under Act XIII of 1879, and the Divorce Act, 1869, is appealable to the High Court of the North-Western Provinces. MORGAN *v.* MORGAN . . . . . I. L. R., 4 All., 306

——— s. 3, cl. 9, and s. 10.—*Desertion.—Adultery.—Judicial separation.*—A husband and wife living in British Burma separated in 1861; the wife, for reasons of convenience, going to England, but with no intention of a permanent separation. After her departure the husband contracted an adulterous connection with a Burmese woman, which was, however, unknown to the wife till 1875. During the separation he kept up correspondence with his wife, and in some of his letters he expressed an intention of never returning to England; and in 1868 expressed his willingness to aid her in obtaining a divorce. The wife never openly consented to the separation, although she could not be said to have made any active opposition to it. *Held* that the wife was not entitled to a divorce, but only to a judicial separation, as there was no evidence of desertion. Desertion under the Indian Divorce Act implies "an abandonment against the wish of the person charging it," and although the word "abandonment" is undefined, the effect of the clause is to introduce into the Indian Statute the view adopted by the Courts in England in construing the English Act. The expression "against the wish of" is to be construed as meaning contrary to an actively expressed wish of the person charging abandonment, and notwithstanding the resistance or opposition of such person. A wife is bound, when seeking to prove desertion, to give evidence of conduct on her part, showing unmistakeably that such desertion was against her will. The decisions of the Probate and Divorce Courts in England must be taken to be a guide to the Courts in India under the Indian Divorce Act, except when the facts of any particular case, arising out of the peculiar circumstances of Anglo-Indian life, constitute a situation such as the English Courts are not likely to have had in view. FOWLE *v.* FOWLE

[I. L. R., 4 Calc., 260 : 3 C. L. R., 484

DIVORCE ACT (IV OF 1869)—*continued.*

——— ss. 4 & 18.—*Matrimonial jurisdiction.—Marriage.—Nullity.*—The High Court cannot entertain a suit of a matrimonial nature otherwise than as provided by the Indian Divorce Act; and therefore has no jurisdiction to make a decree of nullity on the ground that the marriage was invalid. GASPER *v.* GONSALVES [13 B. L. R., 109

——— s. 7.—*Practice.—Inspection of letters.*—The respondent is entitled to have brought into Court letters written to her by the petitioner while the facts to which they speak were fresh in her memory. If the petitioner has none, he should make an affidavit to that effect. GORDON *v.* GORDON [3 B. L. R., O. C., 100

——— *Practice.—Stay of proceedings.—Petition for divorce in India.—Suit by wife in England for restitution of conjugal rights.*—The petitioner having (as he believed), on the 12th December 1885, discovered that the respondent had been guilty of adultery, brought her from Secunderabad to Bombay, and sent her to England on the 25th December 1886. On the 26th February 1886 he filed his petition in the High Court of Bombay. On the 26th March 1886 the respondent filed a suit against the petitioner in the High Court of Justice in England for restitution of conjugal rights. On motion made on respondent's behalf to stay proceedings in the present suit until the suit in England should be determined,—*Held*, in the circumstances of the case, that a stay of proceedings ought not to be granted. THORNTON *v.* THORNTON [I. L. R., 10 Bom., 422

——— s. 11.—*Addition of co-respondent.—Prostitute.—Amending petition.—Laches of petitioner.*—Under the Divorce Act, IV of 1869, the addition of a co-respondent is not necessary if the wife has been leading the life of a prostitute, and the petitioner knows of no person with whom adultery has been committed. Where the respondent was living, not a life of promiscuous intercourse with all who sought her, but living with separate persons in succession, and professed to be able to attribute her respective children to a father, she was held not to be leading a life of prostitution within the meaning of the Act. Where a petitioner neglected for fourteen years to take any steps to obtain a separation from his wife, whom he knew to be living in adultery, the Court refused to allow the petition to be amended by the addition of co-respondents. ROE *v.* ROE . . . . 3 B. L. R., Ap., 9

——— s. 13.—*Collusion.—Collusion in presentation of petition for dissolution.*—Subsequently to the institution of a suit for dissolution of marriage, and on the same day on which the suit came on for hearing, the petitioner and the respondent each filed petitions, setting out that it was agreed between them that from that date the marriage between them should be dissolved; that neither of them should have any claim against the other: that each should marry again at pleasure, and prayed that dissolution of the marriage might be granted on these terms, each party bearing his and her own costs. *Held* that this amounted to collusion within the meaning of section 13 of Act IV of 1869, and that the petition must be dismissed. CHRISTIAN *v.* CHRISTIAN . . . . I. L. R., 11 Calc., 651

DIVORCE ACT (IV OF 1869), s. 13—*continued.*

——— ss. 13, 14, and 15.—*Cruelty.—Condonation.*—The petitioner sued for a divorce on the ground of his wife's adultery. The adultery was admitted, but the respondent proved that her husband had been guilty of various acts of cruelty towards her, which disentitled him to have an unconditional divorce, and claimed on this ground a right to a judicial separation with alimony, under section 15 of the Indian Divorce Act. She was at the time of the suit living with the co-respondent. *Held* that the respondent was not entitled to a decree for judicial separation with alimony. The Court has discretion, under section 14 of the Act, to refuse a decree for divorce if the petitioner has been guilty of cruelty, although the cruelty may have been condoned. Sections 13, 14, and 15 of the Indian Divorce Act commented on. GORDON *v.* GORDON AND SARAN [3 B. L. R., O. C., 136

——— s. 14.—*Cruelty.—Pleading.—Issue.*—The cruelty must be specifically pleaded, and if it is not, the Court will not allow the issue to be raised or evidence given of it. KELLY *v.* KELLY AND SAUNDERS . . . . 3 B. L. R., Ap., 6

2. ——— *Husband and wife.—Charges against wife of adultery.—Cruelty.*—A false charge by a husband against his wife of adultery, although such charge is made wilfully, maliciously, and without reasonable or probable cause, is not an act amounting at law to cruelty, so as to entitle the wife to a judicial separation. AUGUSTIN *v.* AUGUSTIN . . . . I. L. R., 4 All., 374

3. ——— *Condonation of adultery.—Revival by wife's misconduct.*—When a husband, having received reasonably probable information of his wife's adultery, has, by continuing cohabitation, condoned the offence, subsequent misconduct of the wife tending to, though falling short of, adultery, revives the condoned adultery. PEREIRA *v.* PEREIRA AND BOUNJOUR . . I. L. R., 5 Mad., 118

4. ——— *Dissolution of marriage.—Discretionary bar.—Separation from wife without reasonable cause.—Conduct conducing to wife's adultery.*—A husband separated himself from his wife, who up to the time of his doing so was a virtuous woman, merely because she had run him into debt. He did not write to her, or go to see her, or make her an allowance proportionate to his income, after he had done so. *Held*, upon a petition by the husband for dissolution of his marriage on the ground of his wife's adultery, such adultery having been committed during such separation, that his conduct towards his wife disqualified him from obtaining the relief sought. HOLLOWAY *v.* HOLLOWAY AND CAMPBELL . . . . I. L. R., 5 All., 71

5. ——— *Suit for dissolution of marriage.—Adultery of petitioner during marriage.—Discretion of Court.*—The Courts in India will adopt, as a guide in the exercise of the judicial discretion in

DIVORCE ACT (IV OF 1869), s. 14—*continued.*

granting or refusing a decree of dissolution of marriage given by section 14 of the Indian Divorce Act, the principles laid down in the English decisions with regard to the corresponding section in the English Act (20 and 21 Victoria, cap. 85, section 31). The discretion to be exercised under section 14 of the Indian Divorce Act must be a regulated discretion. The Court cannot grant or withhold a divorce on the mere footing that the petitioner's adultery is more or less pardonable, or that it has been more or less frequent. There must be special circumstances attending the commission of such adultery, or special features placing it in some category capable of distinct statement and recognition, in order that the discretion may be fitly exercised in favour of a petitioner. G—— v. G—— . . . **8 Bom., O. C., 48**

6. ———— *Desertion.*—In a suit by a wife for a dissolution of her marriage on the ground of her husband's adultery and desertion, the adultery was proved, and it was found that the wife, notwithstanding the gross misconduct of her husband, continued to live with him for some years, during which time she supported her husband and herself by her own earnings, he contributing nothing to her support; that eventually, under the pressure of pecuniary difficulties, brought about by her husband's extravagance and dissolute habits, they came to an arrangement by which she went to live with her friends and he resided at his mother's house, until they could again find means to provide a common house; that for two years previously to the separation, though they had lived together, no conjugal intercourse owing to the husband's misconduct had taken place between them; that he left his mother's house without telling his wife where he was going, and subsequently went to Madras, where he had since resided. *Held* in the Court below, following the case of *Fitzgerald* v. *Fitzgerald, L. R., 1 P. and D., 694*, that the separation having originally been by mutual consent, desertion could not take place until cohabitation had been resumed; desertion not being proved, the wife was only entitled to a decree for judicial separation. *Held* on appeal that the separation not being brought about by the act of the wife, but by the husband's misconduct, distinguished the case from that of *Fitzgerald* v. *Fitzgerald*, and that, under the circumstances, the desertion was proved, and the petitioner was entitled to a decree for a dissolution of marriage. WOOD *v.* WOOD . **I. L. R., 3 Calc., 485 : 1 C. L. R., 552**

7. ———— *Delay.—Connivance.*—Whilst on the one hand there is no absolute limitation in the case of a petition for dissolution of marriage, yet the first thing which the Court looks to when the charge of adultery is preferred, is, whether there has been such delay as to lead to the conclusion that the petitioner had either connived at the adultery or was wholly indifferent to it; but any presumption arising from apparent delay may always be rebutted by an explanation of the circumstances. WILLIAMS *v.* WILLIAMS . . . **I. L. R., 3 Calc., 688**

8. ———— *Suit for divorce for adultery.—Delay in bringing suit.—Evidence of connivance.*—The marriage took place in 1860, the adultery commenced almost simultaneously with the marriage. The relief was sought in 1872. *Held* that, as until 1869 there was no means of obtaining relief, the question was whether the delay since that time had been sufficiently accounted for. Petitioner's excuse was that he believed that after seven years he could contract a second marriage. *Held*, also, that the delay ought not to be construed into an insensibility to the injury sustained, and the other circumstances of the case rebutted the existence of indifference approaching to connivance. DEVASAGAYAM PITCHAMATHOO *v.* NAIKAGAM . . **7 Mad., 284**

1. ———— s. 16.—*Motion to make decree nisi absolute.—Service of decree nisi on respondent and co-respondent.—Practice.*—When an application was made by the petitioner to make absolute a rule *nisi* for dissolution of his marriage with the respondent, and it appeared he had tried in vain to discover the respondent and co-respondent so as to serve them with notice of the decree *nisi*, the Court made the decree absolute without such service. WARDEN *v.* WARDEN . . **9 B. L. R., Ap., 39**

2. ———— *Application to make decree nisi absolute.—Notice.*—The parties against whom a decree is made in a suit for divorce against the wife, cannot come in to show cause why a decree *nisi* should not be made absolute: therefore, in an application to make the decree absolute, it is immaterial that the respondent has had no notice of the application. WILLIS *v.* WILLIS **[4 B. L. R., O. C., 52**

3. ———— *Practice.—Decree absolute.—Service of decree on respondent.*—It is not necessary, in order that a decree *nisi* for dissolution of marriage may be made absolute, that the decree should be served upon the respondent. HICKS *v.* HICKS . . . **I. L. R., 8 Calc., 756**

4. ———— *Intervenor.—Right of third person to intervene.—Procedure in case of intervening after decree nisi.—Right to move for new trial.—Practice.—Procedure.—Review.—Civil Procedure Code, 1877, s. 623.—Limitation Act, 1877, art. 162.—Motion to make absolute a decree nisi.—Discretion of Court to refuse motion.—Further enquiry ordered by Court.*—A wife sued for dissolution of marriage on the grounds of her husband's adultery and cruelty. The respondent entered an appearance through a solicitor, but did not file any written statement, and did not appear at the hearing, and a decree was made for the petitioner on the 26th July 1881. On the 3rd October, *T.*, who had acted as solicitor for the respondent, appeared as intervenor, and under section 16 of the Divorce Act (IV of 1869) obtained a rule *nisi* calling on the petitioner to show cause why a new trial should not be had and all further proceedings under the decree *nisi* should not be stayed. The rule was obtained upon an affidavit of *T.* in which he stated that since the date of the decree *nisi* he had been informed by the respondent that the petitioner had been, prior to that date, guilty of adultery with a person whose name he mentioned; that he was informed by the respondent

DIVORCE ACT (IV OF 1869), s. 16—*continued.*

that the reason why he (the respondent) had not defended the suit was that he wished to avoid making public the fact of his wife's adultery, and thus injuring the prospects of his children; that application had been made both to the Advocate General of Bombay and to the Government Solicitor that they should intervene as representing the Queen's Proctor in India, but that both had declined. The respondent also filed an affidavit corroborating the statements made in *T.'s* affidavit. In showing cause against the rule it was contended on behalf of the petitioner that, under the Divorce Act (IV of 1869), the proper course for a third person wishing to intervene was to file an appearance, and then to show cause on the motion to make absolute the decree *nisi*, and that the rule for a new trial was wrong in form. *Held* that a new trial could not be granted, there being no provision in the Civil Procedure Code (Act X of 1877) for the granting of a new trial. The respondent himself could only have applied for a review of judgment under section 623, and even if otherwise entitled to a review, the motion of the 23rd October 1881, regarded as an application for a review, was too late under clause 162, schedule II of the Limitation Act, XV of 1877. Assuming that a third person had the right to apply for a review of judgment, *T.'s* application of 3rd October 1881 was also barred. *Held* also that, under the Divorce Act (IV of 1869), a third person may show cause against a decree *nisi* being made absolute, but is not at liberty to institute proceedings, *e.g.*, by obtaining a rule, as was done in this case. *Held* also that *T.*, who had been the solicitor to the respondent, and who was, in fact, acting at the instance of the respondent, was not entitled to intervene or to show cause against the decree being made absolute. A respondent has no right to show cause, and he cannot do indirectly through another what he is not permitted to do himself. Counsel on behalf of the petitioner subsequently moved to make the decree *nisi* absolute, and contended that the Court having held that *T.* had no right to intervene or to show cause, the affidavits filed by him should be disregarded and taken off the file, and that no cause having been shown by any other person, the petitioner was entitled, under the provisions of section 16 of the Divorce Act (IV of 1869), to have the decree made absolute. The Court, however, refused the motion, and adjourned the case, directing that the petitioner should attend personally on a day specified, in order that the matters alleged in the affidavits might be investigated. KING *v.* KING . . . . I. L. R., 6 Bom., 416

5. ——— and s. 36.—*Alimony pendente lite.—Decree nisi for dissolution of marriage.—Application to make decree absolute.—Arrears of alimony.*—A husband who had obtained a decree *nisi* for the dissolution of his marriage with his wife on the ground of her adultery, applied to have such decree made absolute. At the time this application was made, arrears of alimony *pendente lite* were due to the wife. The Court (STRAIGHT, *J.*) refused to make such decree absolute until such arrears were paid. DE BRETTON *v.* DE BRETTON [I. L. R., 4 All., 295

DIVORCE ACT (IV OF 1869)—*continued.*

——— s. 17.—*Act XIV of 1859, s. 1, cl. 16.*—Act XIV of 1859, section 1, clause 16, does not apply to divorce suits. A decree of a High Court confirming the decree by a District Judge for dissolution of marriage reversed, so far as it affected the co-respondent, and condemned him in costs. HAY *v.* GORDON [10 B. L. R., P. C., 301: 18 W. R., 480 L. R. I. A., Sup. Vol., 106

——— s. 19.—*Restitution of conjugal rights, Suit for.—Marriage, Validity of.—Prohibited degrees.—Roman Catholics.—East Indians.—Customary law.—Deceased wife's sister, Marriage with.*—In a suit for restitution of conjugal rights the parties were East Indians, and at the time of the marriage on 22nd July 1877 were domiciled in British India, resident within the limits of Calcutta, and members of the Roman Catholic religion. The defence to the suit was that a previous marriage had, on 6th December 1871, been performed between the respondent and the petitioner's sister, and the respondent prayed that the second marriage might be declared a nullity. The ceremony of 6th December 1871 had taken place while the petitioner's sister was on her death-bed, and *in extremis*, and had been celebrated in accordance with the rites of the Roman Catholic Church, and it was held both by the original Court and on appeal to be a valid marriage. The first Court (CUNNINGHAM, *J.*) held that the second marriage was null and void on the ground that the parties were within the prohibited degrees. *Held* by the Full Bench,—The prohibited degrees mentioned in section 19 of the Divorce Act do not necessarily mean the degrees prohibited by the law of England. All that was known in respect of the parties to the marriage being that they were Roman Catholic subjects with Portuguese names, and it not having been found whether they were of English or any other European descent, or of native or mixed parentag,—*Held* that the prohibited degrees for the parties to the marriage were not the degrees prohibited by the law of England, but those prohibited by the customary law of the class to which they belonged,—that is to say, the law of the Roman Catholic Church as applied in this country. LOPEZ *v.* LOPEZ . . . I. L. R., 12 Calc., 706

1. ——— s. 35.—*Costs of respondent.—Succession Act (X of 1865), s. 4.*—If a suit by a husband for a divorce on the ground of his wife's adultery, an application was made that the petitioner should be directed to pay the respondent's costs. The marriage took place after the passing of the Succession Act, 1865, and it was contended that as section 4 of that Act did not allow the husband to acquire any interest in his wife's property, he would not be made to pay her costs; there was, however, no evidence before the Court that the wife had any separate property, and the application was granted. BROADHEAD *v.* BROADHEAD . 5 B. L. R., Ap., 9

2. ——— *Payment of wife's costs.*—On an application by the wife that a sum should be paid into Court to cover her costs of a suit for divorce in which she was respondent, the Court ordered the Registrar to estimate the probable expenses of

DIVORCE ACT (IV OF 1869), s. 35—*continued.*

the suit from the commencement to the date of final hearing: such sum was ordered to be paid into Court; the wife's proctor to have a lien on the sum to the extent of his costs. An application that the amount estimated should be paid out of Court to her was refused; but the Court granted an application that the respondent's costs incurred should be taxed, and the amount thereof be paid out of Court to her proctor. KELLY *v.* KELLY AND SAUNDERS

[3 B. L. R., Ap., 5

3. ——— *Suit for judicial separation.—Return to cohabitation.—Withdrawal of suit.—Costs.*—Where, in a suit by a wife against her husband, the attorney for the petitioner made an application on notice to the petitioner, the respondent, and the respondent's attorney, for an order that the suit be dismissed or withdrawn, and that the petitioner's costs be taxed and the amount thereof be paid to him by the respondent, and stated in his affidavit that he had instituted the suit under the instructions of the petitioner; that the parties had returned to cohabitation and the suit had been amicably settled; that the petitioner had since instructed him to withdraw the suit, and the respondent would pay the costs, for which purpose he had drawn a petition, which the respondent's attorneys would not agree to, the Court granted the application, so far as to direct that the costs of the petitioner's attorney, when taxed, should be paid by the respondent, but refused to make any order for the withdrawal or other final disposal of the suit, and ordered that the attorney should personally bear the costs of the application. P. ——— *v.* P. ———

[9 B. L. R., Ap., 6

4. ——— *Suit for judicial separation.—Liability of husband for costs of wife.—Succession Act (X of 1865), s. 4.*—In a suit for judicial separation between persons subject to the Succession Act, the Court will not, unless under exceptional circumstances, order the husband to give security for his wife's costs. The principle upon which the Divorce Court in England acts, in requiring the husband, in a suit for judicial separation, to provide for his wife's costs, is based upon the absolute right which the law formerly gave the husband upon marriage to the whole of his wife's personal estate, and to the income of her real estate, leaving her destitute of all means to conduct her case; but this state of the law has been completely altered in India by section 4 of the Succession Act, which prevents any person from acquiring, or losing, rights in respect of property by marriage. PROBY *v.* PROBY

[I. L. R., 5 Calc., 357: 5 C. L. R., 1

5. ——— *Costs of wife.—Succession Act, 1865, s. 4.—Married Woman's Property Act, 1874.*—A wife without property of her own seeking a divorce is entitled to have provision made by her husband for the payment of her costs in the suit. *Proby* v. *Proby, I. L. R., 5 Calc., 357,* distinguished and observed upon. NATALL *v.* NATALL

[I. L. R., 9 Mad., 12

DIVORCE ACT (IV OF 1869), s. 36.

See s. 16 . I. L. R., 4 All., 295

1. ——— *Application for alimony.*—In an application for alimony it is sufficient to set out the fact of the marriage in the petition. An affidavit to that effect is unnecessary. In making the application, it is sufficient to show the Court that there has been a ceremony which might be a valid marriage; and, therefore, where the petitioner was shown to be the respondent's deceased wife's sister, alimony was granted. CRUMP *v.* CRUMP

[3 B. L. R., O. C., 101

2. ——— *Alimony pendente lite.—Practice.*—Alimony *pendente lite* will be granted by the Court from the date of the service of citations, not from the date of the return. KELLY *v.* KELLY AND SAUNDERS . . . 3 B. L. R., Ap., 4

3. ——— *Alimony pendente lite.—Wife living with co-respondent.—Costs.*—In a suit by the husband for a divorce on the ground of his wife's adultery, where it is found that the wife is at the time of presenting the petition living with the co-respondent, or living apart from the husband, under such circumstances that she does not pledge his credit, an application by the wife for alimony *pendente lite* will be refused. *Semble,*—The wife's costs, however, will be allowed. GORDON *v.* GORDON AND SARAN . . . 3 B. L. R., Ap., 13

4. ——— *Alimony.—Failure to pay.—Attachment of respondent.*—The respondent in a suit brought by a wife for the dissolution of her marriage was ordered to pay her R120 a month for alimony, and to pay into Court R2,000, the certified amount of her costs. On his failure to pay this sum he was directed by a further order to pay into Court to the credit of the suit R300 monthly; out of which R120 were for alimony, and the balance for costs. The respondent continued in receipt of his usual income, but failed to make the payment directed by the order of the Court, and subsequently filed his petition of insolvency; in his schedule he entered the Accountant General as a creditor for R2,000, but made no mention of his liability for alimony, and he had not filed any accounts. On an application by the petitioner for his attachment stating the above facts, the Court granted the attachment. GEORGE *v.* GEORGE . . . 11 B. L. R., Ap., 2

5. ——— and s. 37.—*Alimony pendente lite. — Permanent alimony. — Practice.* — Alimony *pendente lite* cannot be granted on an application made after a decree *nisi* in the suit has been passed, nor is it in the power of the Court to grant permanent alimony until an application is made to make such decree absolute. BENNETT *v.* BENNETT

[I. L. R., 11 Calc., 354

1. ——— s. 37. — *Permanent alimony.* — Principle on which the Court will grant permanent alimony. ORD *v.* ORD . 5 B. L. R., Ap., 34

2. ——— *Alimony, Permanent.*—In granting alimony to the wife, the Court should be very reluctant, even supposing it has the power,

DIVORCE ACT (IV OF 1869), s. 37—*continued.*

to tie up the property of the husband, and so convert alimony into an absolute interest in, and charge upon, his estate. Rule as to costs in *Jones* v. *Jones, L. R., 2 P. & D., 333*, followed. FOWLE *v.* FOWLE
[I. L. R., 4 Calc., 260 : 3 C. L. R., 484

3. ——— *Adultery and desertion.—Delay in bringing suit.—Permanent alimony.*—A wife brought a suit for a dissolution of marriage on the ground of her husband's adultery and desertion. The desertion took place twenty-four years before the suit was brought, and ever since the husband had made his wife an allowance. Latterly his circumstances had considerably improved. The Court gave a decree for dissolution, but in determining the suitable amount of permanent alimony it took into consideration the circumstances of the husband at the time of the desertion, and refused to give the wife the full advantage of the present improved circumstances of the husband. SMYTH *v.* SMYTH
[5 B. L. R., Ap., 153

4. ——— *Alimony.—Costs.*—The Court has power, under section 37 of Act IV of 1869, to order permanent alimony to the wife when a husband obtains a divorce on the ground of her adultery. KELLY *v.* KELLY AND SAUNDERS . 5 B. L. R., 71

——— s. 40.—*Order as to marriage settlement.*—By an ante-nuptial settlement, *A.* settled certain immoveable property in Calcutta, to which he was absolutely entitled, upon himself for life, then upon his intended wife for life, and then upon the children of the marriage; but in the event of the intended wife dying in his lifetime without leaving issue, then upon himself, his heirs and assigns for ever. The marriage having been dissolved on the ground of the adultery of the wife before any children were born of the marriage, and the wife having subsequently married the co-respondent, by whom she had children, and with whom she continued to live, the Court, under section 40, Act IV of 1869, declared the settlement void as regarded the wife, and directed the trustees to re-convey the property to *A.* for an absolute estate. WOOD *v.* WOOD
[14 B. L. R., Ap., 6

1. ——— s. 41.—*Suit by wife for judicial separation.—Custody of children.*—When a wife obtains a decree for judicial separation on the ground of her husband's cruelty and adultery, and there is nothing to impeach her own conduct, the Court will allow her to have the custody of the children. MACLEOD *v.* MACLEOD . . 6 B. L. R., 318

2. ——— *Adultery of wife.—Access to children.*—When the marriage is dissolved on account of the adultery of the wife, she is not entitled to have access to the children of the marriage. KELLY *v.* KELLY AND SAUNDERS . 5 B. L. R., 71

——— s. 45.—*Practice as to filing written statements.*—In a suit for divorce on the ground of the wife's adultery, the co-respondent *suo motu* filed a written statement only four days before the hearing, and gave notice thereof only one day before. In an application to have it taken off the file as not

DIVORCE ACT (IV OF 1869), s. 45—*continued.*

being filed within time,—*Held* that there was nothing in the rules of Court, or the Code of Civil Procedure, by which the proceedings under the Act are to be regulated (section 45), which makes it compulsory on a party who tenders a written statement of his own accord to present it before the first hearing of the suit. ABBOTT *v.* ABBOTT AND CRUMP
[4 B. L. R., O. C., 51

——— ss. 51 and 52.—*Suit for dissolution of marriage on the ground of wife's adultery.—Evidence of adultery. — Co-respondent.* — The co-respondent, in a suit by a husband for the dissolution of his marriage with his wife on the ground of adultery, was summoned by the petitioner in such suit as a witness. The Court did not explain to him, before he was sworn, that it was not compulsory upon, but optional with, him to give evidence or not. He did not object to be sworn, and replied to the questions asked him by the petitioner's counsel without hesitation, until he was asked whether he had had sexual intercourse with the respondent. He then asked the Court whether he was bound to answer such question. The Court told him that he was bound to do so, and he accordingly answered such question, answering it in the affirmative. Had the Court not told him that he was bound to answer such question, he would have declined to answer it. *Held*, under such circumstances, that the co-respondent had not "offered" to give evidence within the meaning of section 51 of the Divorce Act, 1869, and therefore his evidence was not admissible. DE BRETTON *v.* DE BRETTON . . I. L. R., 4 All., 49

——— s. 52.—*Witness.*—The respondent in a suit for divorce under Act IV of 1869 can be examined as a witness. By the 52nd section she may be compelled to give evidence in the cases there supposed. In other cases her evidence is admissible if she offers herself as a witness. KELLY *v.* KELLY AND SAUNDERS . . . 3 B. L. R., Ap., 6

——— s. 53.

See MARRIAGE . I. L. R., 12 Calc., 706

See RESTITUTION OF CONJUGAL RIGHTS.
[I. L. R., 12 Calc., 706

1. ——— s. 55.—*Right of co-respondent to be heard on appeal.*—A husband brought a suit for divorce against his wife on the ground of her adultery; the co-respondent appeared in that suit. The respondent appealed on the ground (*inter alia*) that on the evidence the Court ought to have held that the adultery was not proved *Held* that, in that appeal, the co-respondent was not entitled to be heard in opposition to the appeal. KELLY *v.* KELLY AND SAUNDERS . . . . 5 B. L. R., 71

2. ——— *Appeal by a wife from order made in suit for divorce.—Wife's costs.—Security for costs.—Memorandum of appeal admitted without requiring security.*—In a suit for divorce brought by a wife against her husband, the wife obtained a decree *nisi* which ordered the respondent to pay a monthly sum by way of alimony to the wife, and also ordered

DIVORCE ACT (IV OF 1869), s. 55—*continued.*

him to pay the wife's costs of suit. Under this decree a sum of Rs.3,369 was due to the wife on the 26th May 1882. The wife appealed from an order made in the suit, and the Court, under the circumstances, admitted the appeal without requiring from the appellant the usual security for costs. KING *v.* KING . . . . I. L. R., 6 Bom., 487

3. ——— *Appeal.—Production of additional evidence in Appellate Court.*—At the hearing of an appeal from a decree dismissing a suit by a wife for dissolution of marriage, on the ground of her husband's incestuous adultery with her sister *M.* and cruelty, the appellant produced certain letters written by the respondent and *M.* to each other which showed that a criminal intimacy existed between them. These letters were not written until after the appellant had filed the appeal. *Held* that such letters were admissible and should be admitted, and that, having been brought to the Court's notice by the appellant's counsel, the Court was bound in the interests of justice to require their production in order to enable it to decide the appeal on its real merits. MORGAN *v.* MORGAN [I. L. R., 4 All., 306

DOCK.

See LAND RECLAIMED FROM THE SEA. [I. L. R., 1 Bom., 513

DOCUMENT.

——— **Alteration of—**

See CASES UNDER CONTRACT—ALTERATION OF CONTRACTS—ALTERATION BY PARTY.

——— **containing covenants for title.**

See REGISTRATION ACT, 1877, s. 49. [I. L. R., 2 Bom., 273

——— **Person "claiming" under—**

See REGISTRATION ACT, 1877, s. 73. [I. L. R., 1 All., 318

——— **referring to will.**

See WILL—FORM OF WILL. [I. L. R., 4 Calc., 721

——— **Suit for cancellation of—**

See CASES UNDER DECLARATORY DECREE, SUIT FOR—SUITS CONCERNING DOCUMENTS.

——— **Thirty years old.**

See CASES UNDER EVIDENCE ACT, s. 90.

DOCUMENTARY EVIDENCE.

See CASES UNDER APPELLATE COURT—REJECTION OR ADMISSION OF EVIDENCE ADMITTED OR REJECTED BY COURT BELOW—UNSTAMPED DOCUMENTS.

See CASES UNDER SPECIAL APPEAL—GROUNDS OF APPEAL—EVIDENCE, MODE OF DEALING WITH—DOCUMENTARY EVIDENCE.

DOCUMENTS.

See CASES UNDER CIVIL PROCEDURE CODE, 1882, ss. 137, 138, 139, 140.

See CASES UNDER INSPECTION OF DOCUMENTS.

——— **Copies of—**

See PRISONER . 6 B. L. R., Ap., 59

——— **Execution of—**

See CASES UNDER PARDA-NASHIN WOMEN.

——— *Specialty documents.*—The law of British India as administered in the mofussil recognises no distinction between specialties and other documents. TIRUMALA RAU SAHEB *v.* PINGARA SANKARA RAU . . . . 1 Mad., 312

DOMESTIC SERVANTS.

See ACT XIII OF 1859. [2 B. L. R., A. Cr., 32

See WILL—CONSTRUCTION. [8 B. L. R., 244
9 B. L. R., Ap., 4

DOMICILE.

See HUSBAND AND WIFE. [I. L. R., 4 Calc., 140

See MARRIAGE . . 13 B. L. R., 109

See SUCCESSION ACT, s. 4. [I. L. R., 1 Calc., 412

See WILL—CONSTRUCTION . 5 B. L. R., 1

——— **Will.**—*Probate, Application for.—Service under E. I. Company, 21 and 22 Vict., c. 106.—Succession Act, ss. 5 and 10.*—A Scotchman, who entered into the service of the East India Company, and continued in that service after the Act of 1858 (21 and 22 Victoria, cap. 106), transferring the Government of India from the East India Company to the Crown, was passed, died in the year 1878, leaving a holograph will which was not attested according to the provisions of the Succession Act, but which was admittedly good according to Scotch law. *Held*, upon an application for a declaration that the document was a good will, and for a grant of probate, that the deceased had acquired an Anglo-Indian domicile, which he had not lost at the time of his death, notwithstanding the Act of 1858 and the Succession Act, and therefore, the will not having been properly executed, probate was refused. IN THE GOODS OF ELLIOTT . . I. L. R., 4 Calc., 106
[2 C. L. R., 496

DONATIO MORTIS CAUSÂ.

See HINDU LAW—GIFT—GIFTS MORTIS CAUSÂ . . . 6 Mad., 270
[3 B. L. R., O. C., 113
10 B. L. R., P. C., 3

DONATIO MORTIS CAUSÂ—*continued.*

See MAHOMEDAN LAW—GIFT—VALIDITY.
[Marsh., 315
5 C. L. R., 91
2 Hay, 345
W. R., 1864, 221
1 W. R., 17, 152
3 W. R., 40
6 N. W., 159
I. L. R., 2 All., 854
I. L. R., 3 All., 731
I. L. R., 9 Bom., 146

DOWER.

See CASES UNDER MAHOMEDAN LAW—DOWER.

——— **Cause of action in respect of**—

See CASES UNDER LIMITATION ACT, 1877, ARTS. 103, 104.

——— **Lien for**—

See RES JUDICATA—PARTIES—SAME PARTIES OR THEIR REPRESENTATIVES.
[5 B. L. R., 570

——— **Widow, Right of, to dower.**—*Act XXIX of 1839.—Widow of Armenian.—English law of inheritance.*—The widow of an Armenian, married before the Dower Act (XXIX of 1839), is entitled to dower out of lands which her husband held during the marriage for an estate of inheritance, as against a Hindu purchaser for value from the husband during his life, the English law of dower having been recognised in this country amongst Europeans and Armenians as a branch of the law of inheritance. *Per* GARTH, *C. J.*—Estates which have been held by British subjects under the name of freehold estates of inheritance are, in all essential respects, the same estates which have been held in England under the same name. SARKIES *v.* PROSSUNNOMOYEE DOSSEE
[I. L. R., 6 Calc., 794
8 C. L. R., 76

DOWL FEHRIST.

See REGISTRATION ACT, 1877, s. 18.
[I. L. R., 3 Calc., 323
1 C. L. R., 328

DURESS.

See CONTRACT—ALTERNATION OF CONTRACTS—ALTERATION BY THE COURT.
[I. L. R., 8 Mad., 304

1. ——— *Suit to set aside deed.—Restoration of advantage accruing to plaintiff under deed.*—Where one seeks to set aside a deed on account of duress, and such duress does not amount to personal duress, but merely to pressure by threats as of injury to property, the plaintiff must offer to restore any benefit accruing to him under the deed. GUTHRIE *v.* ABUL MAZAFFER
[7 B. L. R., 630 : 15 W. R., P. C., 50
14 Moore's I. A., 53

DURESS—*continued.*

2. ——— *Contract made under threat of Criminal offence.*—In a suit to enforce performance of a contract, where defendant pleads that the contract was executed under compulsion and intimidation, it is not sufficient for him to prove that it was executed from fear of a criminal complaint, as that might have been a righteous fear, and not simply a bodily fear imposed on him, in order to his doing that which he would not of his own free will have done. KOMULANATH SEIN *v.* BEHAREE KANT ROY
[11 W. R., 314

3. ——— **Avoidance of contract.**—*Imprisonment.*—An agent employed by the plaintiff to purchase timber for him in the Siamese territory was imprisoned by an officer of the Siamese Government, on a charge brought against him by the defendant of stealing timber. In order to obtain his release he contracted to purchase from the defendant, for the plaintiff, the timber which he was charged with stealing, at a price much beyond its value. *Held* that the plaintiff might repudiate the contract as obtained under duress. In England the mere fact of imprisonment is not deemed sufficient to avoid an agreement made by one who is in lawful custody under the regular process of a Court of competent jurisdiction where no undue advantage is taken of the situation of the party making the agreement. But in a country in which there is no settled system of law or procedure, and where the Judge is invested with arbitrary powers, imprisonment may in itself amount to duress such as will avoid a contract entered into by the prisoner with a view of obtaining release. MOUNG SHOAY ATT *v.* KO BYAW
[I. L. R., 1 Calc., 330 : L. R., 3 I. A., 61

4. ——— **Suit to set aside agreement made under threat of criminal prosecution for which there was no foundation.**—*Right of suit.*—The plaintiff under threat of a criminal prosecution for the offence of criminal trespass, executed an agreement in writing which conferred certain rights on the defendant. There was no foundation for the charge made by the defendant. In a suit to set aside the agreement,—*Held* that the plaintiff was entitled to maintain the suit. PUDISHARY KRISHNEN *v.* KARAMPALLY KUNHUNNI KURUP . . . . . 7 Mad., 378

5. ——— **Award made on consent given by duress.**—*Setting aside award.*—An award of the late Rajah of Satara, founded upon a deed of consent, set aside on proof being given that the consent had been obtained by duress. SUBHANJI BIN BAHIRJI *v.* BHAVANRAV BIN ANANDRA
[1 Bom., 173

6. ——— **Common assembly.**—*Damage done to property.*—Coercion to form a member of a common assembly by the members of which damage has been done to property, or coercion to bear a part in the damage, is no excuse from responsibility in a civil suit for compensation. GANESH SINGH *v.* RAM RAJA
[3 B. L. R., P. C., 44 : 12 W. R., P. C., 38

DUTIES.

1. ——— **Levy of duties,**—*Haq.—Act XIX of 1844 (Levy of Haqs, Bombay), Act XX of 1859 (Town Duties, Bombay).—Abolition of duties and haqs.—Held* (TUCKER, *J., dissentiente*) that all town duties, taxes, and cesses of every kind on trades or professions (and not merely such of them as were then levied by Government) were abolished by Act XIX of 1844, and that a privilege enjoyed by a private person to levy certain fees on articles imported and exported through three of the city gates of Surat, and originating in an alienation by a former sovereign of a portion of the royal revenues derivable from that source, ceased from the date when the said Act came into operation; and consequently that the Court was not precluded from so deciding, because the provisions of Act XX of 1839 (empowering the Governor in Council of Bombay to prohibit the levy of haqs and fees) had not been complied with in forbidding the levy of the fees in question. *Per* COUCH, *J.*—The intention of the Legislature in 1844 appears, from the language used by it in Act XIX, and from the recital in Act XVI of that year, to have been the import on salt being about to be increased, that, instead of leaving haqs such as this to be abolished at different times under the Act of 1839, they were then to be entirely abolished. NASARVANJI PESTANJI *v.* DEPUTY COMMISSIONER OF CUSTOMS

[2 Bom., 2nd Ed., 75

2. ——— **Toda garas haq.**—*Alienation of haq.—Bombay Act VII of 1863, ss. 27, 32.—Held*, in the absence of proof on the part of Government to the contrary, that there is nothing in the nature of a toda garas payment which makes it in-

DUTIES.—Toda garas haq—*continued.*

capable of alienation; and that without such proof Government receiving such sums cannot withhold payment of them from the alienee of the person to whom, but for the alienation, they would be payable. *Held*, also, that toda garas haq does not come within the meaning of the word "lands" as defined by section 32 of Bombay Act VII of 1863, and that a suit having reference to the recovery of sums due out of such haq is not affected by section 27 of that Act. COLLECTOR OF SURAT *v.* HEIRESS OF KUVARBIA

[2 Bom., 253 : 2nd Ed., 239

3. ——— *Amount collected, Payment of.—Onus probandi.—Held* that whatever may be the right of the Government as to the collection of toda garas from villagers, where it does collect toda garas it is bound to pay over the amount so collected to the original garashia, or his representatives, if the haq is a perpetual one. Where Government has paid a toda garas haq to a garashia for a long and uninterrupted period of time, the *onus* of proving that the haq is not perpetual lies upon Government. UMED SANGJI *v.* COLLECTOR OF SURAT

[7 Bom., A. C., 50

DWELLING-HOUSE.

See HINDU LAW—FAMILY DWELLING-HOUSE.

——— **Lands appurtenant to—**

See RENT, SUIT FOR—

[3 B. L. R., A. C., 65
3 B. L. R., Ap., 133